

May 2023

## **Determinants of Indigenous Rights Adoption in Latin America: Political Implications and Incrementalism 1960-2016**

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**DETERMINANTS OF INDIGENOUS RIGHTS ADOPTION IN LATIN  
AMERICA: POLITICAL IMPLICATIONS AND INCREMENTALISM  
1960-2016**

by

Samantha Ann Hagle

A Dissertation Submitted in  
Partial Fulfillment of the  
Requirements for the Degree of

Doctor of Philosophy  
in Political Science

at

The University of Wisconsin-Milwaukee

May 2023

## ABSTRACT

### DETERMINANTS OF INDIGENOUS RIGHTS ADOPTION IN LATIN AMERICA: POLITICAL IMPLICATIONS AND INCREMENTALISM 1960-2016

by

Samantha Ann Hagle

The University of Wisconsin-Milwaukee, 2023  
Under the Supervision of Professor Natasha Borges Sugiyama

Broadly, this work asks: what leads to the varied political status of indigenous populations in Latin America? From a uniform point of political exclusion, in recent decades governments in the region have adopted various degrees of constitutional reforms to protect their original populations. Some indigenous populations in Latin America remain unrecognized, like those in Chile. Others have gained some recognition and access to equal democratic rights. In other countries, like Bolivia, indigenous peoples have the potential to gain constitutional autonomy and regional self-government for their communities. First, I argue that the rights expansion process depends partially upon the content of the provision to be adopted. Constitutional laws have different political implications for indigenous and non-indigenous groups based on their substantive content. The changes created in these constitutional revisions must be considered when examining the rights adoption process. Second, key domestic factors impact rights adoption, dependent on the political implications of the rights up for adoption. This dissertation finds an incremental nature to rights expansion. First, rights recognize previously excluded indigenous populations as political citizens, then move to equalize political representation for these groups. Next, adoptions go on to establish rights that correct historic

economic and social inequalities suffered by indigenous communities. As the last step in constitutional rights adoption, states recognize indigenous regional autonomies and create new political institutions in their interest.

I conduct a nested analysis to test the impact of domestic factors during the different phases on indigenous rights adoption in Latin America. Survival and firth logit models are first used to test regional patterns of domestic impacts on the rights adoption process, and the incremental nature of rights adoption. Democracy is found to not be associated with the extension of equal democratic constitutional representation to indigenous groups, contrary to conventional knowledge. After initial recognition is gained, indigenous mobilization positively predicts the adoption of indigenous representation, resource, and autonomy provisions. Additionally, indigenous representation in national government is positively related to the adoption of indigenous autonomy rights in the national constitution. Along with these results, other interesting conclusions are drawn from the domestic impacts on rights adoption. Survival and logit models also find support that indigenous constitutional rights expand in a step-by-step process. That is, first, constitutions create terms of equal political rights before going on to address indigenous issues and difference.

Case study evidence supports theories of the incremental adoption of indigenous constitutional protection. Bolivia, the most successful case, has engaged in a strategy of incrementalism, while Chile has recently tried to make far-reaching indigenous adoptions in one revision, which failed to pass. State level analysis also reveals that democracy does tend to precede a political opening to political marginalized populations, but strong indigenous mobilization and national representation is key in procuring far reaching constitutional rights that protect indigenous land, resources, and sovereignty.

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## LIST OF ABBREVIATIONS

Central Obrera Boliviana (COB)  
Centro Ecumênico de Documentação e Informação (CEDI)  
Coordinator for the Defense of Indigenous Peasant Territories and Protected Areas (CONTIOCAP)  
**Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB)**  
Confederación Indígena del Oriente Boliviano (CIDOB)  
Consejo Indígena del Pueblo Tacana (CIPTA)  
Conselho Indígena Missionario (CIMI)  
Conservation International (CI)  
Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica (COICA)  
Council for the Articulation of Indigenous Peoples and Organizations in Brazil (CAPOIB)  
Council for Indigenous Development (CONADI)  
Defense of Indigenous Peasant Territories and Protected Areas (CONTIOCAP)  
Ecumenical Center for Documentation and Education (CEDI)  
Federación Sindical de Trabajadores Mineros de Bolivia (FSTMB)  
Free, Prior and Informed Consent (FPIC)  
Fundação Nacional dos Povos Indígenas (FUNAI)  
Gross Domestic Product (GDP)  
Indigent Work Center (CTI)  
International Criminal Court (ICC)  
International Labor Organization (ILO)  
Movimiento al Socialismo (MAS)  
Movimiento Nacionalista Revolucionario (MNR)  
Non-Governmental Organization (NGO)  
Purchasing Power Parity (PPP)  
Territorio Indígena Parque Nacional Isiboro Sécore (TIPNIS)  
United Nations (UN)  
Union of Indigenous Nations (UNI)  
Varieties of Democracy (Vdem)  
Violence Against Women (VAW)

Wildlife Conservation Society (WCS)

World Bank (WB)

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*This dissertation is dedicated to my daughter Luna, who is the motivation and inspiration behind everything I do.*

## Chapter 0: Introduction

*“From the moment the Spaniards arrived, we’ve been stigmatized in some way, as barbaric Mapuche savages, soulless .... And then we became drunk, lazy, when we were left with little or no land and we were subjected to blood and fire.” - Hector Llaitul, leader of the Coordinadora Arauco-Malleco (CAM) 2021. (Al Jazeera)*

### Introduction

In October 2020, popular protests and social unrest spread throughout Chile. This massive *Estallido Social* (social outburst) exploded in response to an increase in public transportation fees that added to the increasing burden on the average Chilean citizen. Over three million Chileans participated in multiple waves of protests that lasted until March 2020. Protestors demanded that the state take action to correct social inequalities, address unemployment issues for its young peoples, and stop the privatization of Chile’s natural resources. The public also called for the removal of Chile’s old constitution, which was established under decades of violent authoritarianism, and to agree to the adoption of a new text. Protestors demanded that the new constitutional framework represent the needs of its average citizens. Participation in the uprisings was widespread, with the working class, students, and educators participating in the outbursts. Indigenous populations also contributed to these movements and had their own motivations to participate in the renegotiation of the state’s



constitution. This includes implementing constitutional revisions that correct their historical grievances.

This social outburst resulted in a national referendum. Seventy eight percent of citizens voted to throw out Chile's old constitution and create a new one in a representative constitutional assembly in May 2021. For the first time in the country's history, indigenous communities had a say in the negotiation process alongside non-indigenous committee members. The new constitutional committee reserved 17 of 155 seats reserved for the original nations' representatives. The leader of the constitutional committee is also of indigenous descent. She represents the *Mapuche*, the largest indigenous nation in Chile. The committee's work was to undertake a wholesale revision of national law. A new constitution could expand social rights for all Chileans. This includes increased access to healthcare, education, and welfare, among other reforms. The document would also include indigenous rights where none previously existed. The inclusion of indigenous representatives on the constitutional committee represents a shift in the political representation of their communities. Until recently, the original populations were not included in state policies and decision making.

After over a year of drafting and debate, the constitutional committee put the new document up to a vote. The document proposed far-reaching social services for all Chilean citizens. It also guaranteed indigenous political representation, territorial autonomy, and control over resource projects, and recognized the country as plurinational or consisting of multiple nations. On September 4th, 2022, Chile's population resoundingly rejected the drafted constitution. Campaigns against the draft argued that indigenous citizens should not have special status. Nor should the state consist of multiple nations. The question centers around how much

constitutional protection is too much, particularly because native peoples are historically politically marginalized citizens.

The ongoing case in Chile shows an active struggle over how to define indigenous citizenship in national law. At its core, there is a national debate over the form that indigenous constitutional rights should take in Chilean law. There is consensus that these populations are deserving of constitutional inclusion, but it is unclear under what terms rights they should be granted. The political will of the original nations in Chile remains strong despite setbacks, so their push for constitutional representation will continue.

Though the current constitutional committee in Chile is unique, the plight of its original nations is not. Indigenous communities throughout Latin America petition for their representation. They demand the protection of their culture, resources, and land. Native leadership stress the need for national representation (Fontana and Grugel 2016; O'faircheallaigh 2012; Postero 2017; Stocks 2005). But as it stands, constitutional law in the region has engaged with its indigenous populations in different ways. Uruguay and Chile remain the region's holdouts, with no constitutional recognition of its native peoples. Guatemala recognized its indigenous nations early on in 1945 (Constitution of Guatemala, 1945), but failed to expand rights beyond broad cultural protection. Bolivia and Colombia have much more expansive rights in their constitutions, with laws that guarantee original peoples both territorial and legal recognition (Constitution of Bolivia 2009; Constitution of Ecuador 2009).

As it stands, rights for native citizens in the region are highly varied. All but two countries in the region have come to adopt some form of indigenous provision into law. But the timing of these adoptions is not uniform across the region. Revisions to include indigenous rights began in 1933 and continue to be the topic of political debate. Currently, states include anywhere

from one to twenty specific indigenous rights in constitutional law. In addition to the varied timing and number of indigenous rights in the constitution, rights take different form in terms of substantive content. Some rights simply recognize indigenous populations as political citizens, while others guarantee political representation, or even recognize indigenous autonomy. In sum, indigenous populations in Latin America live under highly varied constitutional terms of citizenship.

This dissertation seeks to explain the variance in indigenous constitutional rights in Latin American states. Simply, what drives the adoption of indigenous provisions into national constitutions? From uniform political exclusion under colonial occupations, states formed constitutions that left Latin America's indigenous populations with no political rights. Effectively, indigenous peoples were considered non-political actors at best and were constitutionally defined as unfit to have political rights at worst. Beginning in 1933, state governments in Latin America began to adopt constitutional rights that protect these populations. This represents a shift in many state policies to expand citizenship to their original populations as opposed to continued exclusion. But states have adopted rights to various degrees, with different terms of indigenous citizenship and political access. First, I argue that the substantive content of indigenous rights provisions plays a key role in the probability of their adoption. Second, key domestic variables impact the likelihood of rights adoption, dependent upon the current stage in the adoption process. Finally, indigenous rights adoption is likely to be carried out in steps, with incremental access to rights that first equalize terms of citizenship, and then go on to correct economic and social inequalities, and finally indigenous regional autonomy.

Previous scholarly work discusses indigenous constitutional protections in a limited capacity. First, researchers have explained rights adoption as a diffusion of democratic norms

(Finnemore and Sikkink 1989; Kopstein and Reilly 2000; Bromley 2014; Jung 2003). Minority rights are expected to be adopted into national laws where democratization motivates their adoption. This vein of research also argues that regional adoptions of democratic human rights norms lead to norm cascades of constitutional protections. Second, indigenous rights are positioned within discussions of ethnic mobilization as a motivator for representation (Clement 2011; Klug 2015; Hertel 2015; Yashar 1998). Third, indigenous rights outcomes are interpreted among broader theories of ethnic conflict, where access to political resources are key in the rights negotiation process (Doyle and Sambanis 2006; Fearon and Laitin 2003; Gurr 1970).

But current research does not account for the evolution of indigenous rights over time, nor is there a discussion of the relative status of indigenous constitutional protection among populations in the region. I create an original dataset for this dissertation that measures Latin American constitutional revolutions that create indigenous provisions from regional statehood until the most recent indigenous adoptions in 2016. No other dataset outlines indigenous constitutional revolutions and specifies their substantive content in regional constitutions over time. Recent scholarship also does not consider that the substantive content of these indigenous rights has implications for their adoption. Some rights create terms of equal political access, for example, while others create new national identities and regional self-governments. The political implications of constitutional adoptions for indigenous populations in Latin America is left undiscussed in recent research. Finally, while current political theory discusses the evolution of democratic constitutional citizenship (Benhabib 2005; Shaman 2003; Marshall 1950), it fails to account for indigenous rights that can be nationally divisive in nature. This dissertation seeks to overcome these shortcomings.

I contribute to our knowledge and understanding of the evolution of the rights adoption process. First, I argue that the content of indigenous provisions to be adopted into the constitution has implications for the likelihood of adoption into law. The logic is that minority constitutional protections take different forms and define access to political goods in diverse ways. They restructure the political status quo to various degrees. As a result, state entities engage with their native populations in different ways. Some offer little recognition of native communities and their grievances, while others define autonomous territories and create new institutions. Second, I demonstrate that the timing of adoption matters. Third, key domestic factors interact with rights adoption, but relationships are dependent on the current stage in the rights adoption process. Next, I argue that constitutional rights are expanded incrementally after indigenous peoples are recognized as legal citizens. From this point, rights expand to equal representation before rights of native difference are created. Finally, I include three qualitative case studies, outlining the tangible status of these rights for the original peoples in Latin America and the causal mechanisms that impact the process along the way.

### **Defining Indigeneity**

Before discussing indigenous constitutional representation in Latin America, it is important to discuss what indigeneity means. This dissertation focuses on the political status of indigenous citizens vis-à-vis non-indigenous citizens. The following sections define indigeneity as employed in this work. In broad strokes, most importantly indigenous groups must retain at least some or all their own institutions. These institutions often conflict with terms of citizenship defined by state entities. In addition, indigenous populations pre-date colonial occupation, and recognize their own communities as distinct.

Per international law, the term *indigenous* serves to distinguish one group from others. Simply, indigenous citizens are those have different origins than non-indigenous ones. Indigeneity itself was not considered a status until it was created by the United Nations (UN) after World War II (Merlan 2009). With the creation of the term, the UN outlined qualifications to meet its definition. Populations that meet these qualities are internationally recognized as an indigenous.

First, and most crucially, indigenous communities must retain all or at least some of their own institutions (UN ILO 169). Indigenous peoples in Latin America have passed down their own language, culture, and legal practices, for example. States have come to recognize these institutions as legitimate to varying degrees in constitutional law over time. Another example of an indigenous institution that has received a lot of spotlight in recent political discourse is the right to communal land ownership. Simply put, land rights belong to everyone in the community equally. These norms directly conflict with existing democratic laws that protect private property rights of the individual and private corporations. The critical point is that indigenous populations have *retained unique practices and have their own way of life that is separate from the rest of the nation*.

Next, communities are defined as descended from populations that pre-date colonial invasion and occupation. Peoples that lived in and developed state territory prior to outside intervention have valid legal and moral claims against state entities. Native citizens have historical claim to land, resources, and political autonomy. They also have cultural, spiritual, and economic ties to state territories (Kenrick and Lewis 2004; Merlan 2009; UN ILO 169). Simply, they rely on their land and culture to survive as a nation. Colonialism led to a history of native political dispossession, which these communities are now rising against.

Finally, the original nations recognize themselves as culturally distinct. Self-identification is evident in different social, cultural, and economic conditions that are distinct from other citizens (Merlan 2009; UN ILO 169). Recognition by other groups is also typically a requirement for indigenous status at both the international and national level (Kenrick and Lewis 2004). Indigenous peoples cannot properly petition for rights that protect their way of life unless their status is recognized by both international and national entities.

### **Why Latin America?**

There are countless indigenous peoples that fit these definitions, and they can be found across the world. This work focuses on the current political status of native populations in the Latin American region. Case selection is limited to this region to best compare rights outcomes.

The scope of this research is limited to Latin America because its native populations suffered from a similar past of political dispossession. The region was occupied by Spanish and Portuguese colonizers beginning in the 14<sup>th</sup> century. The result of this occupation was the elimination and marginalization of the indigenous peoples that developed the region prior to invasion. The history of native political marginalization continued when Latin American countries declared independence from the crown in the 17<sup>th</sup> century. The region's original peoples were absent from all state constitutions until the 1930's. The shared historical foundations of exclusion of native populations in the region thus serves as a starting point for this work. Since the state-building era, indigenous constitutional rights have evolved. Non-citizenship from the colonial era continues in some countries, while others have created constitutional rights that are broad and powerful.

From the start of native constitutional recognition in the 1930's, rights for these populations have taken four categorical forms. The first step in the political legitimization of native populations in Latin American countries results in recognition in the constitution. Next, comes representation rights. These provisions provide indigenous communities with the recognition of their cultures and practices. Next is resource rights that include constitutional articles that outline thresholds for representation and state funding for original populations. Finally, the rarest form of indigenous constitutional protection takes form in autonomy rights. These establish laws for indigenous self-governance and create new institutions that align with their practices and customs. Table 1 shows a breakdown of this categorization. A thorough discussion of indigenous constitutional rights in Latin America is in chapter 3 of this work.

**Table 1. Typologies of Indigenous Constitutional Rights**

<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
General Recognition	Right to Culture Right to Health Right to Education Right to Language ILO 169	Political Representation State Health State Education Regional Legitimacy Consultation	Territorial Borders IFPIC Resource Protection Autonomy Indigenous Institutions

<sup>1</sup> ILO 169 is a mention of the UN convention on human rights under the same name. Constitutions can note the convention, but not create the institutions suggested in the convention itself.

<sup>2</sup> State Education and State Health are funded by the government, as opposed to general rights to health and education. The latter do not guarantee that the state will deliver these services.

<sup>3</sup> Consultation is not as powerful as Consent, which is a requirement of IFPIC laws presented in constitutional rights that provide Indigenous autonomy.

## **Theoretical Overview**

First, I argue that the substantive content of indigenous rights adoptions in national constitutions has implications for the likelihood of their adoption. Adopted rights renegotiate the status quo arrangements for access to political goods. Recognition rights are just that, they recognize indigenous populations as legitimate political participants. These adoptions are the most minimal constitutional protection afforded to original populations. Representation rights are



a natural extension of terms of equal democratic rights. They include equalizing indigenous access to health, education, and culture. Resource rights are targeted at correcting social and economic inequalities that are historically related to indigenous status. These adoptions include proportional representation for indigenous communities, state funded indigenous health and education services, and legitimize indigenous land claims. Finally, autonomy rights define multiple nations inside state territory, draw new borders, and create new institutions. These provisions are considered divisive to a unitary national political identity. Simply, I argue that not all indigenous rights are uniform in their access to political goods.

Second, key domestic factors are expected to impact the rights adoption process. But their impact will vary depending on the indigenous provisions to be adopted into constitutional law. Democracy is expected to motivate the adoption of indigenous rights that establish equal access. For those rights that create specialized access to political resources based on indigenous status, or those that create indigenous autonomies, democracy is expected to have no impact. Indigenous movement strength motivates the adoption of resource and autonomy rights and will bring lawmakers to the negotiating table where it otherwise may not have. Similarly, indigenous political representation in government is expected to positively impact the adoption of resource and autonomy rights. The state's reliance on resource rents and its capacity to extract valuable assets from its territory negatively impact the adoption of resource and autonomy rights that establish specialized indigenous provisions and create sovereignties.

Third, I theorize that indigenous rights adoption expands incrementally. From constitutional exclusion, the first step toward constitutional inclusion is to recognize indigenous populations as legitimate actors. From here, rights naturally expand to establish equal political rights in the constitution for original populations. Once equal rights are established in the

constitution, attention is turned toward correcting social and economic inequalities faced by indigenous peoples. Finally, autonomy rights, as the most extreme alteration to the political status quo, come last. These rights should only be achieved where all others are previously adopted.

## **Research Design**

The research design used to discuss the adoption of indigenous rights in Latin America is mixed methods in nature. Combining quantitative analysis with qualitative case studies provides an overall more robust analysis of outcomes. Lieberman's (2005) nested analysis recommends that quantitative results be used to identify case sections for an in-depth analysis of causal mechanisms. These focused comparisons strengthen arguments of casual inference where cases show support for statistical patterns. Stronger evidence among both statistical and case study results additionally increases the accuracy and confidence of the findings of the research. Where case study evidence differs from statistical results, new hypotheses and causal mechanisms, or competing explanations (Lieberman 2005; Evertsson 2017).

As the first step in this nested analysis, quantitative models are used to discern patterns of rights adoption across the entire region. For a regional bird's eye view of indigenous constitutional rights adoption, I test theories and hypotheses using two different statistical models. Survival models are used to test theories of indigenous rights adoption for recognition, representation, and resource rights adoption. The fourth DV, autonomy rights adoption is tested via firth logit modelling and is discussed in the section below. Survival models are also used to test for the sequential order of resource rights adoption in chapter 3. The strength of this approach is that it considers the timing of rights adoption and can test covariates that impact the process. Hazard ratios are calculated to assess whether inputs increase or decrease the likelihood

of an outcome. These models are used where terminal events, or transitional events are the outcome of interest (Hutchison 1988). For example, the survival of political leaders engaged in warfare (Bueno de Mesquita and Siverson 1995). Here, survival models and hazard ratios are used to predict the occurrence of indigenous rights adoption, given certain domestic contexts. Broadly, results show how key domestic factors impact the likelihood of future indigenous rights adoption.

For the adoption and timing of indigenous autonomy rights, I use firth logit modelling. These statistical models are useful for rare events with limited observations. Other logistical regression models that do not correct estimators for rare observations largely underestimate the actual probability of rare event occurrence (Firth 1993; King and Zeng 2001). Firth logit models are commonly used in political science to assess the likelihood of the onset of events like civil war (Brandt and Schrodtt 2014; Cook 2020; Hegre et. Al 2014). These models penalize the log likelihood of outcomes, and more accurately estimate the base line risk for rare events (Firth 1993; Cook 2020). In this work, indigenous autonomy adoption into constitutional law is a rare occurrence. In models that predict the likelihood of indigenous autonomy rights implementation, firth logistical regression is used to estimate effects.

Finally, indigenous rights outcome patterns inform the case selection of later chapters. Case studies consist of countries that represent a high, medium, and low level of indigenous rights adoption. These case studies more closely examine causal mechanisms of rights adoption by engaging in process tracing. Qualitative examination of causal mechanisms provides leverage to the findings of this dissertation where quantitative efforts may have gaps (Collier 2011). In this work, this is done by examining, in detail, how indigenous rights are adopted at the country

level over time, and the impact of domestic inputs on these changes. Overviews of case studies are briefly outlined below.

Bolivia is the case of high level indigenous constitutional rights adoption. As the country with the most representation for its indigenous populations, including multiple rights to indigenous autonomy, there is an extensive scholarship available on the Bolivian case. It is a case that clearly demonstrates successful indigenous rights adoption that expanded to include the most extensive constitutional protections in the region. Democratization is associated with the adoption of indigenous recognition and representation in Bolivia, along with strong indigenous mobilization and the highest levels of indigenous government representatives. High investment in resource rents and high state involvement in indigenous regions has not hindered the adoption of resource and autonomy rights, however. But recent evidence shows that constitutional reforms benefit solely large indigenous populations, and smaller nations continue to be underrepresented and have their land encroached upon by state and private enterprises.

Brazil represents a medium level case of indigenous rights. With only one instance of adoption, rights include indigenous representation and recognition, but have not yet evolved to include resource or autonomy provisions. This supports the perspective that rights evolve and become more expansive over time. Public opinion leans toward the preference for equalized constitutional rights rather than those that address indigenous grievances in particular. Here, democracy also preceded the adoption of indigenous rights provisions in new constitutional amendments, and mid-level mobilization has led to mid-level indigenous constitutional representation overall. Continued underrepresentation in national government means that indigenous populations have little ability to represent their own policy positions at the national level, and provisions that serve their communities specifically have yet to be adopted in Brazil.

Finally, rent dependence and high capacity have blocked access to indigenous resource and autonomy rights.

Last, Chile is one of two countries to have yet to adopt indigenous rights into its national constitution. The framework presented here argues that incremental access to constitutional rights is observed in successful cases in the Latin American region. Recent attempts to revise the constitution in Chile led to a draft with expansive indigenous provisions that forewent incremental adoption. These revisions failed to pass national referendum, partly due to the indigenous rights presented in the draft. Recent repressive authoritarianism desecrated indigenous rights, mobilization, and political representation in Chile, all of which are associated with a decreased likelihood of indigenous constitutional rights adoption. Evidence in this case also signals a high investment in state resource rents and a high capacity to extract them from indigenous territories. These interests continue to work against indigenous interests to protect their lands, resources, and regional autonomy.

## **Road Map**

Chapter 1 provides a review of current scholarship that discusses the evolution of minority rights. The constitutional rights of native populations in Latin America are understudied. But recent scholarly work provides some foundational findings on the expansion of rights to minority populations. First, some authors argue that rights adoption is the result of international norm diffusion (Finnemore and Sikkink 1989; Kopstein and Reilly 2000; Bromley 2014). Second, social mobilization leads to increased representation and institutional change (Clement 2015; Klug 2015; Yashar 1998). Third, theories of ethnic conflict explain the grievances and motivations of marginalized communities (Doyle and Sambanis 2006; Fearon

and Laitin 2003; Gurr 1970). Yet, none of these perspectives explain the variation in indigenous provisions in modern constitutional law.

After a review of the scholarship, chapter 1 develops and offers several hypotheses that explain the likelihood of indigenous rights adoption. I theorize that domestic factors make rights acquisition more or less likely. Indigenous peoples begin as political non-actors. Once they gain political citizenship, rights take many different forms. Domestic factors will impact the likelihood of adoption, but dependent on the *content* of the provision. Simply, domestic factors will motivate or inhibit adoption, dependent on the category of rights being adopted. For example, democracy makes the adoption of native recognition and representation rights more likely. These rights promote ideals of democratic equality and are non-divisive. But democracy will not positively predict the adoption of either resource or autonomy rights since these rights recognize indigenous difference. The theories developed in this chapter are tested in the quantitative chapters of this dissertation.

Chapter 2 outlines the dependent variable of interest- indigenous constitutional rights. This work employs an original dataset that compares the constitutional outcomes for indigenous citizens in Latin America. The period of interest is 1960-2016. The year 1960 is the starting point of this analysis because it precedes the regional spread of indigenous recognition in state law and is a date from which much of the quantitative data used in this work's quantitative chapters becomes available.

Content analysis of regional texts reveals key findings. All rights are not created equal. Indigenous provisions in the constitution vary in terms of political access and resource redistribution. Moreover, some protections are compatible with modern democratic institutions of citizenship, while others are not. The most basic form of constitutional protection for native

citizens is recognition. These articles legitimize indigenous political citizenship at the base level. Next comes representation. These rights recognize indigenous culture and increase their political representation. Both recognition and representation for native populations in the constitution promote ideals of equal citizenship. Resource rights are even more specific about the political power of native communities. These rights allocate funding toward indigenous education, health, and representation. They also create minimum thresholds for native representation in political office. These rights are the first to be considered to elevate indigenous citizens based on their ethnic status. As such, they are more controversial than the prior two categories. But the rarest and most contested rights are autonomy rights. These establish self-governance for indigenous nations, create new institutions that protect their interests, and legitimize separate national identities. Therefore, rights not only vary in terms of political access for marginalized native citizens, but also in their national divisiveness. Below is a table of the regional distribution of each type of legal provision adopted into law in Latin American countries by the year 2016.

Table 2. Regional Distribution of Indigenous Constitutional Protections: Distribution of Type, 2016

Country	Recognition	Representation	Resources	Autonomy
Argentina	1	2	1	0
Bolivia	1	6	7	6
Brazil	1	3	0	0
Chile	0	0	0	0
Colombia	1	3	2	1
Costa Rica	1	1	0	0
Ecuador	1	4	4	1
El Salvador	1	0	0	0
Guatemala	1	4	3	1
Honduras	1	1	0	0
Mexico	1	5	5	0
Nicaragua	1	2	2	0
Panama	1	2	0	0
Paraguay	1	3	3	0
Peru	1	3	1	0
Uruguay	0	0	0	0
Venezuela	1	5	1	0
Regional Total	15	42	29	8

\*Recognition is the minimum threshold of indigenous representation in Latin American constitutions. Recognition is coded as a 0 or 1 once native populations are legally considered state citizens.

After chapter 2 discusses the DV, chapter 3 outlines the data and methodology used in subsequent quantitative and qualitative chapters. This includes a description of all independent variables that are expected to impact the rights acquisition process. Independent variables are derived from relevant literature and include: democracy scores, indigenous movement strength, indigenous population proportion, ethnic fractionalization, judicial strength, resource rent dependence, state capacity, indigenous political representation, and neighborhood diffusion.

My hypotheses are tested in chapter 3 with survival and firth logit models. Survival models take the timing of varied IV scores and the likelihood of future rights adoption. The likelihood of indigenous rights adoption is tested with survival models for recognition, representation, and resource rights. The adoption of autonomy rights is tested with firth logit modelling for rare events. This is because provisions from this category occur in only a handful



of cases. Firth logit models are penalized logistic models that account for the rare occurrence of an outcome and allow for proper statistical analysis (Firth 1993). Results from these models are summarized and discussed before moving to the next quantitative analysis.

Chapter 4 uses the data from the previous chapter to quantitatively test the sequence of rights adoption. Simply, I theorize that citizenship expands incrementally. Recognition of native citizens as legitimate political actors is the minimum threshold of representation in national law. From here, native populations can leverage for political rights that provide more political access. After recognition, indigenous representation rights are more likely to be adopted. These rights provide equal political rights, but they do not correct inequalities. Representation rights precede resource rights. Resource provisions address ethnic inequalities are adopted after equal access is put into constitutional law. Finally, only after native populations acquire resource rights can they leverage for autonomy rights. These rights go beyond correcting social inequalities and elevating indigenous status and legalize indigenous national aspirations. These assumptions are tested again with survival models.

Chapter 5 outlines the legal status of indigenous populations in Bolivia. Bolivia includes the most expansive rights for native populations, including the most instances of autonomy rights adoption in the region. Brazil's indigenous citizens are discussed in chapter 6. This country case is a middle of the road case, where native peoples are recognized and have political representation, but there is a reluctance to adopt resource and autonomy provisions into the constitution. Finally, Chapter 7 is a case study of the ongoing indigenous issues in Chile. Chile remains one of the regions holdouts, with no constitutional recognition of its original populations and represents a country with "low" indigenous constitutional rights.

The final chapter, chapter 8, summarizes the findings presented in this dissertation and makes conclusions about the status of indigenous constitutional rights in Latin America. This discussion notes the main takeaways from this work, along with improvements that can be made to the research presented here.

## Chapter I: Theories of Indigenous Rights Expansion

*“Throughout history, Indigenous peoples have demonstrated a profound capacity for qualified resistance. I call it qualified resistance to underscore the contrast with a passive situation where your rights are continuously violated, and no action is taken. On the contrary, indigenous peoples, through their leadership and their own organizations, have created instruments during various historical situations to confront these attacks that in large part come from the State, which should be defending the interests of these original peoples.”- Eloy Terena, Indigenous Rights Activist (Brazao et al. 2021)*

Latin America’s indigenous populations were subject to violent and repressive colonial occupation under Spanish and Portuguese conquest from 1494. Both kingdoms destroyed countless native populations, and those that remained were subject to slavery, repression, and poverty. They were afforded no political rights and excluded from the political institutions of colonial forces. During the state-building process, indigenous peoples remained excluded from

national law, including state constitutions. Indigenous nations across the region were uniformly excluded from constitutional representation. Effectively, indigenous peoples were forced into the periphery of state politics and remained ignored until the last few decades.

Over the past forty years, governments in Latin America have chosen to include indigenous citizens in national constitutional law to varying degrees. Some countries adopted extensive rights that protect indigenous lands, resources, and right to self-government. Others only include provisions in the constitution that recognize indigenous peoples as political participants with a right to their own culture. Two countries (Chile and Uruguay) have not yet adopted any recognition for its native populations and leaves the status of their indigenous nations unchanged since colonial occupation.

What leads to the varied outcome of indigenous constitutional protection for Latin America's original populations? Why do some states adopt far reaching constitutional citizenship for these communities, while others do not? Previous literature discusses the relative success of indigenous groups in Latin America in their pursuit of broad political representation. These studies identify key variables that are expected to impact the likelihood of minority representation in national law. These factors include democratization, grass roots mobilization, and the relative capacity of both minority and state forces (Bromley 2014; Jung 2003; Kopstein and Reilly 2000; Yashar 1998; Klug 2000; Doyle and Sambanis 2006; Fearon and Laitin 2003; Gurr 1970).

Not only are these theories insufficiently tested, they are often limited to case study analysis, and non-Latin American based studies. Research in the field of indigenous politics is understudied as a whole- little is known about the comparative political rights of the original populations in Latin America. Scholars are only recently able to measure indigenous populations

levels, mobilization, and political grievances. This work fills these gaps in knowledge first by using quantitative methods to take a bird's eye view of indigenous rights revolutions in the region. Regional patterns are then examined in the context of three distinct case studies with varied levels of constitutional protections for their original populations.

Second, current work fails to account for the *content of adopted constitutional provisions*. I argue that not all constitutional negotiations are created equal, and the content of indigenous rights impacts the likelihood of their adoption. Some rights recognize minority populations as political citizens and legitimize their participation. Others protect ethnic cultures, languages, health, and education. There are also rights that allocate government funding for indigenous programs, facilitate proportional representation, or even allow for indigenous self-government. Some of these constitutional provisions are adopted in countries in the region, while others are not. This has important theoretical implications for Latin America's indigenous citizens.

Different indigenous constitutional adoptions have different political implications. In broad strokes, indigenous populations go from being non-political actors to those that are afforded some degree of political resources. Indigenous recognition rights are the least disruptive change to the political status quo. These adoptions simply recognize indigenous populations as legitimate citizens, and legally allow their political participation in the state apparatus. Representation rights take this a step further and facilitate terms of equal access to state political goods for indigenous populations. Next, are resource rights that mobilize the state to correct societal and economic imbalances that impact indigenous populations. These are the first type of rights that target the original populations specifically. Finally, autonomy rights create new institutions to protect indigenous interests. These include the creation of regional borders, plurinational courts, and sovereign rights. These rights are considered most divisive to a unitary

national identity. These categorizations of indigenous rights provisions vary in terms of their reallocation of political goods to original populations. Recognition is very minimal, and representation facilitates equal access. Then, there are resource rights that serve indigenous populations, but within the framework of existing political institutions. Last, the most drastic reorientation of political access is autonomy rights. The implications of adopted rights provisions must be considered when looking at regional trends of adoption. Typologies of indigenous constitutional protection in Latin America are summarized on Table 1.

**Table 1. Typologies of Indigenous Constitutional Rights**

<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
General Recognition	Right to Culture Right to Health Right to Education Right to Language ILO 169	Political Representation State Health State Education Regional Legitimacy Consultation	Territorial Borders IFPIC Resource Protection Autonomy Indigenous Institutions

<sup>1</sup>ILO 169 is a mention of the UN convention on human rights under the same name. Constitutions can note the convention, but not create the institutions suggested in the convention itself.

2. State Education and State Health are funded by the government, as opposed to general rights to health and education. The latter do not guarantee that the state will deliver these services.

3.Consultation is not as powerful as Consent, which is a requirement of IFPIC laws presented in constitutional rights that provide Indigenous autonomy.

This chapter begins by reviewing current scholarship on the status of indigenous rights in Latin America. Existing literature is situated among discussions of democratic norms, ethnic mobilization, and relative capacity (Bromley 2014; Jung 2003; Kopstein and Reilly 2000; Weyland 2006; Yashar 1998; Yashar 2007; Klug 2000; Doyle and Sambanis 2006; Fearon and Laitin 2003; Gurr 1970). I then move to offer my own hypotheses which argue that the content of indigenous constitutional provisions impacts the adoption process. Constitutional rights renegotiate citizenship and access to state resources, but in different ways. Some only recognize

previously excluded ethnic minorities as legitimate political citizens. Others provide state funding, resources, or even define autonomies for original populations. The degree to which the political status quo is restructured during the adoption of these rights varies, dependent on the content of the provision. Domestic factors identified in recent scholarship impact the likelihood of rights adoption but depends on the stage of the adoption process.

## **Minority Rights: An Overview of the Literature**

### ***Democracy and Domestic Minority Rights***

Democracy is long associated with the expansion of citizenship to previously excluded minority populations (Jung 2003; Marshall 1950). The gradual expansion of suffrage and citizenship rights from women, formerly enslaved Black citizens, and other minority groups has been a global trend under democracy. The enfranchisement of previously excluded populations increases democratic integrity and representation of the state's citizens.

Latin American countries experienced its most recent and strongest democratic wave during the late 1980's. Turns toward democracy accelerated with the collapse of the Soviet Union and its influence in the region, and leaders increasingly looked to Washington and its various monetary organizations to fill the gap (Cignarella and Pasquarello 1985; Hafner-Burton et al. 2008; Hathaway 2007; Tsuitsui and Wotipka 2008). In addition to international factors, military regimes and authoritarians slowly lost legitimacy in the region. Domestic pressures for change and outcries against authoritarian human rights abuses also motivated a democratic shift in Latin America (O'Donnell 1993; O'Donnell, Schmitter and Whitehead 2013; Whitehead 1992).

Shifts in indigenous constitutional representation largely occurred during this last wave of democratization. Evidence from the literature argues that democratizing states are likely to adopt and follow international norms and it is these norms that change domestic laws on the ground (Bromley 2014; Jung 2003; Weyland 2006). For example, democratizing regimes will adopt international human rights norms conventions to gain legitimacy in the international community, appeal to Western democracies that they are economically dependent on, and to appease international financial institutions. The likelihood that states adopt democratic norms increases as neighbors adopt similar provisions. Neighborhood effects create norm cascades and lead entire regions to adopt democratic norms and laws (Finnemore and Sikkink 1998; Keck and Sikkink 99; Kopstein and Reilly 2000).

This perspective is consistent with the situation in Latin America during the late 80's. The regional shift toward democracy, and the following widespread economic crises, increased the region's reliance on the West and its financial institutions. The Latin American democratic turn led to the adoption of international laws that represent previously neglected indigenous populations. The United Nation's (UN) International Labor Organization (ILO 169) is the primary international treaty that guarantees Indigenous rights and recognition. After democratization, the provision was adopted throughout the region since the late 1980's. ILO 169 instituted the first international human rights standards for indigenous communities. The convention prescribes that states adopt the convention to implement domestic laws that protect their indigenous populations. Below is an excerpt from the international agreement on indigenous nations:



*Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.*

*2. Such action shall include measures for:*

*(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;*

*(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;*

*(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life. -Article 2, ILO 169, UN*

The article above prescribes national governments to adopt domestic rights that provide equal political representation for indigenous peoples vis-à-vis other citizens. It also includes the protection of cultural identities, and the elimination of socio-economic gaps. The convention also includes more aspirational rights, such as those discussed in the article below.

*In applying the provisions of this Convention, governments shall:*

*(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*

*(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;*

*(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.-Article 6, ILO 169, UN*

Article 6 of ILO 169 asks that, with the adoption of the convention, governments facilitate indigenous representation at all levels of national government. It also states that their communities must be given input on policy that will impact them directly.

While ILO 169 offers a powerful framework, international adoption of indigenous provisions has not translated to domestic protection. As of 2023, all but two countries (Panama and Uruguay) adopted the UN's international convention on indigenous rights. *But ILO 169's provisions were not uniformly adopted into domestic constitutional law by its adoptees.* Only three countries in the region acknowledge the UN's convention in their state constitution. These states are Bolivia, Brazil, and Ecuador. Even so, they did not uniformly adopt the indigenous protections mandated by ILO 169. In fact, each country has a varied outcome for indigenous citizenship rights in their constitutional laws. Even in countries where most of the convention's norms are constitutionally embedded, they were not adopted all at once, nor did they occur as a direct result of the ILO's adoption. Therefore, while democratization facilitated the widespread adoption of international rights norms for indigenous citizens, they have not predictably led to indigenous rights adoption in Latin America.

**Table 3 UN ILO 169 Adoption by Country**

<b>Country</b>	<b>Year of ILO 169 Adoption</b>
Argentina	2000
Bolivia	1991
Brazil	2002
Chile	2008
Colombia	1991
Ecuador	1998
Guatemala	1996
Honduras	1995
Mexico	1990
Nicaragua	2010
Paraguay	1993
Peru	1994
Venezuela	2002

In sum, democratization facilitates the expansion of minority representation, and the adherence to international norms for indigenous protection. But, while widespread adoption of the UN's ILO 169 occurred alongside democratization and strengthened relationships with the West, international norms have not been translated into domestic protection for most communities in the region. These explanations do not sufficiently explain the variance in domestic indigenous protections in the national constitution, given the recent changes in democracy. International norm adoption and democratic norms for ethnic minorities are widespread, but most have not translated these protections into their domestic democratic law or have done so to varying degree. While previous work has demonstrated that democracy leads to the adoption of international provisions that are recommended to be put into national law, this work will directly measure how democratic shifts impact domestic indigenous policy.

### ***Indigenous Mobilization***

Another line of scholarship argues that grass roots social movements force unresponsive state governments to transform adopted international norms into domestic law (Kim 2013). Strong social movements pressured state governments to adopt expansive child protection laws in France, Japan, Pakistan, the UK, and the US in recent decades. Htun and Weldon (2012) similarly found that social movements had an enduring impact on Violence Against Women (VAW) policy implementation at the constitutional level. Finally, grass roots activism led to numerous “human rights revolutions” and rights advancements for indigenous nations in Canada (Clement 2011).

Research in this area consists of multiple case studies that focus on the origins and relative ability of social movements to gain concessions from the state (Jung 2003; Seider 2002; Yashar 1998; Yashar 2007). Comparative studies stress the importance of social movements in South Africa (Klug 2015), India (Hertel 2015), and the United States (Markoff 1996) in acquiring constitutional changes that restructure access to political power and representation for excluded minority populations. Grassroots social movements were key in achieving broad constitutional reforms that guarantee health (Hertel 2015; Klug 2015), political participation (Becker 2011), plurinationalism (Ruiz 2008), resource rights (Nelson 2015), and protection from discrimination (Almeida and Cordero 2015; Htun and Weldon 2012; Markoff 1996) to previously unrepresented groups.

Scholars also find evidence that indigenous communities are increasingly mobilizing to correct grievances via constitutional representation. Indigenous social movements in Latin America call for protection at the national level, often as a reaction to intrusive neoliberal policies (Yashar 1998; Yashar 2007). Mobilization against these policies have opened the

discussion of ethnic politics in Ecuador (De la Cadena 2010), Panama (Fisher 2014), Mexico (Jung 2003), Bolivia (Postero 2017), and Chile (Wolff 2020). In the Bolivian case in particular, Becker (2011) finds that indigenous movements were necessary to create a constituent revolution that forced the document to include Indigenous demands. Overall, qualitative work in the region finds that indigenous mobilization emerged to contest for constitutional rights, with varying strength in their mobilization efforts. Yashar (1998) shows that indigenous movements are more likely to originate where there are pre-existing communication networks that support them. These cases do well in establishing how and why Indigenous communities mobilize, but they do not discuss the relative outcomes of these efforts.

Mobilization literature in the region contains a limited number of case studies that are not examined under a wider comparative lens. Cases typically include those states where there has been relative success in rights acquisition for the local original populations (e.g., Bolivia, Ecuador, Guatemala, Mexico) (Yashar 1998; Yashar 2007). These country case studies describe the origin of some movements and their relative success. But current work does not discuss the wider regional patterns of indigenous mobilization and constitutional outcomes. The literature also does not consider that indigenous mobilization is more successful during certain stages of the rights adoption process and motivates only the adoption of some indigenous rights. Finally, we do not know how social movements interact with other domestic political processes during the rights adoption process.

### ***Ethnic Conflict and Minority Rights***

The ethnic conflict literature argues that where citizenship rights are defined along ethnic lines, violent conflicts are likely to occur. This is especially true where one ethnic group is highly deprived of political and economic resources (Doyle and Sambanis 2006; Fearon and Laitin

2003; Gurr 1970). Politically excluded populations that are ethnically, culturally, and territorially distinct are considered especially dangerous to those who have a monopoly on state political resources. Excluded indigenous populations are both physically excluded from state power, as they are concentrated in rural regions of Latin America, and they are politically distant from the state where they have no legal representation at the national level. Linguistic, cultural, or religious distance between indigenous and non-indigenous citizens distinguish access to political representation. These divides, paired with a history of coercive repression by state powers against native populations predict conflict between state and non-state represented populations throughout the region (McEvoy and O'Leary 2013). But the ability for conflict literature to explain indigenous rights outcomes in the Latin American context is weak. Despite similar grievances, escalated violence is largely absent from indigenous groups and does not predict the adoption of indigenous rights that renegotiate the political status quo.

According to this vein of literature, political, cultural, and physical divides drive ethnic conflict against state entities with a monopoly on political resources. Since the colonial period, ethnicity has defined access to political resources and representation. Indigenous peoples throughout the region were further dispossessed during the state building process, and new polities served only the interest of the ruling European elites in newly formed Latin American states (Satvenhagen 1992). National laws constructed during independence left indigenous communities as non-citizens, with no right to political participation at the national level. This exclusion from national law continued until only recently.

Indigenous communities were not only excluded politically from state governments, but economically as well. Many indigenous citizens were considered custodians of the state under the laws of newly independent states. This meant they had no right to own property or assets, and

state entities took charge of the political interests of indigenous populations. Though some laws have changed in the region in the past decades, economic divisions remain. In 2020, the UN found that 45.5% of indigenous people in Latin America are living on less than \$5.50 a day in purchasing power parity prices (GDP/PPP) and 7.1% are living on less than \$1.90 a day. Most indigenous populations still live under extreme poverty in the Latin American region. These percentages are double those of non-indigenous citizens, on average (Davis-Castro 2020).

This framework posits that ethnically defined political and economic disadvantages incentivize marginalized groups to violently contest against the state apparatus (Fearon and Laitin 2003; Gurr 1993). Indigenous grievances with current status quo are thought to drive mobilization and violent action. Marginalized communities mobilize to renegotiate the unfavorable state structure that leaves their interests unprotected. State actors will respond to demands according to their own capacity to maintain a grip on current political arrangements. Additional conditions that make marginalized ethnic groups more likely to engage in violence against the state include a large, non-fractionalized population (Fearon 2003; Horowitz 1985), resource rich land to sustain rebellion efforts (Collier and Hoeffler 2000), regional population concentration (Weidmann 2009), and economic inequality (Gurr 1970). Of these factors, fractionalization among ethnic groups in the region varies, but most native communities live in resource rich regions that are much more likely to be poor and underdeveloped. While these theories have proven useful in the context of Africa and the Middle East, the same levels of conflict are not observed between indigenous and state entities in the Latin American region.

Some minor conflict between indigenous peoples and state actors is evident, particularly in the last 30 years as constitutional rights have been expanded. In Bolivia, wealthy white citizens mobilized to oppose the presidency of Evo Morales, who ran on a campaign of

correcting issues of inequality and is himself of indigenous ethnicity. In Colombia, recent indigenous uprisings resulted in violent backlash. Five community leaders were killed, along with more than 700 community organizers murdered between 2016 and 2019 (Tharoor 2019). In 1993, Peru's constitution changed to affirm its plurinational foundations in recognition of its indigenous foundation. But this same amendment process revoked the inalienability of original nations' lands and reasserted state control over resource ownership (Constitución de Peru de 1994). Although state entities made some efforts to recognize ancestral territories in its 2005 iteration of the constitution, it consistently refused indigenous control of original lands, and encroaches upon fishing industries in the region (Stocks 2005). In sum, some states adopt indigenous provisions into constitutional law to appease mobilized groups. But largely, violence in the region is disproportionately initiated by state entities, not by aggrieved indigenous populations.

Recent indigenous mobilization is motivated by political and economic grievances that extend from the colonial era into modern times. But ethnic conflict theories fail to explain the absence of violent conflict between state and indigenous groups in recent years, given strong political, economic, and territorial divides. Latin America's indigenous populations live under conditions that are highly conducive for violent political conflict proposed by this line of literature. But large-scale indigenous revolt against state entities is absent in the region. Indigenous populations, which are politically, economically, and territorially marginalized in Latin America, fit theoretical descriptions that predict political violence. But in many cases, domestic rights evolved to include these populations to dampen possible violent conflict. As it stands, current literature fails to account for why ethnic violence in Latin America remains



relatively low compared to other regions, and how constitutional law can negotiate peace among aggrieved populations.

### **Conclusions from the Literature**

The scholarship identifies democracy, ethnic mobilization, and the relative capacity of native populations to extract political resources as important for indigenous representation in constitutional law. But the scholarship does not consider first that the degree of indigenous protections in constitutional law vary. Constitutional amendments that protect native populations in Latin America vary in scope and political implications. Democratic theory posits that democratization leads to the expansion of citizenship, the adoption of laws that protect human rights and minority populations, and adherence to international norms of political behavior. Widespread democratization and norm adoption occurred in Latin America in the 1980's, but domestic indigenous rights are much more varied in the region's adopted constitutional provisions over the last half century. As it stands, it is unclear how democracy impacts the adoption of domestic protection for indigenous populations in the constitution. Social movements are also identified as important in the adoption of more indigenous protection in domestic contexts. But again, these theories do not explain wider patterns of successful indigenous mobilization while considering the rights that are adopted into national constitutions. When are indigenous movements most successful in negotiating the adoption, and what do these rights look like? These questions are left unanswered in recent work. Finally, conflict literature describes the motivations of state and non-state entities in the negotiation of increased minority representation. But these theories do not account for the lack of violence between indigenous groups and the state and the constitutional negotiations that its place.

The following sections seek to fill in these gaps, and account for the domestic impacts of key variables on the adoption of indigenous constitutional protections. I argue that the content of indigenous provisions adopted into Latin American constitutions influences the adoption process. First, I discuss the uniform political marginalization of indigenous populations in the region of Latin America. The region's original nations were subjected to historical violence, suppression, and non-citizenship at the hands of colonizing forces. From uniform non-citizenship, indigenous populations have been recognized by state entities in Latin America to varying degrees through constitutional negotiations. I briefly define four different types of indigenous rights: recognition, representation, resources, and autonomy. These rights have different political implications once adopted into the constitution. Democracy, indigenous mobilization, and state capacity and motivations impact the likelihood of rights adoption. But their importance varies based on the current stage of the rights adoption process. This temporal component of rights adoption for indigenous populations is also theoretically absent in current work.

### **Theories of Constitutional Rights Variation for Indigenous Peoples in Latin America**

To understand the modern political status and struggle of indigenous peoples in Latin America, we must first understand how the region's institutional structures originated. The following discussion provides a historical background of the indigenous political representation in the Latin American region, stressing the importance of colonial legacies and the marginalization of indigenous peoples. Colonial legacies and structural inequalities persist in states throughout the region.

#### ***Legacies of Exclusion: Indigenous Non-Citizenship Under Colonization***

Latin America was under Spanish and Portuguese colonial occupation from the 1500s, with colonies gaining independence at various points early in the 19th century. European colonial forces were not initially aware how many indigenous nations lived on the continent, but upon their arrival, colonizers seized land for resource extraction. Under the justification of *terra nullius*, or ‘no man’s land’, the continent was declared uninhabited despite the presence of hundreds of advanced indigenous civilizations. The European settler populations were the minority amongst thriving native communities. It is estimated that at the time of first European contact, over 57 million indigenous peoples lived in the region, eclipsing the number of settler populations (UN ECLAC).

Despite their numerical disadvantage vis-à-vis massive native populations, settlers were backed by the military might of the Spanish and Portuguese crown. The support of the monarchy allowed regional colonial elites to expropriate wealth and resources from the land. In response to the Indigenous threat that stood in the way of this venture, colonial powers pursued the extermination of the countless indigenous nations. Campaigns of genocide against native populations took place throughout the entire Latin American region during colonial occupation. Genocide, war, forced labor, and disease are estimated to have caused the total indigenous population to fall by 80% within only the first 50 years of contact with Europeans (Satvenhagen 1992). Remaining indigenous populations were employed as a cheap labor force that were forced to mine for resources alongside millions of enslaved Africans.

The economic structure established in settler colonies was organized to rely on high labor populations, and indigenous peoples were restricted politically and considered non-citizens in the polity (Acemoglu, Johnson, and Robinson 2001; Gott 2007; Irigoin 2016). The wealth found in Latin America under the hyper extractivist system was astronomical. Many colonies enjoyed per

capita incomes that were on par or greater than the wealth of Western Europe (Coatsworth 2005). Most extracted resource wealth was sent back to Europe as private treasure and wealth owned by European elites (Irigoin 2016). To optimize resource extraction, colonizers set up monarchical, absolutist states that concentrated rights in the hands of the Crown and its regime. The power of political elites in these colonies had few restraints and allowed the effective control over indigenous populations and lands. The elite class secured a high European standard of living, while the original populations had no political rights, and were subjected to slavery and poverty (Gott 2007).

In broad strokes, colonial settlers established political institutions that purposefully excluded native populations from the political process. This exclusion permeated all levels of the state. Settler colonies ensured that the original nations lacked political representation and access to legal mechanisms such as property rights, or the right to a decent standard of living. Furthermore, institutions from Spain and Portugal were based on laws compiled from royal cédulas, rigid law codes decreed directly by the Crown (Lynch 1992). Legal institutions in the colonies adhered to these strict law codes and archives that only served to grant the European class protections and shied away from creating new protections for its indigenous citizens after they were established.

### ***State Building Post-Independence***

During independence and subsequent state building process, however, indigenous populations remained excluded. Elite populations that benefited from colonial inequalities strengthened them in newly forming nations. In fact, some regional European elites vehemently protested the crown's past requests to 'whiten', or racially mix with the remaining indigenous populations. These policies were aimed at long term assimilation of indigenous populations into

broader society. In Brazil, these would have required white men to marry indigenous females to slowly mix their bloodlines. White settlers in Venezuela also rejected proposals to integrate its indigenous populations. Progressive programs were sent from Madrid that aimed to improve the living conditions of its indigenous populations. But they were unanimously rejected by Venezuelan political elites and indigenous populations remained politically excluded (Gott 2007).

Independence came to Latin American colonies early in the 19th century amid European political chaos. In 1810, the Spanish crown's power was severely limited under the conditions of the Napoleonic invasion. At the same time, a new constitution, the *Cardiz* constitution, relaxed imperial control to protect the colonies from chaos at home. In short, this constitution further concentrated political power into the hands of the ruling elite class in Latin American colonies (Kurzman 1998). When King Ferdinand VII of Spain regained control of the country and pushed to reinstitute his absolutist control over the colonies, local authorities decided that they preferred their new-found independence. They took advantage of the weakened monarchy and captured control the region. Soon after, regional political elites adopted more legal mechanisms that monopolized their control over resource wealth (Acemoglu, Johnson, and Robinson 2001).

Between 1808 and 1830, a total of fifteen future nations in Latin America drafted 46 constitutions (Irigoin 2016). The final versions of these documents continued the legacy of indigenous political exclusion and further entrenched colonial institutions. Indigenous populations were not recognized as citizens in constitutional documents until the 1930's onward. The rulers of these previous colonial empires formed legal frameworks that concentrated state citizenship and political power along ethnic lines. Additionally, new state constitutions were modelled off the US constitution, which favored private, individual rights instead of the

collective laws favored by Latin America's original populations. Restriction of indigenous political rights ensured that the status quo would persist and the balance of power between groups would remain intact.

By 1825, Latin American states adopted a republican form of government with millions of unrecognized indigenous peoples. State formation would precede the establishment of democratic civil societies in Latin America. This means that pre-existing powerful political elites formed the state and its legal structures in a way that would benefit European-descended populations. Many regional leaders believed that indigenous peoples would hold back the development of Latin American nations, leaving them unable to join the other 'civilized' nations of the world (Irigoin 2016; Petruccelli 2015). The consolidation of new nation states in Latin America further entrenched the dispossession of indigenous peoples in political institutions.

During state building, Latin American elites used the American constitution as a model, and indigenous social, religious, and political institutions were excluded from the laws of national governance (Satvenhagen 1992). Political exclusion of the original populations was an attempt to solve this "*problema indigena*", or the states' obstacle to development and wealth. This dissertation's work finds that the terms *indigena* or *nativo* cannot be found in any constitution in the region until 1933. These communities were effectively legally absent from state national laws and identities until this point. Today, the status of indigenous constitutional citizenship varies across the region. Some states adopted extensive rights that recognize indigenous autonomies, while others offer little or no legal protection. But political elites remain heirs to restrictive colonial institutional legacies that have only recently begun to change.

In sum, colonization of the continent under Spanish and Portuguese forces destroyed and enslaved countless indigenous peoples. Colonial laws excluded the original nations from political

citizenship, representation, the right to own property, and to make their own legal decisions. This exclusion continued into the state-building era, when constitutional documents modeled after the American laws favored private rights and did not recognize communal rights and properties. Native populations were effectively excluded as national citizens. Since the colonial era, policies of indigenous exclusion have had long lasting effects. Across the colonial and post-colonial period in the region, there is exclusion and denial of rights. Some Latin American countries did experience democratic periods in the early 20<sup>th</sup> century, such as Brazil and Colombia, and although those episodes were short-lived, indigenous inclusion did not occur. Political exclusion of these populations remained in stasis, and indigenous peoples have only recently been recognized as political citizens in Latin American states.

### *Constitutional Negotiations as Conflict Avoidance*

Beginning in the 1970's, Latin American indigenous communities and their allies accelerated campaigns for political recognition and constitutional rights that protect their communities (Fisher 2014; Jung 2003; O'Faircheallaigh 2012; Sieder 2002; Yashar 1998; Yashar 2007). The demands of indigenous peoples in the region were broad and far reaching. Demands included constitutional rights to self-determination, nondiscrimination, bilingual education, cultural protection, and control over project developments in ancestral territories. Indigenous populations were in a unique position, since some demanded greater inclusion in the state political process, but others sought native autonomy from the state apparatus.

Constitutions themselves serve many crucial functions, especially for threatened communities such as the indigenous nations of Latin America, but the role of constitutional negotiations to prevent conflict with marginalized ethnic populations is understudied. While conflict scholars note that ethnically defined access to political resources is a recipe for conflict,

inclusionary power structures can help to avoid it. Specifically, where state actors promote minority rights and constitutional provisions to appease a dissatisfied ethnic group (Wimmer 2012).

A constitution negotiates more inclusive political power structures in important ways. First, a constitution is a credible commitment device on behalf of the state to its citizens. Laws outlined in this document provide a legal framework for indigenous communities to protect their cultures, identities, and well-being. Historical indigenous exclusion in state power structures also motivate native peoples to push for the incorporation of special laws that will preserve their way of life (McEvoy and O’Leary 2013). These laws are used by communities to protect their land from state and private encroachment. A constitution can also define sets of goals or aspirations the state wishes to achieve. In some cases, constitutional protections delineate specific criteria and decision-making procedures aimed to accomplish future goals. Simply, a constitution is an effective communication device between the state and its citizens about resource and power distributions.

Constitutional scholars have argued that peace may be negotiated between state actors and unsatisfied ethnic groups through different strategies. Horowitz (1985; 1993) argues that integration of minority populations through electoral incentives and representation will erode divisions between groups over time. Lijphart (1991) disagrees and instead argues that each ethnic group has veto power over executive decision making to best protect their interests. The central debate over constitutions as negotiation devices is in their relative ability to foster long lasting peace between groups. It is the consensus that constitutions that adopt minority rights based on different status are most dangerous and divisive (Kuperman 2015; Horowitz 1985; 1993).



Constitutional laws that reinforce ethnic divides and foster separate national identities requires the central state to share power with multiple nations and are the most difficult to implement.

Latin American constitutions vary in their inclusion of equal recognition and rights that support separate ethnic identities at the national level. Some countries continue to exclude indigenous populations from national constitutional representation. Others provide rights that are non-controversial, and non-divisive. There are also a few countries in the region that adopt nationally divisive rights that elevate indigenous populations based on their ethnic status or identify autonomous groups and territories. Overall, the strategies embraced by states in the region vary. Some have negotiated indigenous constitutional protections that are much more far reaching.

Importantly, the inclusion of legal protections, in any form, allows marginalized communities access to legitimate political participation. For example, the South African apartheid state provides evidence that initial political recognition in state constitutions legitimizes the political claims of ethnic minorities in the future. Access to constitutional recognition was key in the future adoption of territorial claims for endangered communities in this case (Klug 2015). Legal citizenship, at a minimum, provides political resources and legitimate avenues to pursue justiciable rights in the future.

Original nations in Latin America have employed similar legal strategies. In the case of Brazil, indigenous peoples were first recognized by the state in 1988 and a *marco temporal*, (temporal mark) that defines the current terms of constitutional citizenship. The law recognizes indigenous settlements that were occupied by populations as of October 5<sup>th</sup>, 1988, the year of indigenous constitutional recognition. The *Articulação dos Povos Indígenas do Brasil* (Brazilian Indigenous peoples Association) is currently petitioning for more representative land rights, with

the slogan “*Nossa História Não Começa em 88*” (Our History Didn’t Begin in ’88). Three cases were brought to the Supreme Court to challenge the temporal thesis of Brazil’s current constitutional law. These cases have not yet resulted in the change of the *marco temporal* in Brazil’s constitution, but the Brazilian state has publicly acknowledged that the rights of indigenous peoples are original and did not begin in 1988 and need to be re-examined (Brazao, et al. 2021).

Legal advisors are employed to leverage existing constitutional provisions and expand them to better protect native peoples, and debates over the content of these texts persist. Where vulnerable communities have legal rights that protect their interest, legal cases are effectively brought to court and indigenous legal claims are legitimized. Ecuador and Colombia saw an increase in indigenous lawsuits opened against the state and private companies alike to protect such constitutional rights. Constitutional law is used by communities to protect against oil extraction in Ecuador, and highway construction in Colombia, which endangered the survival of indigenous populations in these regions (ELLA).

To summarize, constitutions serve important functions. I argue that these documents are important communication devices that define access to citizenship and political resources. But these adoptions are more than symbolic. They represent negotiations between previously marginalized groups and state entities. When new constitutional rules are renegotiated, there is a shift in access to political resources and the relative political representation of the state’s populations. Native peoples in Latin America were historically considered non-political citizens, and the inclusion of these peoples in national law is a new and ongoing phenomenon. State actors in the region can choose to continue to exclude minority populations from national law or recognize them in any number of ways. Broadly, rights frameworks can either ignore, seek to

integrate, or establish different national populations in constitutional law. Indigenous aspirations have included both rights that create equal political citizenship and access vis a vis non-indigenous citizens. But they also pursue some rights that serve their political identities and practices. This chapter now moves to discuss the factors that drive the adoption of indigenous rights, as advised from recent scholarship in the field. Importantly, the degree to which constitutions renegotiate access to political citizenship and resource is key in the adoption process. Constitutional provisional content interacts with domestic factors on the ground and impacts the likelihood of the adoption of indigenous rights in the national constitution.

### **Indigenous Constitutional Outcomes: A Theoretical Framework**

Thus far, I have established that the region's first state constitutions were rooted in colonizing precepts. Indigenous peoples and civilizations were reduced to dependent, politically marginalized minority groups. Citizenship and access to political power was strictly defined along ethnic lines and historically favored non-indigenous citizens of European descent. Since the colonial era, some Latin American states have continued this political exclusion, while others have renegotiated arrangements with its Indigenous peoples. Since political power remains concentrated in the hands of non-indigenous state actors, I expect these actors to be reluctant to renegotiate political power in favor of 'ethnic others'. Governments must be sufficiently motivated to renegotiate the current terms of political resources in the constitution. Amendments and overhauls represent new cultural compromises and reorganize the political interaction of Indigenous and non-Indigenous citizens.

While various scholarly perspectives identify key variables that impact indigenous political representation, they ignore that compromises between state and indigenous actors manifest in state constitutions in several ways. Rights are not expected to be equal in their access

to, or redistribution of, political power and resources. The way in which minority protections are codified into constitutional law will have implications for the likelihood of adoption by state actors. Additionally, theories of ethnic conflict inform us that rights that create more divisive identities are dangerous to political stability in the long run. However, states may implement rights that promote both integrative and divisive rights into domestic law.

Broadly, I argue that some rights provide indigenous peoples with more resources than others while creating either ethnically divisive or inclusive arrangements. Simply, some constitutional adoptions promote rights that create equally defined access for underrepresented indigenous populations. Others are considered more divisive and define political access along lines of ethnic difference. Domestic factors impact the likelihood of their adoption, but their importance varies according to the current state of rights adoption for indigenous populations in the country. Below, I briefly discuss the categorization of indigenous rights that are present in national law in Latin America.

### ***Indigenous Rights in Constitutional Law: An Overview of Agreements and Implications***

Indigenous constitutional rights in Latin America have been evolving since 1933, when the Peru first recognized its original nations as political citizens. From this point, adoptions spread across the regions that included indigenous representation in constitutional law. But not all countries adopt the same provisions. The substantive content of indigenous constitutional protection varies between country cases in the region. Some rights are symbolic in nature or offer terms of equal democratic citizenship. Others create special terms of indigenous representation, access to funding, and presence in existing state institutions. Finally, there are those rights that define the existence of multiple sovereign nations and mechanize indigenous autonomies and

self-governance. A brief discussion of these categories follows, and a full discussion of indigenous rights variation in Latin America is the topic of Chapter 2.

First, rights that offer recognition are the least disruptive to the current political status quo. These rights recognize indigenous peoples as legitimate political participants. This is the *minimum recognition* afforded to native populations in the region. The second category of adopted indigenous provisions are categorized as representation. These rights are more tangible than the former category. They define the protection of indigenous culture, language, education, and way of life. Minority rights are enshrined *under state sponsored institutions* and integrate them into the current state apparatus. The next category of rights discusses the allocation of state resources and corrects disadvantages based on ethnicity or other minority status. State compliance can be measured through government funding and representation, making these more finite commitments. These rights are often framed as elevating native status vis a vis other national citizens. Simply, state resources are allocated to correct past inequalities that are based on ethnic discrimination of original populations. The mobilization of state resources for specific minority grievances is considered divisive to a unitary national identity as they “elevate the indigenous few” (Stocks 2005). Finally, the last category of indigenous constitutional rights is defined as autonomy. These rights are highly mechanized rights and create new political institutions. For example, autonomy rights ensure native populations regional self-governance, territorial delineation, and the right to prior consent of impactful resource projects. Such institutions could prove dangerous for unitary national cohesion in the future, according to their critics. Simply, recognition represents the minimum threshold of indigenous political recognition at the national level. From this point, rights can evolve in several different ways. Some states employ representation rights in the constitutions, and protect indigenous cultures, languages, and

way of life. Others may go on to adopt laws that use state resources to correct inequalities based on indigenous status. Finally, autonomy rights define indigenous national borders, create new representative institutions, and allow for community input into resource projects led by the state or private enterprises. Table 1 summarizes indigenous rights categories adopted into Latin American constitutional law over the past half century. Chapter 2 discusses the distribution and implications of these categories in detail.

**Table 1. Typologies of Indigenous Constitutional Rights**

<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
General Recognition	Right to Culture Right to Health Right to Education Right to Language ILO 169	Political Representation State Health State Education Regional Legitimacy Consultation	Territorial Borders IFPIC Resource Protection Autonomy Indigenous Institutions

<sup>1</sup> ILO 169 is a mention of the UN convention on human rights under the same name. Constitutions can note the convention, but not create the institutions suggested in the convention itself.

2. State Education and State Health are funded by the government, as opposed to general rights to health and education. The latter do not guarantee that the state will deliver these services.

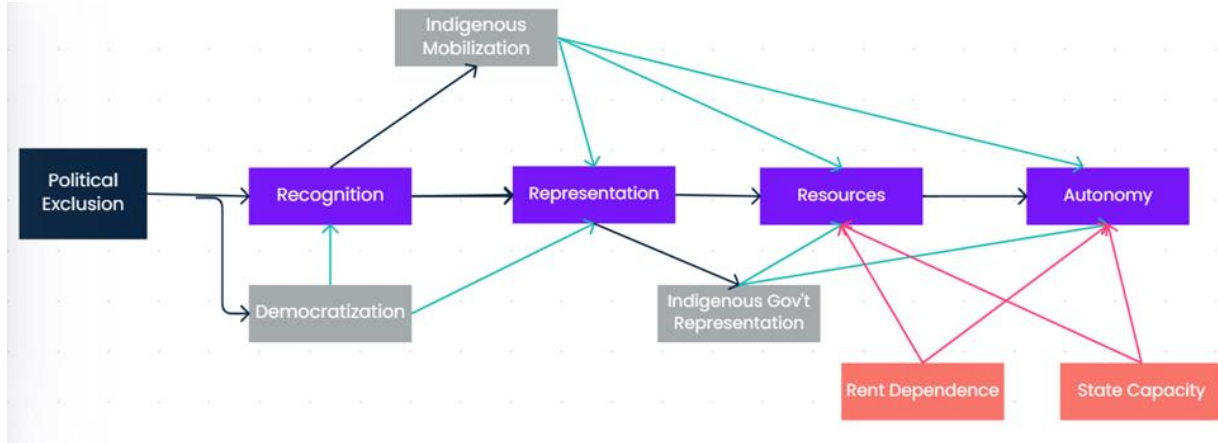
3. Consultation is not as powerful as Consent, which is a requirement of IFPIC laws presented in constitutional rights that provide Indigenous autonomy.

### ***Theory and Hypotheses of Indigenous Rights Adoption in Latin American Constitutions***

Not all indigenous constitutional provisions are created equal. Some simply legitimized their populations as recognized political citizens, which vaguely define the legal right of indigenous populations to be represented in national government. Others provide the opportunity for equal rights vis a vis non-indigenous citizens. Still, there are more constitutional protections for indigenous peoples that allocate state resources, proportional representation, or even indigenous self-governmental autonomies. Depending on the content of indigenous constitutional provisions, domestic factors motivate or work against the likelihood of their adoption. Below is a

summary chart of domestic impacts on rights acquisition, followed by a discussion before moving to offer this work’s hypotheses.

**Figure I: Theory of Indigenous Rights Adoption in Latin America**



This work argues that from uniform political exclusion in national constitutional law, citizenship expands incrementally to indigenous populations. I assume that indigenous populations in Latin America start from a point of uniform political exclusion in newly established free states in constitutional law post colonization. Since this point, countries adopted different provisions in their constitutions that protect indigenous interests. But laws vary in content, scope, and political implications. This section will first outline the rights adoption process that Latin American countries experience and highlight the factors that impact rights adoption.

**Positive Predictors of Indigenous Rights Adoption**

*Democratization*

The Latin American region went through many regime transitions post-independence, the last of which occurred in the mid 70’s and 80’s (Cardoso and Helwege 1992; Huntington

1991). Regional spikes in democracy coincided with a wave of new constitutions that included indigenous constitutional protection. Democracy was solidified as the dominantly legitimate political regime type after the Cold War, and Latin American states embraced democratic rhetoric promising the expansion of citizenship, free and fair elections, and the adherence to international human rights norms (Jung 2003). I expect that from uniform the point of political exclusion, democratization encourages state entities to extend citizenship to formerly excluded groups.

But democratizing regimes are expected to embrace only *democratic* ideals of expanded citizenship. Democracy creates the conditions for indigenous communities to gain political recognition and representation under democratic institutions. States that wish to show goodwill, and appeal toward an international audience will also choose to establish original populations as legitimate political participants in newly democratic regimes (Weyland 2006). But some indigenous aspirations and rights are considered incompatible with ideals of modern democratic citizenship. Original terms of national citizenship in Latin America were framed on the US's constitutional model. These documents stressed citizenship under ideals of liberty and *equality* for the *individual citizen*, under one *unified national identity*. Constitutional rights are meant to create *equal* citizens with *equal* access to state resources under this framework. This model is embraced in the interest of a growing solidified national identity. Rights that prioritize capitalist private property laws are created in this image (Marshall 1950).

Non-indigenous citizens may consider some indigenous protections as an effort to “elevate the indigenous few”, and any form of collective representation presents itself as divisive to a national identity (Ferguson 2016; Yashar 1998). Democracy promotes rights of equal political access, but when it comes to correcting ethnic imbalances, or establishing separate



national identities, increases in democracy do not encourage the adoption of rights. Resource and autonomy rights are considered nationally divisive and define special access to political resources for formerly excluded indigenous groups. Specifically, indigenous traditional laws rely on notions of communal land and resource ownership, collective decision making, and communal rule of law. These laws are difficult to adopt where state institutions are constructed to protect private property rights of the individual, as well as those of private business investment (O'faircheallaigh 2012; Ferguson 2016; Stocks 2005).

Simply, democratization promotes *equal access* to political representation and establishes the first legitimate access to constitutional representation for the original nations in Latin America. Indigenous recognition and representation are compatible with democracy, and stress that indigenous populations be legitimized as political actors and are owed similar societal protections as non-indigenous state populations. But when laws allocate resources and autonomies based on racial classifications, democratic ideals do not promote rights adoption.

*H1: Democracy will have a positive impact on rights adoption for those rights that are compatible with democratic recognition and representation in national constitutions.*

### ***Indigenous Mobilization***

Once the state adopts indigenous political recognition into law through democratization, indigenous political claims are legitimized, and their mobilization is legalized. After the adoption of indigenous political recognition in the constitution, communities mobilize to pressure the state for more political access and resources. After indigenous communities are defined as political

actors in national law, they have the right to petition the government for resources, and increasingly mobilize to do so under a less repressive regime.

Indigenous mobilization first coalesces on rights that establish equal political access, or recognition rights that are compatible with modern democratic values. These rights establish the indigenous right to culture, education, health, and political representation. Indigenous movements rely on state law to motivate state entities to recognize their demands.

After indigenous groups obtain constitutional rights that promote equal access, movements focus on the negotiation of rights that correct past inequalities, such as economic marginalization. Mobilization literature argues that grass roots movements are needed to pressure unresponsive states to adopt international agreements into law (Jung 2003; Seider 2002; Klug 2015). Strong movements in Bolivia, Ecuador, and Mexico were successful in negotiation of some provisions from the UN's ILO 169 convention on indigenous rights (Almeida and Cordero 2015; Fisher 2014; Webber 2007; Yashar 1998). These rights, which include land and resource protection for indigenous communities, were previously neglected by these governments despite their adoption of the international convention.

Many indigenous movements focus on the acquisition of rights that define political protection beyond the recognition of indigenous peoples as *national* citizens. Instead, indigenous movements have claims to the sovereignty and regional autonomy of their nations. Strong mobilization can pressure governments to adopt autonomy rights for their native populations. Autonomy rights include the demarcation of indigenous territories, the recognition of the state as plurinational, or input in extractive projects in their land. For example, a major focus of indigenous mobilization is to acquire Indigenous Free Prior Informed Consent (IFPIC) on projects that involve their ancestral territory (O'faircheallaigh 2012; Fontana and Grugel 2016).

FPIC requires the government to consult with original populations before undertaking large development projects or legal reforms that involve their ancestral territory, with the option to withhold their authorization for such projects (ELI 2004; United Nations Department of Economics and Social Affairs ENDESA 2004). The Guarani of Bolivia have defined multiple self-governed indigenous territories through constitutional reforms adopted in 2009 (Constitution of Bolivia 2009, Art. 353). These communities now hold land titles to over 800,000 hectares of land. The titles give communities the power to negotiate with oil and gas companies that historically extract resources from these regions (Postero 2017). Similarly, native mobilization is associated with the establishment of FPIC in Panama, which allowed these populations to suspend projects that threatened their land (Almeida and Cordero 2015; ELLA).

Overall, after indigenous political participation is legitimized in state constitutions, indigenous mobilization motivates the adoption of more constitutional representation for these groups. Strong mobilization is expected to positively motivate state entities to adopt all future categories of indigenous rights, which include representation, resources, and ultimately autonomy.

*H2: Indigenous mobilization is positively associated with indigenous rights expansion in state constitutions after initial recognition.*

### ***Indigenous Political Representation***

After indigenous populations are recognized as political participants in the constitution, along with constitutional political representation, indigenous political parties and leadership in national government can be established. The presence of indigenous representation in the

national government increases the salience of the existing political grievances of native communities. Increased national representation of indigenous populations means that the government is more likely to hear of indigenous issue topics that would otherwise not be brought to the floor.

According to this logic, once indigenous recognition laws in the constitution promote their representation in state governments, increased representation motivates the adoption of future provisions. The most famous case of indigenous national representation is the presidency of Evo Morales, an indigenous citizen of Bolivia who was recently removed after 14 years of presidency in 2019. Although he did not fulfill all his promises, Morales ran on a campaign of constitutionalizing the interests of the country's indigenous populations.

I similarly expect that indigenous political representation in national government motivates the adoption of rights that correct past inequalities. Representation increases the salience of issues that are unique to the original nations, such as legacies of poverty, land theft, and non-recognition of their communal legal practices. The representation of these issue topics in national branches of government increases the likelihood that rights provisions that outline indigenous access to political resources, and autonomy are adopted into constitutional law.

*H3: Indigenous representation in national government (legislative, executive, judicial) increases the likelihood of the adoption of indigenous resource and autonomy rights in the constitution.*

## **Negative Predictors of Rights Adoption**

### ***Resource Rent Dependence***

Where there is significant indigenous mobilization around constitutional protections that lay claims to land and resources, there is a risk of severe backlash against their claims. States

with a high dependence on resource rents from extractive economic policies will resist the adoption of rights that give indigenous populations legal claims to their land and its resources. These types of constitutional rights are found in the resource and autonomy categories of indigenous rights.

Supporters of extractive neoliberal policies argue that state land and natural resources belong to all state citizens. Thus, export-oriented growth is the most effective way to redistribute wealth to all citizens and develop rural areas. Repealing these neo-liberal policies is highly opposed by numerous regional elites, who see them as necessary for a strong state economy (Postero 2017). Recently, there has been a resurgence of neoliberal pursuits despite native appeals for protection. In Peru, for example, mineral exports increased from 1,477 million to 4,554 million from 1990 to 2003 (De la Cadena 2010), demonstrating the state's motivation to pursue state led development projects in the territories of original nations.

Rent dependent state entities also argue that indigenous organizations have “excessive” expectations and do not collaborate with existing state structures (Fontana and Grugel 2016). Equal rights and access are stressed in these cases. Politicians take the position that some indigenous rights are, “too much for too few” when it comes to land rights and regional autonomies. For example, Colombia is home to around 500,000 indigenous peoples, constituting 2% of the nation's population. These communities inhabit and lay claim to roughly 27% of the land (Stocks 2005). In Peru, on the other hand, Aymara make up 47% of the nation, and occupy 50% of the national land (Cott 2002). The argument against the expansion of land rights in Colombia is that they give the original nations disproportionate access to state resources. In Peru, where natives make up a larger portion of the population, this argument is not as easily made.

But globalization has accelerated resource extraction in recent years and rights that protect lands and resources of the original nations are a point of contention.

In sum, rent dependent states do not find issue in adopting rights that recognize indigenous citizens on equal political terms. But when it comes to the adoption of defined resources and autonomy, rent dependent states will work against the adoption of these rights.

*H4: Resource rent dependence as a proportion of the nation's economy negatively impacts the adoption of indigenous resources and autonomy in the constitution.*

### ***State Capacity***

State capacity represents the government's ability to not only exert physical monopoly on violence in its territorial borders, but also the ability to extract wealth and taxes from all its citizens. The higher the state capacity, the more effective the government control over its territory. Furthermore, they exercise extractive control over the state's resources and citizens.

Like rent dependence, a high state capacity does not block indigenous representation in the constitution that defines access to equal political rights (recognition and representation). But when indigenous nations make claims for special status, territorial recognition, and autonomy, for example, strong states are unlikely to cede control to previous political outsiders of these regions. High state capacity signals increased government reach and entrenchment in rural territories where indigenous peoples have legal claims to land. Where indigenous efforts meet a weak state, on the other hand, there is less government involvement in rural, native territories that are far from the reach of the central state apparatus. In these situations, state entities are more likely to cede land and resource rights to indigenous nations where they have less reach.

*H5: State capacity is negatively related to the adoption of indigenous resource and autonomy rights in the national constitution.*

## **Research Design**

To test these hypotheses, I use a mixed methods approach. First, I employ an original dataset that I constructed to record indigenous rights adoptions in Latin America from 1933-2022 to capture regional trends of indigenous rights adoption over time. I use survival models for the adoption of indigenous recognition, representation, and resource rights in constitutional law. These models consider changes in domestic inputs and how they impact the future likelihood of rights adoption. Autonomy rights, which are a rare occurrence, are tested via Firth logit statistical modelling. These models construct a penalized log likelihood for rights adoption and are especially useful for the quantitative analysis of rare events (Hutchison 1988; Firth 1993; King and Zeng 2001; Lieberman 2005; Evertsson 2017).

While quantitative models can help draw regional patterns of indigenous rights adoption in Latin America, the use of multiple case studies are more illustrative of the specific mechanisms at play. I derive three case studies that are illustrative of indigenous rights outcomes in Latin America. First, Bolivia represents a country with a high level of indigenous provisions in its national constitution. These include multiple indigenous resource rights, and definitions of regional self-government. Second, Brazil is a medium level case of indigenous rights. Its government has only had one constitutional revolution that led to recognition and various representation rights creation. Last is Chile, a country that has yet to adopt any indigenous recognition in its constitution. This case is especially informative of what has not worked, and why indigenous provisions are absent in this context.

## **Conclusions**

The following chapter moves to discuss the variance of this work's DV, indigenous rights outcomes in national constitutions. This includes a thorough discussion of rights categorization, and their adoption over time in the Latin American region. Then, in chapter three I test the theories presented in this chapter in survival and firth logit modelling. Together, these results lead to a selection of three qualitative case studies detailed in chapters 5, 6, and 7 of this work.



## Chapter II: Indigenous Constitutional Outcomes in Latin America

*“Our expectation is that we will be able to put an end to this relationship of domination between the Chilean State and the Aymara people. We are seeking guarantees of an equal and intercultural relationship that recognizes us as peoples with the right to self-determination. The State must recognize us as subjects with political rights, the right to govern ourselves and the right to participate in decision-making at the municipal and regional levels, in Congress and in the courts,” - Luis Jiménez Cáceres, Constitutional Assembly Member for the Aymara people (BBC 2021)*

What forms do indigenous rights take in Latin America’s constitutions? Colonial occupation led to the uniform political exclusion of the region’s original populations. This exclusion remained in stasis until the early 1930’s. From this point, indigenous rights have been adopted throughout the region, although in different forms. This chapter discusses the outcome of interest in this dissertation- indigenous rights in Latin American constitutions. This includes a

discussion of the distinction between different types of rights and their political implications for indigenous and non-indigenous actors after their implementation.

Over the past few decades in particular, indigenous rights have evolved in the region. But it is unclear how minority protections manifest at the national level on a comparative basis, and most constitutional outcomes for native citizens are yet to be measured. Though indigenous political representation has increased in the past few decades, little is known of how these rights have evolved. Scholarship that discusses the institutional arrangements made in new constitutional agreements is understudied.

### **Indigenous Rights Adoption: Divergent Outcomes**

First, it is clear in the observation of indigenous constitutional protection over time, not all countries create the same rights. In Guatemala, indigenous populations are currently appealing to international human rights standards against state aggressions in their ancestral territory. These communities demand prior consent and consultation prior to resource projects in their ancestral lands, and that these provisions be adopted into the constitution. These outcries for protection come after increased state encroachment on ancestral territories (Farand 2022). Yet the fate of this ongoing plight is uncertain. Guatemalan ancestral lands and resources are yet to be protected under the current constitution and the Q'eqchi' have little legal ground to stand on to defend their communities (Constitución de Guatemala de 1993).

Guatemala was one of the first countries in Latin America to formally recognize its indigenous peoples at the national level. Since recognition of native populations in the state constitution was adopted in 1945, rights were again revolutionized in 1985, further protecting the interests of these endangered communities. The 1985 amendments included provisions that

protect aspects of indigenous culture, such as language, and an increase minority political representation (Article 66, 68, and 76: Constitución de Guatemala de 1985). Subsequent revisions to the constitution in 1993, however, made no further advancements in the rights for indigenous populations.

In neighboring Ecuador, where original populations were initially recognized as citizens in the same year, indigenous constitutional protections have expanded to include a wide range of legal articles. The breadth of minority protections included in Ecuador's constitution makes it one of most ethnically inclusive in the region. Since 2008, Ecuador's laws have been revised to include specified native territorial regions, constitutional councils, and the collective rights of original nations (Constitución de Ecuador de 2008).

As demonstrated in the comparative cases of Guatemala and Ecuador, states embrace native populations in different ways. Ecuador went on to extend far more protectional articles in its national constitution. Despite a similar starting point, minority provisions did not extend nearly as far in Guatemala.

National law in Latin America was amended in various "mini-revolutions" to state constitutions over the past forty years. I am particularly interested in those constitutional revolutions that provide political resources and protection to indigenous populations. Prior to this work, there was no comparative dataset that aggregates all typologies of indigenous constitutional outcomes according to their political implications. Ideally, this framework can expand to discussions of indigenous outcomes in other regions of the world, where peoples are also historically excluded from political institutions and representation. The dataset can also be updated yearly to account for changes, such as the current constitutional revolution in Chile, where revisions to national law are being led by indigenous communities and not yet complete.

First, this chapter examines the historical variation in rights outcomes for native peoples in Latin American Constitutions from 1960-2016. I capture the longitudinal trends of the *amount* of inclusion for indigenous populations adopted over the past half century to discuss patterns over time. Then, I will move to define the different types of indigenous rights adopted into Latin American constitutions. Different types of rights renegotiate the political status quo between the state and previously non-represented citizens in different ways. Some indigenous rights simply recognize these populations as legitimate citizens. Indigenous recognition represents the starting point of citizenship and political inclusion for marginalized original populations. From this point, indigenous inclusion can encourage the further adoption of indigenous recognition rights that extend equal democratic recognition. Both recognition and representation of indigenous peoples in the national constitution include rights that are compatible with modern ideals of equal democratic citizenship. Next come resource rights that correct economic and racial inequalities and define resource access along racial lines. These are considered rights that begin to define indigenous populations as separate, with specialized access to state resources. Finally, autonomy rights are the most nationally divisive, and include the definition of multiple nations, and sovereign territories.

### **The Constitutional Rights of Indigenous Peoples in Latin America**

Latin America is experiencing a new era of indigenous political inclusion and affirmative action. State actors are increasingly called upon to renegotiate the institutional arrangements that native communities live under. Between October and December 2019, indigenous activists participated in mass protests across the region in states such as Bolivia, Chile, Colombia, and Ecuador. This social explosion has been coined, “the Latin Spring,” and resulted in numerous constitutional reforms, contested elections, allegations of electoral fraud,

and the resignation of President Evo Morales, who failed to uphold his promises to minority constituents (Bromley 2014; Tharoor 2019; Wolff 2020).

In 2019, Ecuador's government faced indigenous mobilization it had not seen since the anti-neoliberal protests of the 1990's. Nearby in Chile, despite the ongoing COVID-19 pandemic, millions of Chileans voted in favor of scrapping the country's constitution that dated back to the authoritarian Pinochet regime. The country's current constitutional committee will contain 155 members that will draft the new national laws. These laws are set to include specified protections for native peoples residing in state territory. Seventeen seats on the committee are reserved for indigenous national representatives and make up 12% of the total population of the state (BBC 2020; Wolff 2020). Native communities are increasingly taking up seats on constitutional commissions such as the current one in Chile and employ constitutional lawyers to ensure that their rights are implemented and protected at the state level (Postero 2017).

Original nations in the region articulate their demands in forms that relate to problems their populations face under current political institutions. The dominant strategy communities pursue is to promote structural changes from within the state, through increased representation and recognition at the national level (UN ECLAC (United Nations Economic Center for Latin American and the Caribbean)). Constitutional aspirations are far reaching. Native peoples petition for representation and protection across several rights categories. First, they seek to negotiate the protection of their culture, and language, which have been under threat of extinction for many peoples in the past. Social disparities mobilize indigenous activists around issues of education and health funding to correct high levels of inequalities between indigenous and non-indigenous citizens. Political representation at the state level is also a negotiation topic.

Finally, conflict over rights to land and regional control are hot button issues between indigenous and non-indigenous state entities. The preservation of these territories, along with many of the natural resources that reside in them, are integral to the survival of the original nations in Latin America. Some native-led organizations, such as those in Mexico, Guatemala, and Peru, demand that their lands be restored through agrarian reform laws in the constitution. Similarly, in Panama and Brazil, natives argue for territorial border demarcation and recognition to better protect their resources, and peoples in Argentina, Chile, and Costa Rica seek specified land titling (Satvenhagen 1992). These are the most aspirational indigenous rights and have the purpose of establishing autonomy and self-determination for the original nations. Self-determination includes the right to self-government within designated ancestral territories. To be recognized constitutionally, ancestral lands must both be demarcated, and self-government allowed. Autonomy allows native communities to employ traditional political institutions and alternative judicial systems within their ancestral territories.

Numerous constitutional "mini-revolutions" led by indigenous groups have come to fruition in the past few decades. Many peoples have laid claim to rights such as cultural protection and the right to negotiate policy with state and private enterprises when it concerns native lands and resources. There has been some improved access to state social services for native populations, and poverty reduction in these communities has been recorded in Peru, Bolivia, Brazil, Chile, and Ecuador over the past few decades. Education gaps between indigenous children and non-indigenous children have also been closed in Mexico, Nicaragua, and Ecuador (Wellenstein 2022). Indigenous populations in Brazil made similar progress after a constitutional reform in 1988 granted them the right to bilingual education in native languages, fair prices for their products in globalized markets, and demarcation and recognition of their

territories (Constitución de Brazil de 1988). In 1996, Law 1715 presented legal framework that allowed Indigenous communities to claim *tierras comunitarias de origen* (TCOs) in lowland Bolivia, which has provided them a legal mechanism to protect their lands from both state and private projects (Constitución de Bolivia de 1996). But massive gaps remain.

Constitutional law in Latin America engages with its indigenous populations in very diverse ways. Uruguay and Chile remain the region's holdouts, with no constitutional mention of its original peoples. The latter is set to negotiate rights with an indigenous-led constitutional council later this year. Guatemala, in contrast, recognized its indigenous peoples early on in 1945 (Constitución de le Republica de Guatemala de 1945) but has failed to expand minority rights beyond broad cultural protection. Bolivia and Colombia have much more generous constitutions, offering original nations specified territorial and legal recognition (Constitution of the State of Bolivia 2009; Constitution of Ecuador 2009). These constitutions are plurinational in nature, which is a historic goal for marginalized communities around the globe.<sup>1</sup> Other states, like Peru, made some efforts to recognize ancestral territories but do not include mechanisms to ensure its protection from state encroachment (Constitutions of Peru 1993). Indigenous protections over land in this case are vague, and the state has consistently refused the community's input or control over projects in these regions. There is also evidence that state extraction continues to

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<sup>1</sup> Plurinational implies the existence of more than one nation within state borders. Plurinational constitutions explicitly denote that multi-national component of the state, affording legitimacy to Indigenous claims of nationhood. Sandoval-Rojas (2020) argue that plurinationalism is an important initial step in protection of Indigenous rights in constitutional law. However, this work differentiates between the mention of plurinationalism-which is a nod to a multi-national component of the state- and constitutional law that creates conditions for true plurinationalism- regional autonomy, Indigenous political and legal institutions, and collective property laws. Some states may mention the word "plurinational" in their constitution but may not create conditions to support it (Eg. See Constitución de Nicaragua de 1987). I also do not find evidence that the mention of plurinationality in a state constitution predicts any further rights expansion for Indigenous peoples.

encroach upon vital fishing industries in these areas, putting entire native communities at risk (Stocks 2005). Depending on the extent of indigenous protectional provisions in the constitution, these communities in Latin America are currently living under varied forms of citizenship in nationally defined laws.

Some indigenous aspirations push back against current institutional arrangements and traditional forms of state authority more so than others. It has been argued that aspirations toward indigenous autonomy and regional authority challenge the hegemonic concept of Latin American nation-states (Satvenagen 1992). These demands, along with those that protect indigenous nations with more specific legal mechanism are often seen as “excessive” by state actors in the region. The redistribution of valuable state resources to minority populations is often to the detriment of those that benefit from current arrangements. Similarly, collective property rights and other aspects of traditional indigenous political institutions conflict with those currently in place (Ferguson 2016; Yashar 1998).<sup>2</sup> Yet, some Latin American states adopt even the most extensive indigenous rights that create new political institutions oriented toward their interests and reaffirm indigenous national aspirations.

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<sup>2</sup> Collective property rights conflict with the private property rights employed by current institutions. Private property rights in modern democracies protect individual citizens from encroachment from the government, as well as private business interests and investments (see Riker 1991).



## Current Regional Distributions of Indigenous Rights

Drawing on a unique database of Latin American Constitutions, it is possible to map the variance in indigenous constitutional provisions across the region. First, by examining the *number of provisions* afforded to these peoples over time. To construct this dataset, constitutional documents and amendments were gathered to cover the entirety of the observation period (1960-2016). This discussion of indigenous constitutional rights is constructed from a simple count of every constitutional rights provision that mentions or addresses indigenous interests. This includes any constitutional article or amendment that discusses indigenous communities, cultures, lands, laws, or institutions in their text. These rights must also have the intention of protecting indigenous interests to be counted in the total number of rights provisions.<sup>3</sup>

Heat map images detail regional distribution of indigenous constitutional rights over the past 60 years. A higher total represents more constitutional protection of native populations in

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<sup>3</sup> Some constitutional rights may mention indigenous communities, but not be motivated in their interests. This is especially observed during the early years of the observation period. For example, Article 95 in Panama's 1946 constitution states:

*"Llevar a los hogares campesinos e indigenas la accion de los organismos de educacion y asistencia que tiendan a elevar su nivel moral, cultural, y social" (Constitución de Panama de 1946).*

This law is motivated toward to integration of Indigenous peoples into society, but it is implied that their morals, culture, and education must be elevated to do so. Constitutional laws such as this are not coded as "indigenous rights", as they still have colonial undertones, aimed toward integrating native peoples into the state in a discriminatory manner.

the state. To be counted in this total, rights must discuss Indigenous issues and interests, and issue topics cannot be repeated in the total count.<sup>4</sup>

**Figure II: Indigenous Rights Heat Map 1960**

Indigenous Rights in National Constitutions: 1960

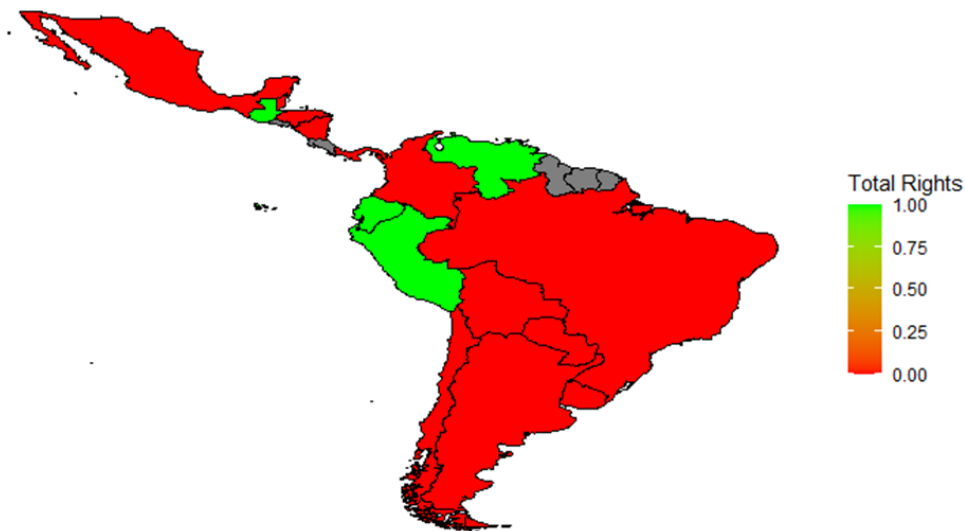


Figure I shows a snapshot of indigenous rights at the beginning of the observation period. In 1960, native peoples were either recognized in state constitutions as legitimate political actors, or not. The regions can be coded as a 0 or 1 for indigenous constitutional rights at start of observation. The few countries that possessed provisions for native populations at this time only included general provisions that legitimized the existence of these communities as political actors. This is the case in Peru's 1933 constitution, for example. This iteration of the document

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<sup>4</sup> Issue topics include, but are not limited to legitimacy, representation, education, language, health, autonomy, borders, resources, land protection, and institution creation. For a full list of issue topics see codebook/appendix. Each topic present in a state constitution is counted as 1 toward the total rights for that state. Issue topics cannot be counted more than once toward the total when discussed in multiple articles.

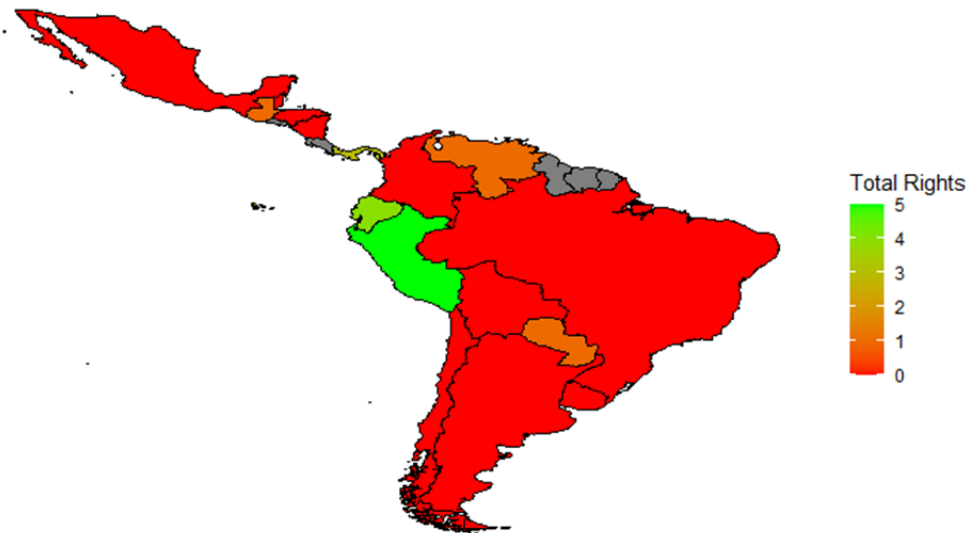
persisted until the 1960's without additional renegotiations on the behalf of indigenous communities. By 1960, Costa Rica, Ecuador, Guatemala, Peru, and Venezuela had recognized its original nations to a similar extent. These rights are highly non-specific and simply note indigenous peoples as legal citizens, such as the following article from Peru's 1933 constitution.

*Artículo 207.- Las comunidades indígenas tienen existencia legal y personería jurídica.-  
Constitucion de Peru de 1933*

The above article is a simple, one sentence statement that allows native populations legal recognition and existence. Importantly, this article does not make guarantees that are precisely directed at indigenous nations, nor does it make promises to create new institutions that support indigenous national aspirations. But these laws afford marginalized communities national recognition and legitimacy on the state level that they did not have prior. An amendment to recognize indigenous peoples, although the minimum threshold of representation in the region, represents a change in the negotiated structure of state citizenship. Adoptions of these types of articles are the first step in expanded indigenous rights in the region.

**Figure III: Indigenous Rights Heat Map 1980**

Indigenous Rights in National Constitutions:1980

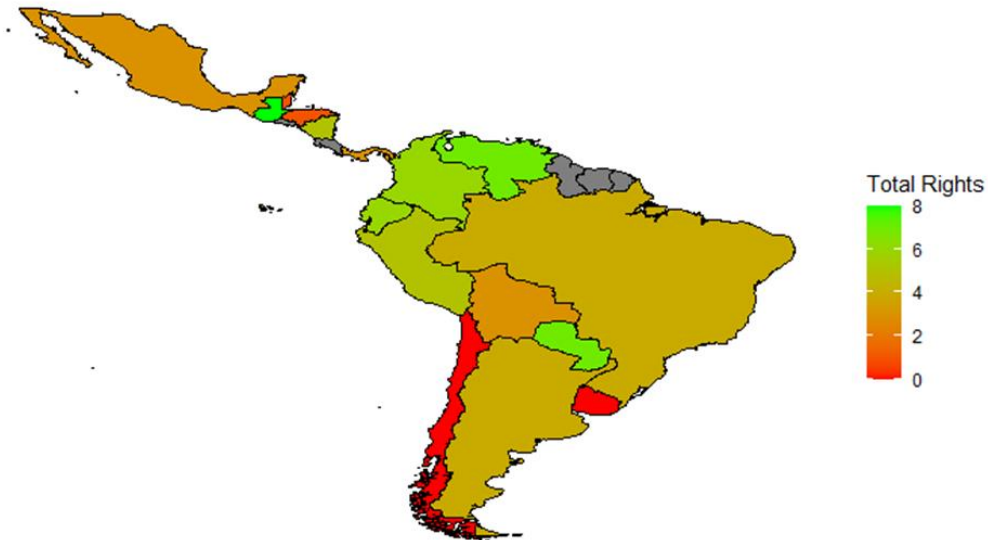


Twenty years later, only Panama and Paraguay added themselves to the list of those countries that had included indigenous rights in their constitutions. Ecuador and Peru made efforts to expand the number of provisions protecting these communities and have the most rights during this period. In these cases, constitutional law notes indigenous nations, the protection of their languages and cultures, and the right for them to carry out native cultural practices. These rights are consistent with the expansion of democratic citizenship based on equal rights and access, according to democratic constitutional law. Most countries in the region still had not acknowledged Indigenous communities at the national level, even at the base recognition level by 1980.

If we fast forward by 20 years again, the distribution changes drastically after the region's period of democratization.

**Figure IV: Indigenous Rights Heat Map 2000**

Indigenous Rights in National Constitutions:2000

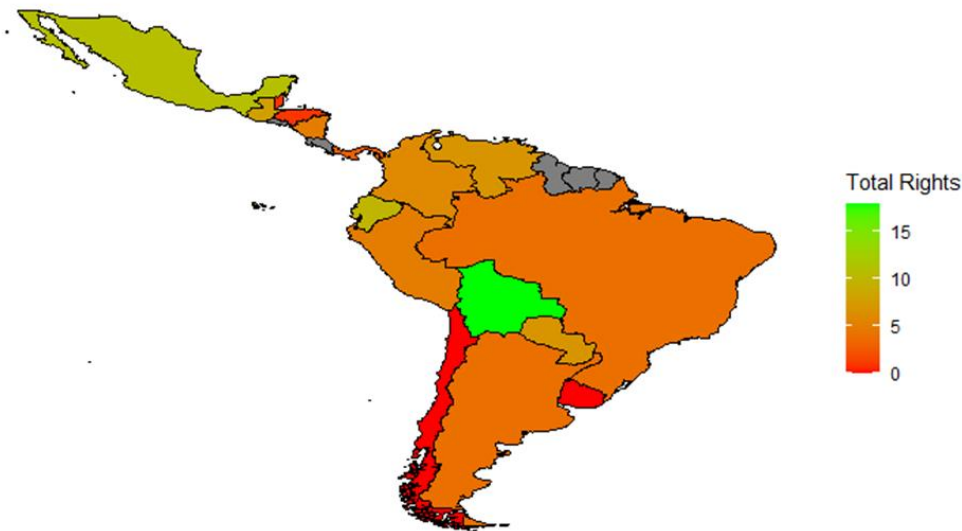


Red countries on this map are the states that had yet to recognize original populations in the constitution by the year 2000. By this time, many states had renegotiated the constitution in favor of indigenous nations. Chile and Uruguay had not, and still do not, include any indigenous rights provisions in their national constitutions. Guatemala, Paraguay, and Venezuela included the most indigenous provisions in their state constitutions. Colombia, Ecuador, and Nicaragua were close behind. Most other countries had provided 3-5 constitutional protections for native communities by this time. In the year 2000, native citizens and cultures were represented in most Latin American countries, although to varying degrees, depending on the country. It is by this time that some countries adopted constitutional laws that are based on ethnic difference and serve to correct economic and political inequalities based on race. These are defined as resource

rights in the subsequent discussion of rights categorization. At this point, democracy no longer motivates the adoption of indigenous provisions that define access to representation based on indigeneity. Significant indigenous mobilization and political representation is needed to facilitate the adoption of rights that correct indigenous inequalities and define autonomy.

**Figure V: Indigenous Rights Heat Map 2016**

Indigenous Rights in National Constitutions:2016



Finally, this last heat map of constitutional rights of indigenous populations in 2016 reveals some key findings. First, it is evident that the expansion of indigenous constitutional rights slowed or stopped in many country cases after the year 2000. For example, Brazil, Colombia, Guatemala, and Peru did not make efforts to renegotiate constitutional rights with their original populations at any point between 2000-2016. In contrast, Bolivia and Mexico made substantial changes to their national constitutions during this same period. Bolivia went from a total of three protective constitutional provisions in 2000 to 18 by 2016. Mexico's leap was less

drastic; from 3 to 11 native protections, but the change was still substantial, nonetheless. Ecuador made leaps on par with Mexico's, and its constitution currently includes 10 different provisions for original nations that live in state territory. Bolivia, on the other hand, extended the most far-reaching indigenous provisions to its populations. These include defined autonomies and the creation of a plurinational judicial system (Constitucion de Bolivia de 2009).

But even by 2016 there are six countries with underrepresented native populations (possessing 1 Indigenous rights provision, or less). These countries include either no protection for these populations, or only the general recognition of these groups as legal citizens. The countries in Latin America that currently fit this definition of underrepresentation are Costa Rica, El Salvador, Honduras, Chile, and Uruguay.<sup>5</sup>Rights totals circa 2016 are presented on the table below and discussed along with a summary of comparative outcomes for indigenous peoples in Latin America.

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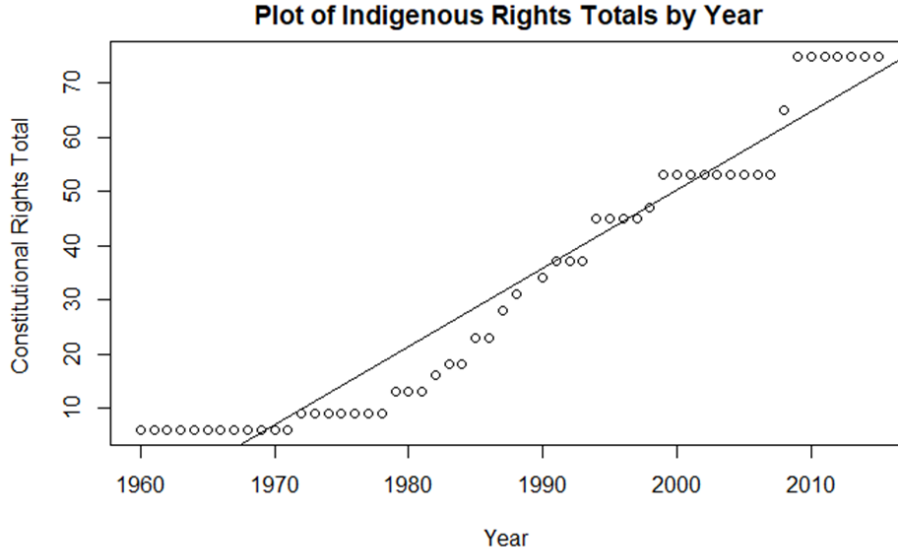
<sup>5</sup> Note again that Chile's constitution is currently under revision and is set to include some degree of Indigenous representation, yet to be determined.

**Table 4. Regional Distribution of Indigenous Constitutional Protections: Total Rights in 2016**

<b>Country</b>	<b>Number of Provisions</b>
Argentina	4
Bolivia	19
Brazil	4
Chile	0
Colombia	3
Costa Rica	1
Ecuador	10
El Salvador	1
Guatemala	9
Honduras	1
Mexico	11
Nicaragua	5
Panama	3
Paraguay	7
Peru	5
Uruguay	0
Venezuela	7
<b>Regional Total</b>	<b>93</b>



**Figure VI: Indigenous Rights Totals By Year: 1960-2016**



Overall, the total observed indigenous rights provisions present across country cases shows one side of the evolution of minority rights and reveals some key findings. Bolivia, after its plurinational constitutional reforms of 2009 created a national document with the most indigenous provisions and legally recognized freedoms. Mexico comes in second for the total number of protective rights, with 11 in its most current constitution. This is followed by Ecuador’s state constitution, with a total of 10 provisions. Chile and Uruguay, as of 2016, have no protections in their constitutions that support indigenous interests and aspirations. Many states offer very little protection, with the inclusion of only 1 to 3 provisions (Costa Rica, Ecuador, El Salvador, Honduras, Panama). The average number of indigenous rights present in state constitutions is 5, but this reduced to 4 total rights provisions on average when the Bolivian case is removed from the sample.

While the number of indigenous protections is useful in a cross-comparative analysis of outcomes, this measurement does not consider the substantive *content* of indigenous rights provisions. The observations in 1960 tell us that indigenous rights during this time were limited

in the region. From this point, rights were renegotiated to various degrees over the next few decades. Furthermore, rights provisions present in the 1960's typically take the form of general recognition of indigenous peoples as citizens (see the Peru example above). By the 1980's, constitutional recognition expanded, and more specific terms of legal citizenship are present. Therefore, not only the *amount* of protection is key, but the substantive *content* of those protections must be taken into consideration. In these next sections, I explore the DV and establish a typology for indigenous constitutional provisions. This typology presents an argument that indigenous protections in national law take form under four different dimensions, depending on their purpose and specification.

### **Indigenous Constitutional Rights: An Argument for Differentiation**

Not all constitutional rights are created equal. The first observations of indigenous recognition at the state level includes only the legitimization of natives as legal citizens. Some later indigenous protections are brief, and often only take up a sentence or two in an entire constitutional document. These rights minimally recognize the culture and needs of the original nations of Latin America. The provisions do offer generalized recognition of native peoples as citizens, and of their languages, customs, and cultures. More specified rights that come later in most cases delineate specific mandates on native representation, access to public resources, and national program spending. Yet another set of rights are highly detailed and delineate the creation of new political institutions that reinforce indigenous perspectives of nationhood autonomy.

What these observations tell us is that while taking stock of the total number of rights afforded to marginalized peoples is helpful for comparison, the way in which these rights manifest has implications for their potential adoption. A thorough analysis of the content of

these amendments in national documents is necessary to explain observed variation in rights outcomes in the region.

Rights can grant recognition, representation, resources, or autonomy to its original peoples. Broadly, representation is just that; the recognition of the communities' right to exist as political actors in the state. Representation allows for more specific legal rights to marginalized populations and notes specific cultural practices, languages, and customs. Both recognition and representation rights are consistent with democratic ideals of equal citizenship and access to political resources. Resource rights provide even more detailed provisions that extend state political and economic resources to support native communities, negotiated through pre-existing political institutions. These rights also define government funds, institutional support, and representation that corrects past economic and political inequalities. Finally, rights that define autonomy represent the most extreme redistribution of political resources and divide state defined national identity. Articles that define these rights are highly specified and constitute pages of text in some cases. Domestic conditions must motivate the adoption of these more divisive indigenous rights. Since legal protections for minority populations can, and do, take many forms, this work now defines the distinct categories of indigenous rights as observed in the region's legal texts from 1960-2016.

### ***Indigenous Constitutional Rights: Recognition***

Recognition of indigenous peoples takes the form seen in Peru's constitution earlier in this chapter. To recall, the provision granted native peoples the right to legal state citizenship in 1933 (Constitución de Peru de 1933). Peru was among the first nations in the region to recognize indigenous peoples as citizens.

Recognitions is the most frequently observed type of constitutional representation afforded to indigenous citizens in Latin America. Even in states where constitutions eventually take a plurinational form and provide original nations highly accommodating rights and representation, general recognitions are typically adopted first and earlier on in the observation period. Bolivia, for example, first recognized its native peoples as citizens in 1994, but did not specify rights to administration of land, self-government, or the creation of representative indigenous institutions until subsequent constitutional revolutions in 2002 and 2009 (Constitución de Bolivia de 1960;1994;2002; y 2009).

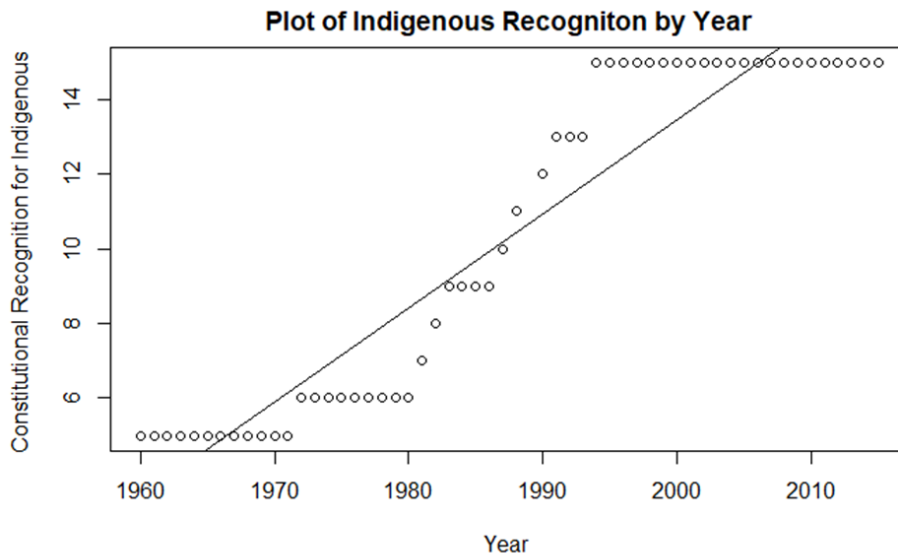
*“El Estado reconoce la personalidad jurídica de las comunidades indígenas y campesinas y de las asociaciones y sindicatos campesinos.”Artículo 171 no.2, Constitución de Bolivia de 1994.*

The above decree is sampled from Bolivia’s constitution in 1994 and defines indigenous peoples as legal citizens. This article, like the one from Peru, is non-specific, and does not set out clear goals to pursue indigenous interests or access to state resources.

Rights in this recognition category reorient native peoples as citizens of the state. They mention indigenous political legitimacy, but in non-specific ways that do not restructure political power arrangements or access to state resources. There is no discussion of what political participation looks like for native communities, nor is there mention of indigenous practices, wants, or needs. Recognition simply legitimizes the existence of indigenous peoples within state borders.

Nonetheless, recognition as political participants represents a shift in national political discourse. State entities show motivation to expand citizenship to previously unincorporated indigenous groups. Below, figure charts the adoption of indigenous recognition in constitutions. Recognition of indigenous populations begins in the 1930's, but spikes along with the turn toward democracy during the 1980's. Overall, recognition is the most minimal and most widely adopted indigenous constitutional representation in the region.

**Figure VII. Indigenous Constitutional Recognition by Year: 1960-2016**



***Indigenous Constitutional Rights: Representation***

The second category of indigenous constitutional protection is representation. These rights go a step beyond recognizing the existence of original peoples living in state territory, and mention the protection of native culture, education, language, and legal practices.

*“Se fijarán mínimos para la enseñanza fundamental de manera que se asegure la formación básica común y el respeto a los valores culturales y artísticos, nacionales y*

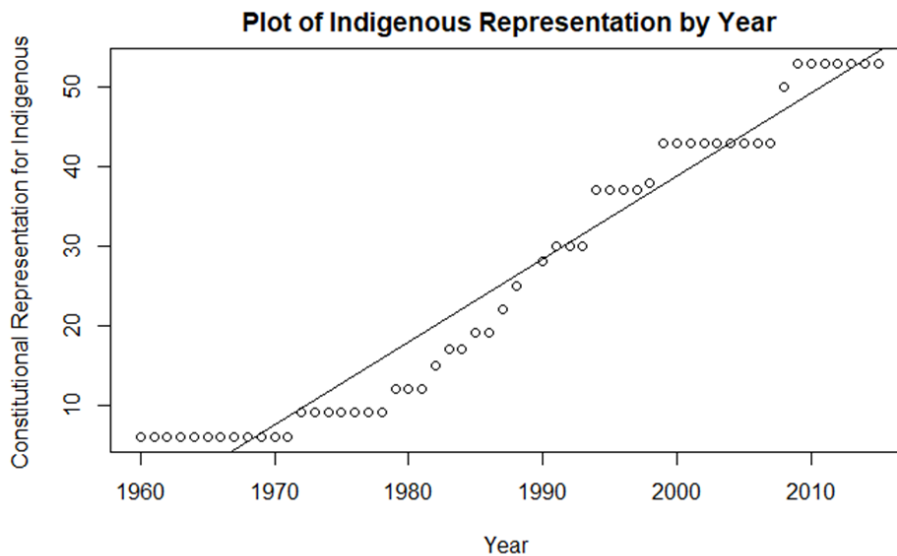
*regionales.....La enseñanza fundamental regular será impartida en lengua portuguesa y se asegurará, también, a las comunidades indígenas el uso de sus lenguas maternas y métodos propios de aprendizaje,” Art. 210 de Constitución Política de la Republica Federativa del Brasil 1988*

This article, from Brazil’s 1988 document, makes broad promises to respect regional cultures and nations, and officially legalizes the use of native languages alongside Portuguese, the state’s official language since colonization (Political Constitution of Brazil 1988). This article does not provide political legitimacy for native citizens beyond cultural recognition but does broadly allow for the use of their traditional practices and customs. A distinguishing feature of the provisions in this category is that they are an expansion of equal democratic citizenship. They state that indigenous communities have a right to their own culture, education, and traditional practices. Representation makes indigenous issues more salient, but they *do not correct historical economic and representative imbalances*. They also do not specify state funding of indigenous education and medicine. Representation rights in the constitution define indigenous peoples as equal citizens with equal rights. Access to political resources is not defined according to indigenous status.

Although the excerpt from the constitutional text above argues the right to indigenous education, there is no guarantee that the state will provide funding to support this right. The burden then, may fall to indigenous communities to provide access to cultural education to its peoples under the context of this law. Constitutions similarly discuss the minority right to political representation or political office. But proportional access or corrective state monetary support is not included.

Representation rights that are compatible with modern democratic definitions of private citizenship were adopted in many constitutional texts in Latin America. Below, figure 8 plots the adoption of indigenous representation by year. Again, indigenous representation coincides with the third wave of democracy to take hold in the region. It is not surprising, then, that rights that include the expansion of equal citizenship coincides with heightened democracy.

**Figure VIII: Indigenous Representation by Year: 1960-2016**



***Indigenous Constitutional Rights: Resources***

From recognition rights that establish equal indigenous state citizenship, resource rights are based on the correction of historic economic, political, and social exclusion. This includes the adoption of proportional political representation for Latin America’s indigenous populations, along with the allocation of state funding toward representative programs. Resource rights define state action that addresses indigenous grievances and marginalization. Importantly, these rights

allow political access and resources based on indigenous status. Resource rights for indigenous peoples are defined in terms of funding for indigenous education, healthcare, and proportional representation in national government. representative office. Resource rights can also create new branches that represent indigenous communities within existing state institutions.

*Resource rights are fully compatible with existing state institutions and do not create new institutions.* Resource rights do not delineate indigenous sovereignties or aspirations toward nationhood, nor do they allow these communities to block state agency over land and resource projects. However, *resource rights allocate economic and political access to indigenous communities to correct historic imbalances.* Such rights can be controversial, as they define access along ethnic lines and are considered to elevate indigenous status vis a vis other citizens. Articles containing resource rights often legitimize proportional indigenous access to political office, for example. Indigenous representation at the national level increases the future salience of indigenous issues at the state level, as in Article 171 of Colombia's 1991 constitution. This provision guarantees two indigenous senators in the current council of 100:

*“El Senado de la República estará integrado por cien miembros elegidos en circunscripción nacional. Habrá un número adicional de dos senadores elegidos en circunscripción nacional especial por comunidades indígenas,” Art. 171 de Constitución Política de Colombia de 1991.*

Instituted officially in 1991, this provision renegotiates political resources in favor of native communities. These peoples are now guaranteed representation in the state senate, where before these representative thresholds did not exist. It is also obvious if the state, for any number of possible reasons, does not allow native representatives to occupy the reserved positions in the senate. These rights are valuable for indigenous populations because they are more clearly

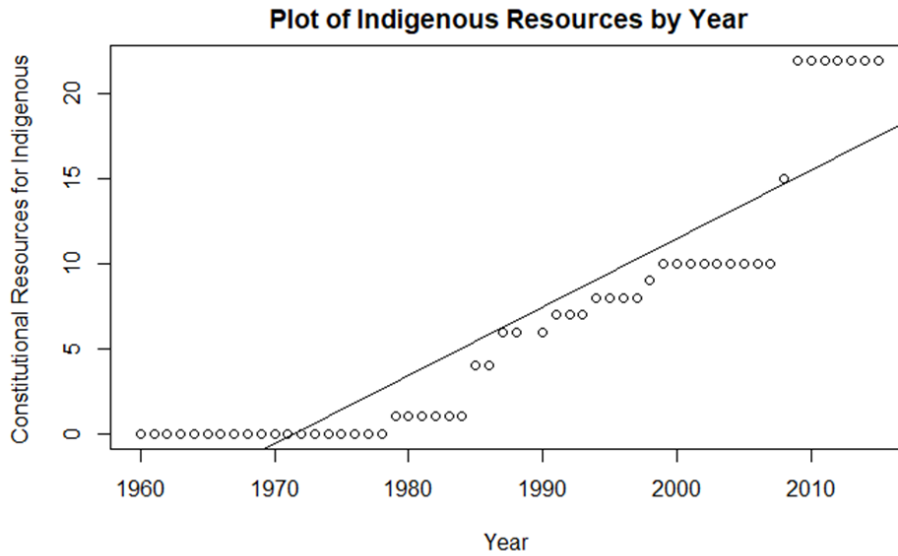


defined and when the state reneges on its promises it is clear. But these new laws are created within existing state political structures and are subject to their oversight.

In sum, resource rights restructure political power and resource arrangements on behalf of native populations and outline methods to reach goals of political inclusion. Other examples of these rights include state funded education and healthcare, targeted policies that benefit ancestral territories, and the creation of specialized representative branches in pre-existing political institutions.

Although less common than the constitutional protections recorded in the previous categories, resource rights are commonly found in state constitutional texts in the region. Figure 8 depicts trends of resource right adoption in the region. Resource adoptions steadily increase in frequency in national laws starting in the mid 1980's. This development demonstrates that many states are willing to allow indigenous peoples political resources within the configuration of its own existing state institutions. State actors, overall, are more willing to renegotiate terms of citizenship under this framework, as opposed to the next form of indigenous constitutional protection, which is much more rare.

**Figure IX: Indigenous Resources by Year: 1960-2016**



***Indigenous Constitutional Rights: Autonomy***

Indigenous constitutional rights in the autonomy category represent the most far-reaching restructuring of national representation. These indigenous protections are also the rarest in state constitutions in Latin America.

Autonomous rights invoke aspirations of native sovereignty and the recognition of their nationhood. These laws also demarcate indigenous territorial control and legalize national borders for the original nations living within state territory. Other forms of autonomy rights elevate traditional political institutions to equal footing with the national ones. Autonomy laws also serve the purpose of negotiating conflict resolution between state and indigenous entities. For example, by creating plurinational judicial systems that consider the position of all existing nations that live in state territory, or with mechanisms like IFPIC that protects native lands and resources. Specification of these laws or institutional arrangements that support native sovereignty are typically discussed at length, across multiple constitutional articles. For the sake of brevity, excerpts from these articles are limited.

*Artículo 403. I. Se reconoce la integralidad del territorio indígena originario campesino, que incluye el derecho a la tierra, al uso y aprovechamiento exclusivo de los recursos naturales renovables en las condiciones determinadas por la ley; a la consulta previa e informada y a la participación en los beneficios por la explotación de los recursos naturales no renovables que se encuentran en sus territorios; la facultad de aplicar sus normas propias, administrados por sus estructuras de representación y la definición de su desarrollo de acuerdo a sus criterios culturales y principios de convivencia armónica con la naturaleza. Los territorios indígena originario campesinos podrán estar compuestos por comunidades. II. El territorio indígena originario campesino comprende áreas de producción, áreas de aprovechamiento y conservación de los recursos naturales y espacios de reproducción social, espiritual y cultural. La ley establecerá el procedimiento para el reconocimiento de estos derechos.”-Constitución Política del Estado (CPE) - Bolivia de 2009*

Article 403 of the Bolivian constitution adopted in 2009 outlines the indigenous right to ancestral lands and makes promises to provide prior and informed consent over natural resource projects that take place in them. In broad strokes, this provision allows for certain regional autonomies (Constitución Política del Estado (CPE) - Bolivia de 2009). The terms of these laws are discussed at length and include specific mechanisms that original nations use to make claims against encroachment on their sovereignties. These protections also invoke international human rights norms like indigenous Free Prior and Informed Consent (FPIC) in their wording.

In addition to including indigenous nations in resource project negotiations, autonomy laws create new political institutions. New political institutions are established in constitutional law to safeguard the original nations, like the special constitutional courts found in Ecuador and

Bolivia. In some cases, native representative institutions are put on equal footing with pre-existing state institutions (See also (CPE) - Bolivia, Art No.394).

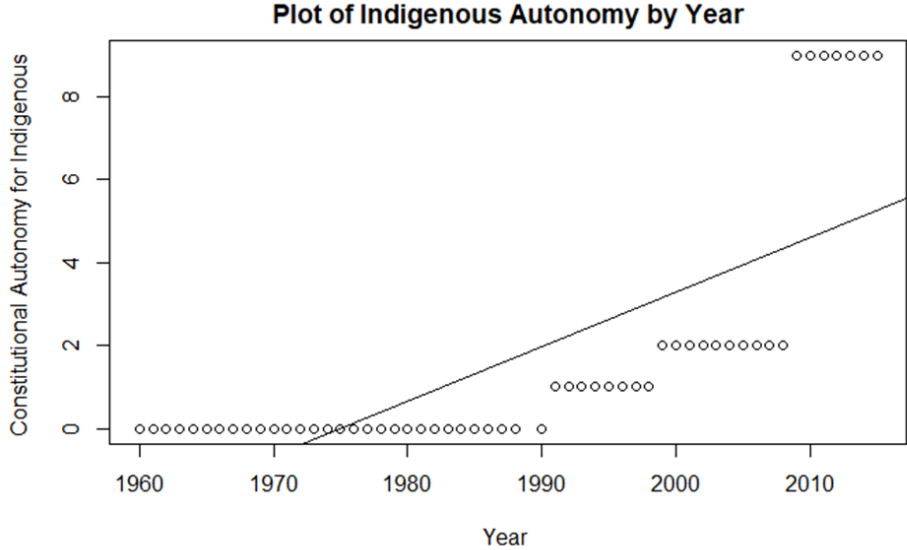
*“En el caso de un territorio indígena que comprenda el territorio de dos o más departamentos, su administración se hará por los consejos indígenas en coordinación con los gobernadores de los respectivos departamentos. En caso de que este territorio decida constituirse como entidad territorial, se hará con el cumplimiento de los requisitos establecidos en el inciso primero de este artículo.” - Artículo 329 de la Constitución de Ecuador de 2008*

This excerpt from Ecuador’s 2008 constitutional reforms discusses methods for conflict resolution over territorial claims. If a territorial dispute between an indigenous community and another party occurs, a formal negotiation must be made between representatives of both parties. Additionally, indigenous nations are allowed to apply for special autonomy status that establish autonomous zones of community self-government (see Artículo 329 de la Constitución de Ecuador de 2008). This constitutional reformation afforded marginalized peoples in Ecuador access to a wide array of new political resources that better defend their interests.

In sum, *indigenous autonomy rights define regional self-governments, and create new political institutions to better protect populations from state and private encroachment.* These rights are often considered nationally divisive, as they define the existence of multiple legitimate nations in state territory. These provisions go beyond the allocation of access to state political goods and representation- they establish mechanisms that are considered contrary to state interests. Specifically, constitutional autonomy rights allow indigenous nations to effectively challenge state policy and exercise regional self-government.

Provisions of autonomy like those discussed above are, unsurprisingly, the least common type of indigenous protection found in the region. This research finds that legal autonomy only occurs in 8 observed instances before 2016. Since this point, no further constitutional amendments were adopted that protect indigenous citizens. Most autonomy rights adoptions over the observation period are driven by Bolivia’s constitutional revolution in 2009. This constitution created a plurinational state and created far-reaching sovereign rights for the country’s native populations. Bolivia includes a total of 6 autonomies in the national constitution. Colombia and Ecuador each have one inclusion of indigenous autonomy in their state documents. This evidence shows that state actors are especially reluctant to negotiate rights for original nations that allow for sovereignty, self-government, and the creation of indigenous institutions in national law.

**Figure X. Indigenous Autonomy by Year: 1960-2016**



## Indigenous Rights: Conclusions and Trends in Constitutional Protections

A general comparison of constitutional rights typologies reveals valuable information. Recognition of indigenous citizens in constitutional law tends to be adopted earlier in the observation period, followed by recognition rights. Both types of provisions are compatible with democratic ideals of access to political representation and resources and are steadily adopted in the region over the observation period. Resource rights define access to political resources based on indigenous identity and are rarer than the latter two categories of rights. Resource rights are adopted at later points of the observation period, and by only a few countries (Bolivia, Ecuador, Colombia). Finally, autonomy rights that define indigenous national rights to self-government and create new political institutions to ensure the representation of these communities are the rarest type of constitutional protection. Autonomy rights are found in only 8 different iterations in only Bolivia and Ecuador, as of 2023. These typologies are outlined on the table below and is followed by another table that summarizes adoption trends in the region over time.

**Table 1. Typologies of Indigenous Constitutional Rights**

<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
General Recognition	Right to Culture	Political Representation	Territorial Borders
	Right to Health	State Health	IFPIC
	Right to Education	State Education	Resource Protection
	Right to Language	Regional Legitimacy	Autonomy
	ILO 169	Consultation	Indigenous Institutions

<sup>1</sup> ILO 169 is a mention of the UN convention on human rights under the same name. Constitutions may make note of the convention, but this is typically to note its adoption rather than create the institutions suggested in the convention itself. This is a general form of recognition that only Bolivia, Brazil, Ecuador, and Costa Rica have mentioned in their constitutions, despite the convention being widely adopted throughout the region (by all but two countries).

2. State Education and State Health are guaranteed to be funded by the government, as opposed to general rights to health and education. The latter do not guarantee that the state will deliver these services to marginalized Indigenous populations.

3. Consultation is not as powerful as Consent, which is a requirement of IFPIC laws presented in constitutional rights that provide Indigenous accommodations.

4. General autonomy grants legitimacy to the regional self-determination of Indigenous communities. However, general autonomy rights do not specify what “autonomy” means under existing political structures. This means that while granted some legitimacy, these claims are easily encroached upon by state actors in the future if they are not clearly defined. Specified autonomy rights, on the other hand, solve this problem. They specify what Indigenous “autonomy” means and what it will look like. Communities with these rights have much more leverage in protecting their interests.

**Table 4. Regional Distribution of Indigenous Constitutional Protections: Distribution of Type, 2016**

<b>Country</b>	<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
Argentina	1	2	1	0
Bolivia	1	6	7	6
Brazil	1	3	0	0
Chile	0	0	0	0
Colombia	1	3	2	1
Costa Rica	1	1	0	0
Ecuador	1	4	4	1
El Salvador	1	0	0	0
Guatemala	1	4	3	1
Honduras	1	1	0	0
Mexico	1	5	5	0
Nicaragua	1	2	2	0
Panama	1	2	0	0
Paraguay	1	3	3	0
Peru	1	3	1	0
Uruguay	0	0	0	0
Venezuela	1	5	1	0
<b>Regional Total</b>	<b>15</b>	<b>42</b>	<b>29</b>	<b>8</b>

Unsurprisingly, Bolivia which has the most indigenous rights adopted in the constitution also the most indigenous protections of every typology in its current document. Chile and Uruguay are outliers on the opposite end, with no constitutional protections adopted for their native populations. Most states are willing to adopt indigenous recognition at the minimum, along with rights that extend provisions of equal citizenship to previously neglected original populations. Recognition and representation occur early in some cases, and their adoption peak from the 1980’s onward. Resource rights that are defined to correct inequalities and allocate representation and resources based on indigenous status are rarer and more adopted later on in the observation period.

Finally, autonomy rights occur with the least frequency at later stages of observation and are adopted by only Bolivia and Ecuador.

### **Overview of Chapter**

This chapter discussed the DV of interest of this dissertation: Indigenous Constitutional Outcomes. First, patterns of rights were examined by their total recorded observations. Some states such as Bolivia, Mexico, and Ecuador employ constitutions that include several Indigenous protections. On average, states tend to include 4-5 protections for native populations in national constitutions. But there are many cases where these populations face state powers that refuse to renegotiate constitutional law and are left with little to no political representation. But simply taking a measure of the *number* of protections is not enough to explain a difference in indigenous rights outcomes in the region.

I argue that the *substantive content of these rights will have implications for their adoption*. Some rights recognize indigenous citizens as political participants where they were previously excluded from participation. Other states extend these rights to the equal recognition of indigenous participation, culture, languages, education, and other practices. A small number of governments have constitutions that define resource rights that direct government funding and representation specifically to indigenous nations. Finally, there are autonomy rights in both Bolivia and Ecuador that define indigenous nations and self-government in national law.

This chapter's observations also inform us that these indigenous constitutional rights become less frequent in domestic law as they move beyond establishing terms of equal democratic citizenship. Recognition of native peoples is the most common, followed equal recognition of their cultures, practices, and political participation. Once constitutional



amendments allocate representation based on indigenous status and define indigenous national differences, rights adoption is less frequent.

The next chapter moves to test these arguments in quantitative models. The content and implications of indigenous rights provisions impact the likelihood of their adoption, in conjunction with key country features. But the impact of state variables on indigenous rights adoption depends on the current stage of indigenous constitutional citizenship.

### **Chapter III: Determinants of Indigenous Rights Adoption in Latin America 1960-2016**

*“Indigenous territories guarantee water, food, [and] clean air. If they are destroyed, the future of humanity on this planet is also put at risk..... Now we have reached the point of no return, we’ve run out of options. Either we defend our territory, or we’ll disappear,” – Jose Greforio Diaz Mirabel. Coordinator of Indigenous Organizations of the Amazon Basin. (Coordinadora de las Organizaciones Indigenas de la Cuenca Amazonica – COICA).*

What explains the variance in indigenous constitutional provisions across the Americas? This chapter examines the extent to which key domestic political considerations matter. I take a bird's eye view of regional constitution-making to identify the determinants of indigenous rights adoption across four distinct types of indigenous rights.

I begin by discussing the measurement of constitutional rights outcomes of Latin America’s original populations. This is the DV of interest of this dissertation. Chapter 2 argued that the substantive content of indigenous provisions in national constitutions must be considered when interpreting the expansion of indigenous citizenship. Indigenous constitutional rights are

categorized according to the extent that they restructure the country's political institutions.

Categories of indigenous constitutional rights outlined in chapter 2 take the form of recognition, representation, resources, and autonomy.

Next, I discuss the measurement independent variables. These are domestic factors that are expected to influence the rights acquisition process for marginalized native populations. These factors are democracy, indigenous mobilization, indigenous population representation in government, resource rent dependence, and state capacity. These domestic inputs will either positively or negatively motivate rights adoption, depending on which rights are up for adoption. I also summarize the measurement of important control variables, like judicial strength, neighborhood effects, and the relative size and fractionalization of indigenous populations.

This chapter then moves to test chapter 1's hypotheses in both survival and firth logit modelling. Survival models account for the timing of rights adoption, and firth logit models are used to test for rare occurrences. The results of these tests shows that the impact of domestic variables on the likelihood of indigenous rights adoption changes, depending on the content of the negotiated constitutional provisions. Against expectations, democracy is not positively related to any form of indigenous constitutional rights implementation. Results suggest that countries with low democracy scores are highly likely to adopt indigenous recognition. Democracy is also negatively related to the adoption of resource rights that correct inequalities that are historically due to indigenous status. Indigenous social movements are only positively related to the adoption of autonomy rights in the constitution, suggesting that strong mobilization is more impactful later in the adoption process. Indigenous political representation in national government positively predicts the adoption of protectional provisions early on and throughout the entirety of the process. Representation of these populations in national government is

positively associated with the creation of rights from all categories. When it comes to the state apparatus itself, resource rent dependence is negatively related to the adoption of indigenous autonomy rights, and signals that states heavily invested in resources are unlikely to recognize regional national sovereignties. Finally, state capacity is unrelated to the adoption of indigenous rights across all categories. These results are presented and discussed, alongside important control variables, like judicial strength, neighborhood effects, and indigenous population proportion.

Now, this chapter presents the dependent and independent variables and data used in its statistical modes. Then, I present and discuss statistical results. Last, I summarize the findings of this chapter before moving to test the sequential nature of the rights adoption process in chapter 4.

### **Dependent Variable: Indigenous Constitutional Outcomes**

Indigenous peoples have lived on the political periphery of state citizenship for most of the region's recent history. Only in the past few decades have constitutional rights and protections been extended to indigenous communities. The previous chapter details the evolution of constitutional negotiations for indigenous provisions over the last 7 decades. This chapter concludes that America's indigenous peoples have lived under different rights regimes in recent history.

To accurately measure the evolution of indigenous constitutional rights in Latin America, I constructed an original dataset that tracks minority rights under constitutional laws throughout the region. Observation begins in 1933, when native populations were first established as citizens in constitutional law in Peru<sup>1</sup>(Constitución de Peru de 1933). This point marks the beginning of

the dataset, and the observation period concludes in 2016. Since then, only Chile has drafted constitutional revisions for its original populations. But a recent referendum in 2022 rejected the current draft, and these laws are not yet in place. There are plans to update this dataset in the future to account for advancements in the law.

Constitutional law can be changed through several different processes. There are constitutional overhauls, or revolutions, which completely restructure the document. There may be a constitutional “mini” revolution where large parts are changed in the original constitution, but the overall structure of the preceding document remains intact. Parts of the law can also be changed via executive or judicial decree. Any process that results in a constitutional revision on the national level was analyzed in the creation of the dataset. When negotiations result in rights for the original peoples and nations of Latin America, they are recorded as an observation. Below is a summary of rights categories and their measured frequency in Latin American constitutions.

***Measurement of Indigenous Rights in Constitutional Law***

**Table 1. Typologies of Indigenous Constitutional Rights**

<b>Recognition</b>	<b>Representation</b>	<b>Resources</b>	<b>Autonomy</b>
General Recognition	Right to Culture	Political Representation	Territorial Borders
	Right to Health	State Health	IFPIC
	Right to Education	State Education	Resource Protection
	Right to Language	Regional Legitimacy	Autonomy
	ILO 169	Consultation	Indigenous Institutions

<sup>1</sup>ILO 169 is a mention of the UN convention on human rights under the same name. Constitutions may make note of the convention, but this is typically to note its adoption rather than create the institutions suggested in the convention itself. This is a general form of recognition that only Bolivia, Brazil, Ecuador, and Costa Rica have mentioned in their constitutions, despite the convention being widely adopted throughout the region (by all but two countries).  
 2. State Education and State Health are guaranteed to be funded by the government, as opposed to general rights to health and education. The latter do not guarantee that the state will deliver these services to marginalized Indigenous populations.  
 3. Consultation is not as powerful as Consent, which is a requirement of FPIC laws presented in constitutional rights that provide Indigenous accommodations.  
 4. General autonomy grants legitimacy to the regional self-determination of Indigenous communities. However, general autonomy rights do not specify what “autonomy” means under existing political structures. This means that

while granted some legitimacy, these claims are easily encroached upon by state actors in the future if they are not clearly defined. Specified autonomy rights, on the other hand, solve this problem. They specify what Indigenous “autonomy” means and what it will look like. Communities with these rights have much more leverage in protecting their interests.

Indigenous constitutional rights take four main forms per measurement. First, there are rights that recognize indigenous peoples as national citizens. These are termed recognition rights. These rights, as observed in the previous chapter, are recorded earlier in the observation period, and for many cases they represent the entry point of constitutional recognition for indigenous groups. Recognition is coded as a 0 or a 1 for every year from 1933-2016. Either general recognition of indigenous peoples is present in these provisions, or it is not. Recognition in the constitution is the minimum constitutional protection adopted for marginalized groups. There is no case where recognition occurs AFTER the acquisition of more specific rights.

All but two countries (Chile and Uruguay) adopted the general recognition of its native peoples at the state level by the 2016, meaning that fifteen of seventeen countries in the region are scored as a 1 for general indigenous recognition. However, recognition occurs at various times across the period observed (see chapter 2).

The second category of rights are similarly recorded by country, and totals are updated every year. Representation rights have a range of 0-5 and have a mean of 2.47 by 2016. This is the second most common right type afforded to minorities in the region, after indigenous recognition. To reiterate, these protections legitimize native cultures, languages, practices, and political participation rights as equal to those of other citizens. But these rights do not serve to correct inequalities historically defined along ethnic lines.

These rights are observed either after or alongside recognition of indigenous populations in constitutional law. To be coded into this category, a constitutional article must specify the

indigenous right to cultural practices, education, religion, health, or political representation. But these rights do NOT guarantee state funding, institutional support, or guaranteed representation in government or other state institutions for indigenous interests.

The third recorded category of indigenous constitutional rights are the first that promise guaranteed state resources and political representation at the national level for their communities. Resource rights provide the promise of state funded education, health, and other support. They also establish guaranteed thresholds of indigenous representation in existing state institutions. For these reasons, these rights are more hotly debated since they are defined only to benefit one population and not another.

Values for resource rights in state constitutional documents range from 0-7 across the region, with a mean value of 1.7 by 2016. These rights are less common than the latter two categories of indigenous protections but became more common in the later years of the observation period.

The last indigenous rights category observed in the region's constitutions are autonomy rights. Autonomy amendments *must discuss terms of indigenous sovereignty* or *create new institutions that serve indigenous interests* to be coded in this category. New indigenous institutions create mechanisms for conflict negotiation between indigenous and state entities. For example, such legal mechanisms exist in the plurinational courts created in Bolivia and Ecuador (Constitución de Bolivia de 2009; Constitución de Ecuador de 2008).

Values of autonomy rights range from 0 to 6, but only two countries currently provide autonomous rights in national constitutions. This makes the presence of autonomy rights for indigenous nations a rare occurrence. To account for the low rate of adoption of these provisions,

the presence of autonomous rights in state law is coded as a 0 or 1 across country cases.

Measurement on a binary level allows for statistical testing for these occurrences in the first logit models presented in chapter 4.

In sum, I measure the dependent variable, indigenous constitutional rights outcomes in Latin American law from 1933-2016. Indigenous rights are measured according to their type of provision: recognition, representation, resources, and autonomy. Rights totals for every category are recorded on a country-case basis and are updated every year to account for constitutional amendments, revisions, overhauls, and executive orders.

### **Measurement of Independent Variables: Domestic Inputs on the Rights Adoption Process**

Though the very first changes in indigenous constitutional protections began in 1933, datasets and sources used to measure the domestic factors that motivate or inhibit adoption do not exist until the 1960's. For this reason, quantitative modelling output represents rights adoption from 1960 onward. At this point, only a few states recognized their indigenous populations as legitimate political participants. This is the lowest threshold of indigenous constitutional recognition and is present in only 3 cases at the start of 1960.

Below, I summarize measurements and regional summary data for the independent variables of interest. These domestic inputs include democracy, indigenous mobilization, indigenous political representation, resource rent dependence, and state capacity. I also discuss the measurement for controls identified from recent literature before moving to present this chapter's quantitative models.

#### ***Democracy***



The first factor that plays a role in constitutional change and rights expansion is democracy. Democracy creates legitimate avenues to indigenous political recognition and representation in state constitutions. But ideological incompatibilities will mean that democracy has no impact on resource or autonomous rights for ethnic minorities. Broadly, democracy will expand rights that embrace *democratic* ideals of citizenship. The adoption of laws that go beyond equal access to state resources will not be motivated by increases in democracy.

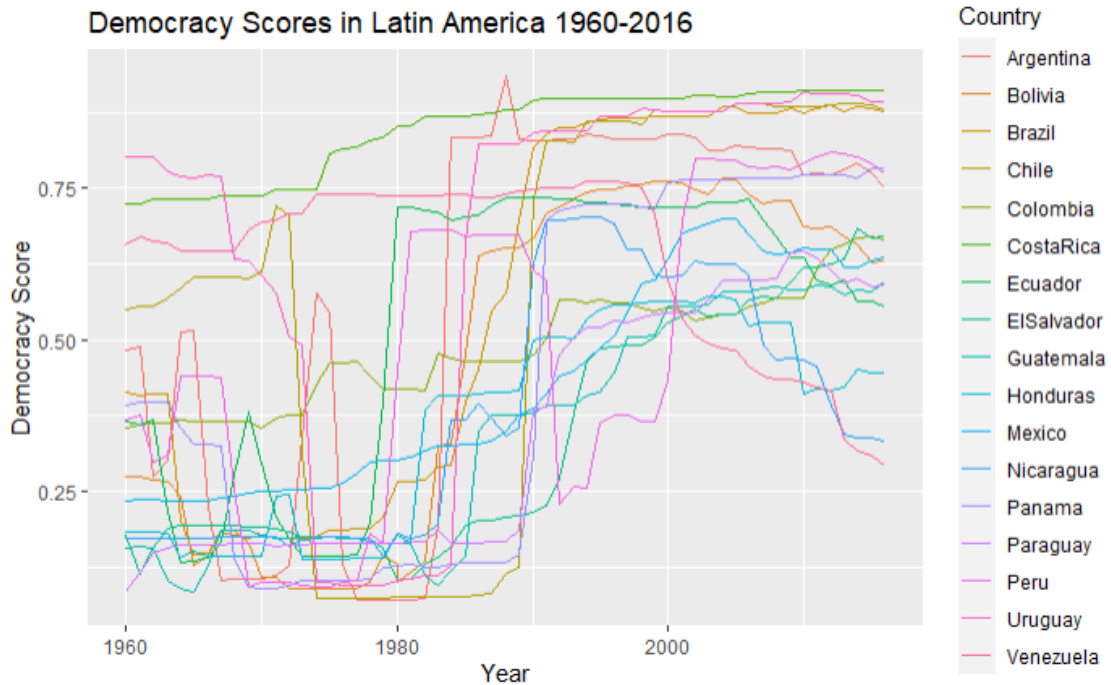
Country level observations for democracy are gathered from the Varieties of Democracy (VDem) dataset from the mid 1960's onward. Data is not available before this period. VDem's democracy score contains an aggregate value based on hundreds of indicators and country expert consultation.<sup>2</sup> Aggregate indicators of democracy include but are not limited to measurements of suffrage, elections, transition of power, legislatures, courts, and political parties.

Values for democracy range from 0 to 1. The closer to 1, the more democratic the country, according to its aggregate score of indicators. Countries in Latin America have a range score of .07 to .935 over the observation period. The mean score across this period is right in the middle, at .5. The following plots exemplify the variation in democracy scores on a country case basis.<sup>3</sup>

Democracy levels in the region spiked during the late 1980's. This upward trend coincides with a turn towards Washington post-Soviet Collapse after the conclusion of the Cold War. However, the region's experience with democracy has not always been stable and remains volatile. In recent years, there is a return toward illiberal democratic tendencies, as is the case in the neighboring United States, and other European democracies. This is especially true of downward democratic trends in Nicaragua and Venezuela. These changes in democratic

commitments over time are expected to influence the rights adoption process for marginalized ethnic populations such as Latin America's indigenous peoples.

**Figure XI: Democracy in Latin America: 1960-2016**



### ***Indigenous Mobilization***

Indigenous mobilization is theorized to be positively associated with rights adoption in after indigenous constitutional recognition is adopted. But mobilization is particularly important for rights that specify resource and autonomy rights. Once original populations are legitimized as political participants on the national level, groups will mobilize to appeal for further representation. Drawing on current literature, strong group mobilization can also bring state entities to negotiate the adoption of rights provisions they would otherwise ignore.

The comparative mobilization strength of indigenous groups in Latin America is not currently directly measured in data. This presents a bit of a challenge for quantitative testing of

the effectiveness of indigenous mobilization efforts. Scholars have only recently begun to attempt to measure ethnic based mobilization in Latin America. Many of the most recent informative works include only case study analysis of indigenous mobilization, and do not expand comparisons of activity on a regional level.

To capture a quantitative measurement for indigenous mobilization capacity, I employ the Harvard database's record of social organization presence around the world. Particularly, I use the establishment and presence of social movement headquarters organizations as a proxy for mobilization strength. The database records where and when these headquarters were established, along with their political aspirations. To be counted toward a score of indigenous movement strength, mobilization headquarters must be committed to indigenous issues, or environmental and class pursuits that specifically note indigenous solidarity in their mission statement. A total count of movement headquarters is carried out on a country case basis for every year of the observation period. Country cases across this time period have a recorded 0-6 established indigenous mobilization headquarters. Below is a summary of observations in the region as of 2016.

**Table 5: Indigenous Mobilization in Latin America 2016**

Country	Mobilization Headquarters (2016)
Argentina	1
Bolivia	6
Brazil	3
Chile	0
Colombia	2
Costa Rica	6
Ecuador	6
El Salvador	0
Guatemala	0
Honduras	2
Mexico	6
Nicaragua	2
Panama	0
Paraguay	3
Peru	5
Uruguay	2
Venezuela	4

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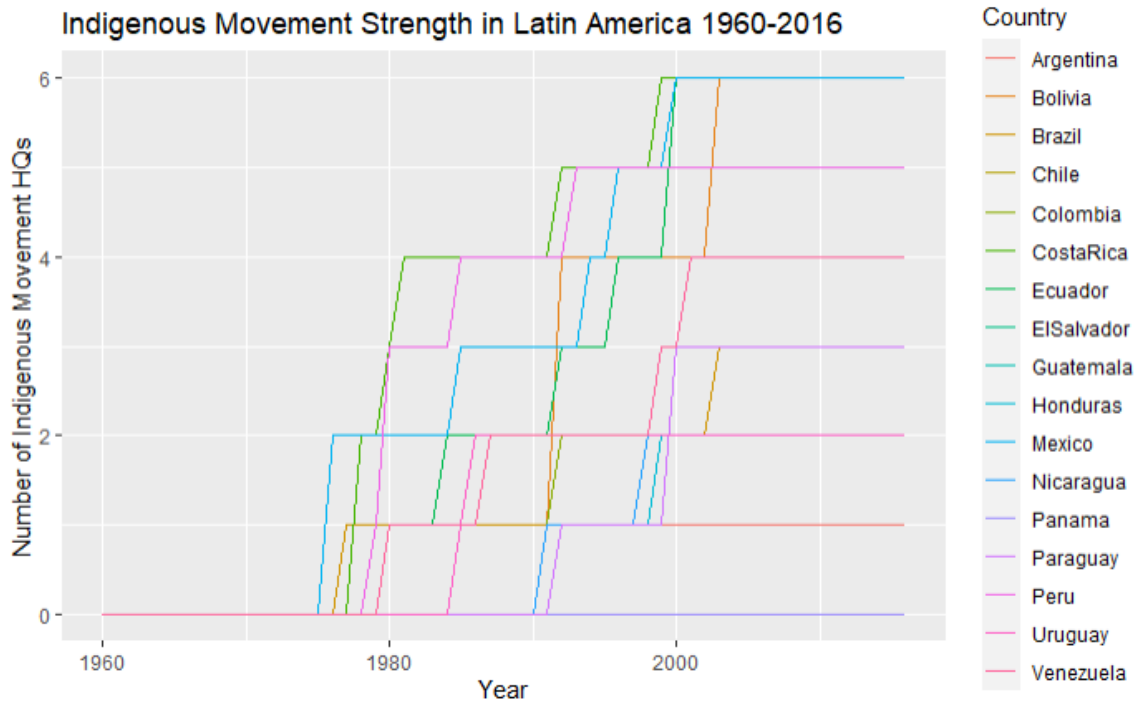
Data is sourced from *Harvard Transnational Movement Organization Dataset*

Bolivia tops the list as a country with one of the most brick-and-mortar headquarters for indigenous focused social movements with a total of six physical establishments. Chapter 2's analysis of indigenous constitutional provisions shows that Bolivia also adopted the most far-reaching provisions for these populations.

But some countries that adopted less indigenous protections than Bolivia, like Mexico, have an equal amount of indigenous mobilization establishments. Moreso, Costa Rica only

recognizes its native populations to the most minimal level in the state constitution<sup>4</sup> (See chapter 2) but score just as high as the plurinational state of Bolivia when it comes to the presence of social mobilization capacity.

**Figure XII: Indigenous Mobilization in Latin America: 1960-2016**



The average social mobilization headquarters per state is 1.15, and some countries do not have any establishments currently within their borders (Chile, El Salvador, Guatemala, and Panama).<sup>5</sup> This is an imperfect measure of indigenous mobilization strength and underrepresents the true grassroots activity on the ground. Subsequent chapters attempt to remedy these shortcomings through thorough qualitative case analysis of historical mobilization presence. But the presence and investment in these political outlets does signal a relative ability of peoples to mobilize for political representation. International organizations and NGOs lend their resources to these established networks and increase indigenous mobilization momentum and focus.

### ***Indigenous Government Representation***

I theorize that increased legitimized indigenous mobilization will increase the political representation of their communities in political office. Once representatives from original populations are elected to national representative office, they increase the salience of issue areas that would otherwise go unnoticed by the central government.

I include a measurement for indigenous leadership in high political office (legislative and executive branches). The measurement for this variable is a simple count of seats reserved for the election of indigenous community representatives in the legislature and judiciary in national law, and of the total years an indigenous politician held executive office. As of 2023, there are no provisions that guarantee indigenous representation in national judicial branches.<sup>6</sup> Therefore, observations are limited to indigenous positions held in the legislative and executive branch.

This is a strict measurement of indigenous political representation on the national level and representation is only observed in three cases in the region. Only one indigenous candidate, Evo Morales of Bolivia, held a presidential position in Latin America. He held power from 2006-2019. Theoretically, states that required representation or allow representation in executive office have already legitimized indigenous political participation at the national level. This is consistent with the theoretical positions of this work.

Indigenous political representation is measured every year during the observation period. When legislative seats are saved for these communities, the total number of seats are added to a running count. Another observation is added to the total score during the years that an indigenous leader occupies the presidency<sup>7</sup>. The results of these regional totals are summarized below.

**Table 6: Indigenous Representation in National Government**

<b>Country</b>	<b>Adoption into Constitution</b>	<b>Legislative Representation</b>	<b>Executive Representation</b>
Bolivia	2009	7 seats in congress	Evo Morales (2006-2019)
Colombia	1991	2 seats in the senate 1 in the lower chamber	N/A
Venezuela	1999	3 seats in congress	N/A

Data is sourced from constitutional texts for each country case, along with widely publicized electoral data for the region.

Only three countries adopted an order that required indigenous representation in the national legislative body. Colombia was first to do so, in 1991 and required a total of three representative seats – two in the upper house and one in the lower. Next, Venezuela adopted a similar law into its constitution, and mandated that three seats be saved for community leaders in congress. Interestingly, Morales became president in Bolivia in 2006, *before* constitutional changes in 2009 required a total of 7 indigenous reserved seats in the national congress. An indigenous executive leader may have resulted in better terms of indigenous representation in the legislative body in this case.

### *Resource Rent Dependence*

Resource rent dependence is expected to negatively impact the rights adoption of indigenous amendments that go beyond equal political citizenship that promotes private property rights. The more dependent a state is on natural resource rents as a total proportion of its GDP, the more state entities will resist adopting constitutional rights that promote indigenous territorial legitimacy and resource rights. Resource and autonomy rights are framed as serving the “indigenous few” at the cost of the state’s economic productivity and growth. This rhetoric

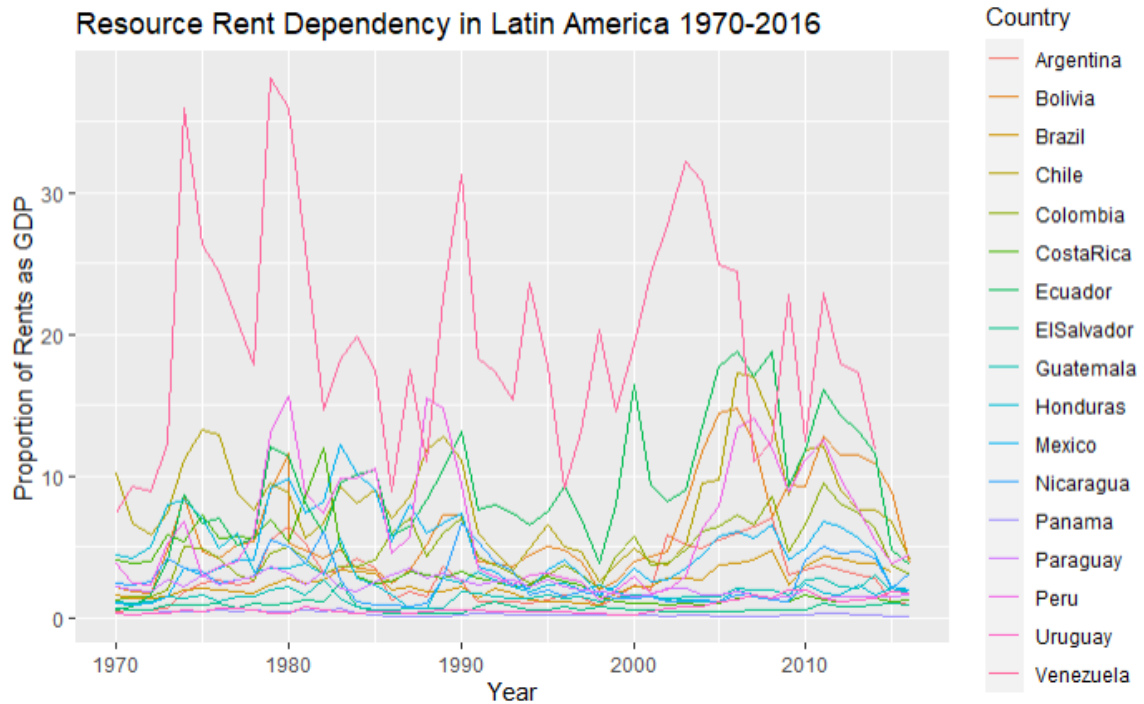
harkens back to colonialism when Spanish occupiers justified seizing land because the original populations were not “productive” enough with what they had.

The measure for resource rent dependence was gathered from a World Bank (WB) database from 1970 onward records estimates of the total natural resource rents as a percentage of the national gross domestic product (GDP). This percentage is weighted average of the sum of oil rents, natural gas rents, coal rents, mineral rents, and forest rents, all of which are relevant to the resource industries found in Latin America. These percentages are updated annually.

As expected, resource rent dependence is highly volatile in the region.<sup>8</sup> Natural resources are bound to the mercy of the global market, and prone to boom-and-bust cycles that fluctuate the natural resource’s market value. There is a range of .19% of total GDP that is dependent on resource revenues to 38.1% of the total. Levels in Peru have been historically near 15% and are comparably high vis-à-vis other countries in Latin America. The resource dependence of Venezuela is the most erratic, rising and falling from anywhere from 10% to 38% during the observation period. Resource rent dependence in Brazil, Guatemala, and Uruguay are relatively low, and in Bolivia and Ecuador, they are on a modest increase. On average, 6% of a country’s GDP on the region is reliant on natural resource rents from 1960-2012.



**Figure XIII: Resource Rents in Latin America: 1970-2016**



### *State Capacity*

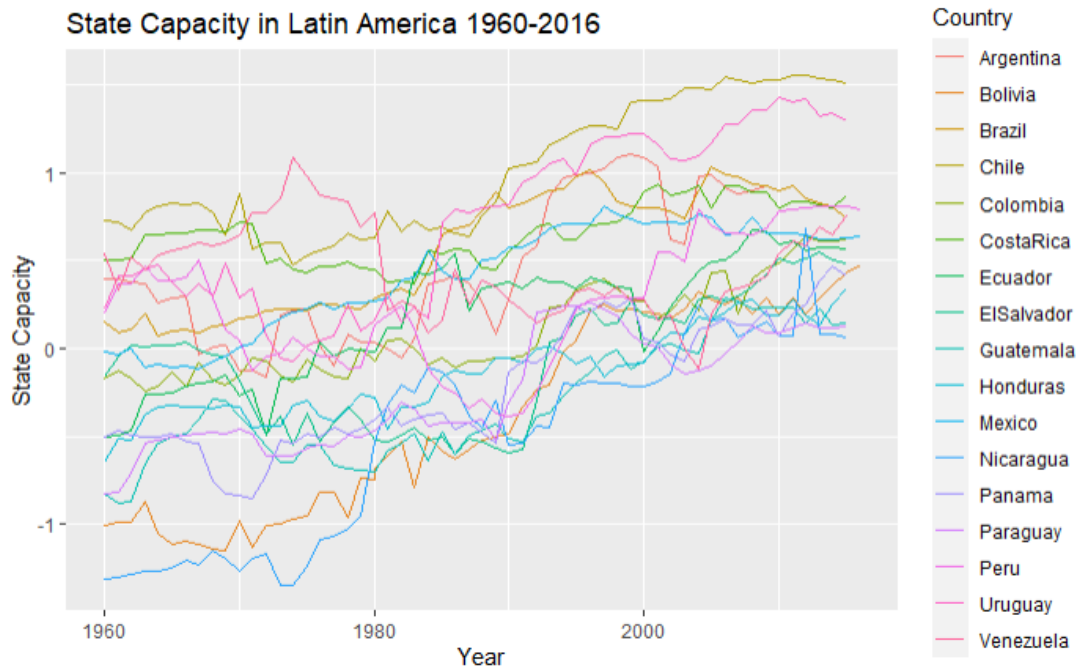
State capacity is the second factor predicted to inhibit the constitutional adoption of indigenous resources and autonomy. Stronger states that have a higher degree of physical control over its borders are unlikely to cede territorial legitimacy and control to ethnic minorities. Strong states also have a higher ability to extract wealth through either taxes or other wealth extraction. A high state capacity signals that a state not only has more territorial reach, but also the capability to extract wealth from these regions and their populations.

State capacity is an aggregate score of indicators from Hanson and Sigman's measurement, "Leviathan's Latent Dimensions: Measuring State Capacity for Comparative Political Research," (2020). The comparative database gathers an aggregate score of indicators to

measure state capacity on three dimensions. First, is the state's extractive capacity, or its ability to extract revenue and assets from its populations. Second, the coercive capacity of the state. This is the state's military capacity measured via the log value of military expenditure per million citizens and the number of personnel per thousand in the population. This measure includes the degree to which the state also has a monopoly on violence within its borders. Finally, the third dimension includes the VDem measurement for coercive capacity, which is the percentage of state territory under physical control of state actors (Hanson and Sigman 2020). The score across these three dimensions is combined into one score per country on a yearly basis through the observation period.

State capacity values on the plots below are captured between values of -2 and 2. Values in the region vary widely. Higher scores indicate a stronger state capacity. Overall, state capacity is on the rise in the region over the last few decades. But values vary widely and are anywhere from -1.45 to 1.5. Chile has seen the greatest increase in state capacity since the 1980s according to these observations.<sup>9</sup> Nicaragua also saw gains in its relative ability to extract assets and maintain territorial control over the observation period.

**Figure XIV: State Capacity in Latin America: 1960-2016**



### ***Controls***

The following variables, while not the main variables of interest in the theory presented here, should be included in the analysis according to current theoretical works. Strong judiciaries that are the result of a turn toward democracy are associated with higher protection of minority rights and can independently facilitate legal revisions (Apodaca 2003; Powell and Staton 2009). Democratic norms have also been observed to happen as a cascade- once so many countries adopt human rights norms, others follow (Finnemore and Sikkink 1998; Keck and Sikkink 1999). The same logic applies to domestic adoptions into constitutional law, and I test for a neighborhood effect of indigenous constitutional adoptions. Finally, indigenous population proportion and fractionalization, according to conflict literature, impact the leverage that ethnic minorities have when making political demands from the state apparatus (Doyle and Sambanis

2006; Fearon and Laitin 2003; Gurr 1970). I briefly discuss these control variables before summarizing the content of this chapter.

### ***Judicial Strength***

Judicial strength, often an outcome of democracy, implements more successful constitutional revolutions (Feinrider 1980; Sandoval-Rojas and Brinks 2020). Judicial branches that effectively exercise power create constitutional change that is consistent with democratic norms and international human rights law. Simply, a stronger judicial branch acts more independently and is less subject to oversight from other political branches. It is easier to create progressive laws that protect minority populations where there are strong judiciaries.

*H6: Countries with strong judiciaries are more likely to adopt indigenous provisions into the constitution.*

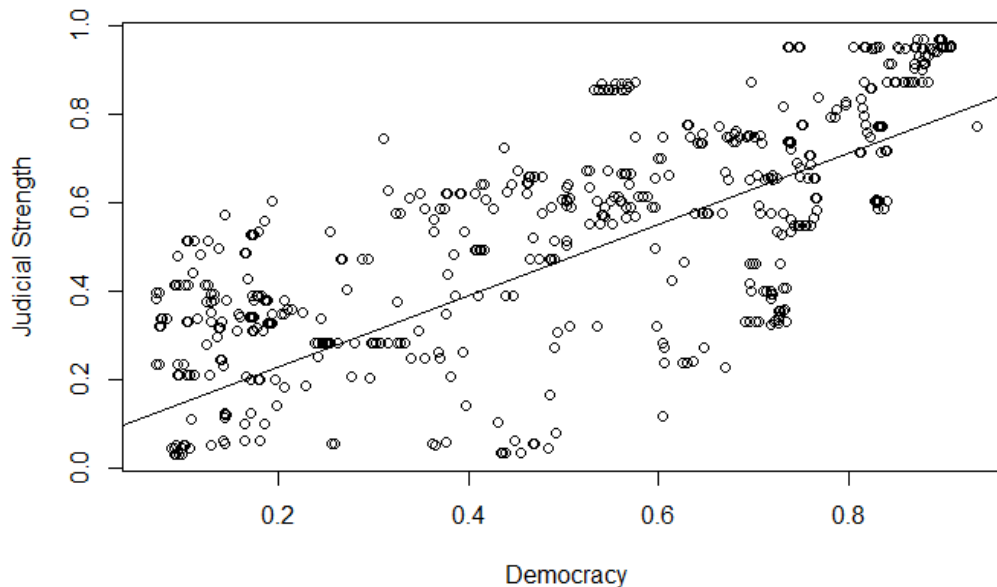
As strong judiciaries are thought to more easily adopt progressive laws independent of oversight and other constraints (Powell and Staton 2009), I account for the potential effects of the judicial branch. Particularly, a strong judicial branch vis-à-vis the executive indicates increased judicial independence and implementation of progressive laws. I expect strong judicial branches to positively impact the likelihood of indigenous rights adoption for these reasons.

The measurement for judicial strength is taken from VDem data that scores the independence of the branch. Specifically, it assigns each country a score for judicial independence from other branches of government and its ability to constrain the executive branch's decisions. Scores range from 0 to 1. The closer to 1, the more independent the judicial branch is in its actions.

Since strong judicial branches are an indicator of democratic strength, democracy levels and the independence of the judicial branch of government are related to one another. The sample estimate for correlation between these two variables is .76. This score indicates a strong positive correlation between democracy levels and the strength of the judicial branch. As such, survival and firth logit models test democracy and judicial measures separately. Below is a plot of the relationship between democracy and judicial strength, followed by plots of judicial strength by country case.

**Figure XV: Relationship Between Democratization and Judicial Strength**

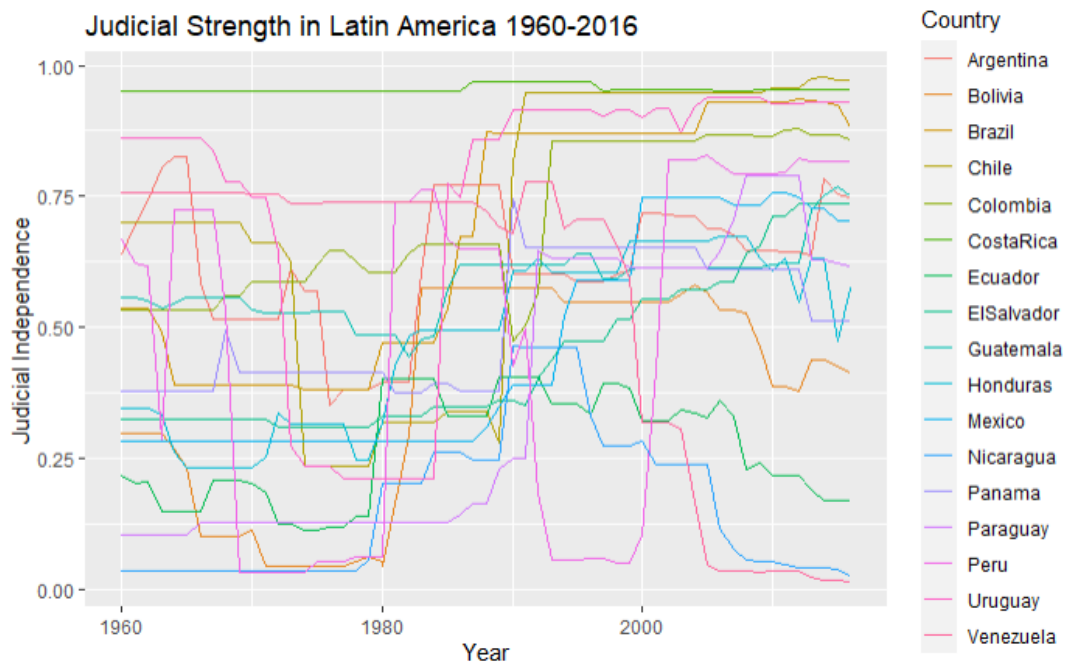
**Correlation Plot: Democracy and Judicial Strength**



Interestingly, the strength of the judicial branch in Bolivia appears to have increased, but only to a level that is around the mean of .54. This low score is despite that fact that indigenous populations are most constitutionally protected in that state. On the other hand, Brazil's court is strong, but does not afford the same rights to its ethnic minorities. Since the authoritarian Pinochet era in 1980's Chile, the court has become extraordinarily strong, which is a factor in the

current constitutional revolution that will replace the dictator’s old rules of the game. Similarly, Mexico’s judiciary has steadily gained independence over time. The strength of the courts in Peru has waxed and waned over time but is most recently on the stronger side (about a .75 out of 1). Uruguay’s judicial branch is strong, and Venezuela’s has lost all its power in recent decades. Summary plots are presented below.

**Figure XVI: Judicial Strength in Latin America: 1960-2016**



***Neighborhood Effects***

Other perspectives note that international human rights norms, like those that protect indigenous minorities, are adopted through norm cascades (Finnemore and Sikkink 1998). Simply, the more countries adopt protective laws, the more likely it is that others will follow. This logic applies to the adoption of domestic minority protections into constitutional law as well. As more neighboring countries adopt indigenous constitutional provisions into domestic law, the more likely a country is to do the same.

*H7: Neighborhood effects positively impact the likelihood of indigenous rights adoption in the national constitution.*

Democratic norm literature posits that human rights norms, including the adoption of minority protections into national law, are caused by norm cascades (Finnemore and Sikkink 1998). Simply, the more regional neighbors or allies acknowledge a policy position as legitimate, the more likely a state is to follow suit and engage in the same behavior. As more country neighbors adopt indigenous provisions, the more likely its government is to do the same. This perspective argues that there are regional and international pressures to undertake certain political behaviors.

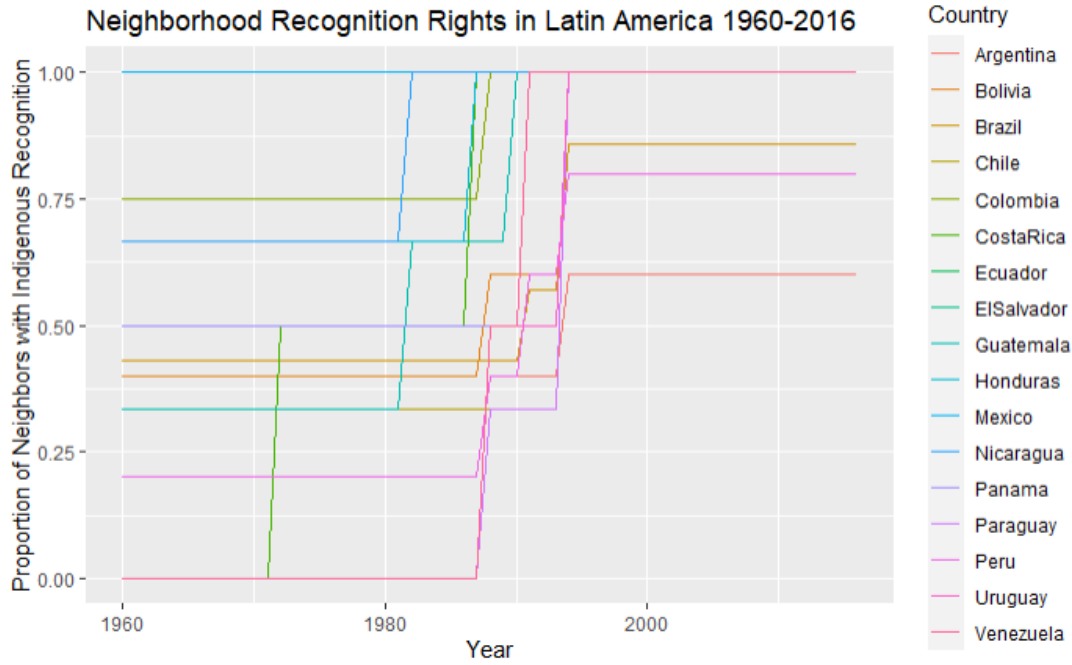
To calculate a neighborhood effect, I measured a total proportion of border-sharing neighbors for each country in the region that includes indigenous recognition, representation, resources, and autonomy in their national constitutions. This means that neighborhood effects are separately calculated for each category of indigenous provision. Values range from 0 to 1. For example, as more border sharing neighbors adopt indigenous recognition in their constitution, a state becomes more likely to do the same. This logic follows for every category of indigenous provision.

Between the years of 1960-2016 an average country shares 66% of its borders with countries that adopted indigenous recognition into their national constitutions. When it comes to indigenous representation rights, the average percentage of shared borders drops to 38%. The average neighborhood effects of indigenous resource rights adoption over the observation period is similar, at an average of 37%. Finally, the average effects of indigenous autonomy rights in border sharing neighbors is 6%. Neighborhood effects for autonomy, then, are likely to be very low.

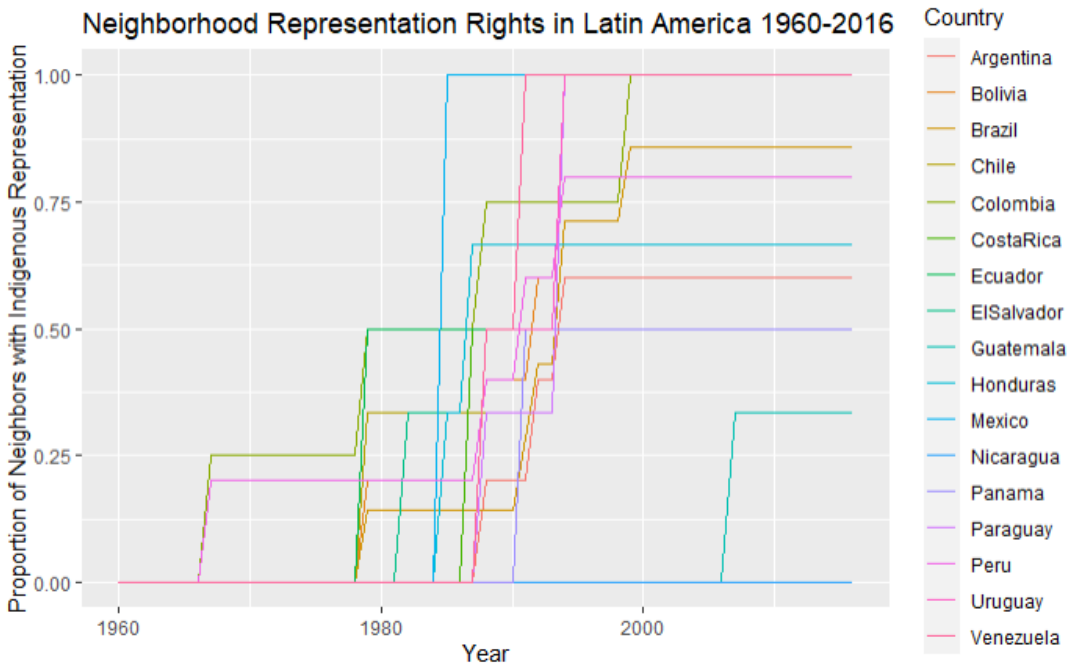
Below, I show plots that measure the neighborhood effects of indigenous recognition in constitutional law in each country in the region. For the sake of brevity, I do not include plots that measure the effects of representation, resource, and autonomy adoptions.



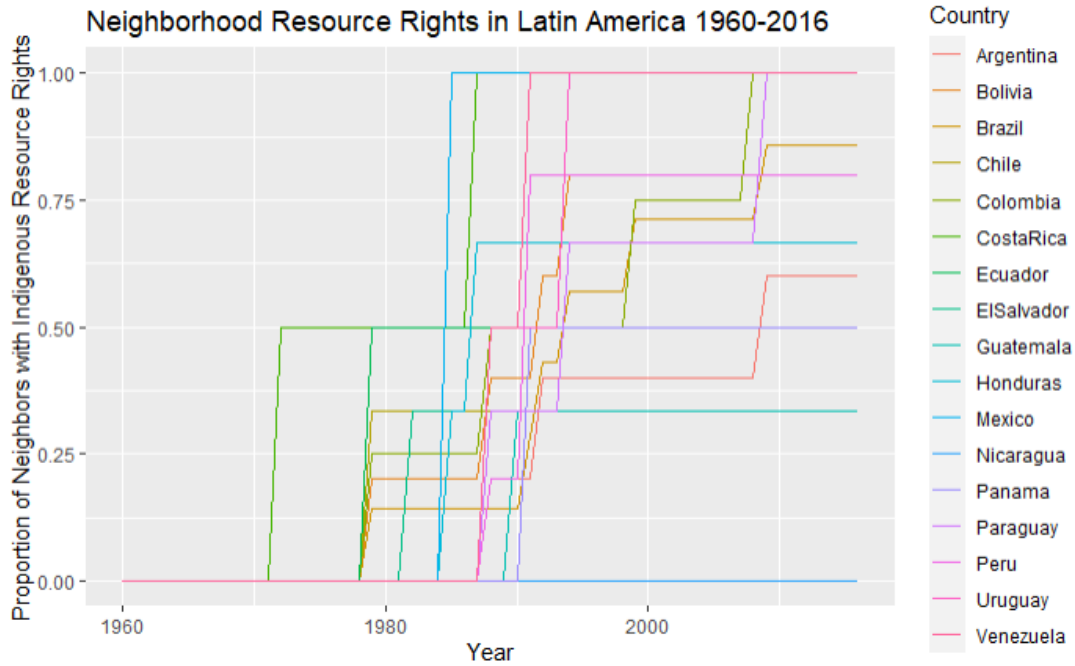
**Figure XVII: Neighborhood Recognition Rights in Latin America**



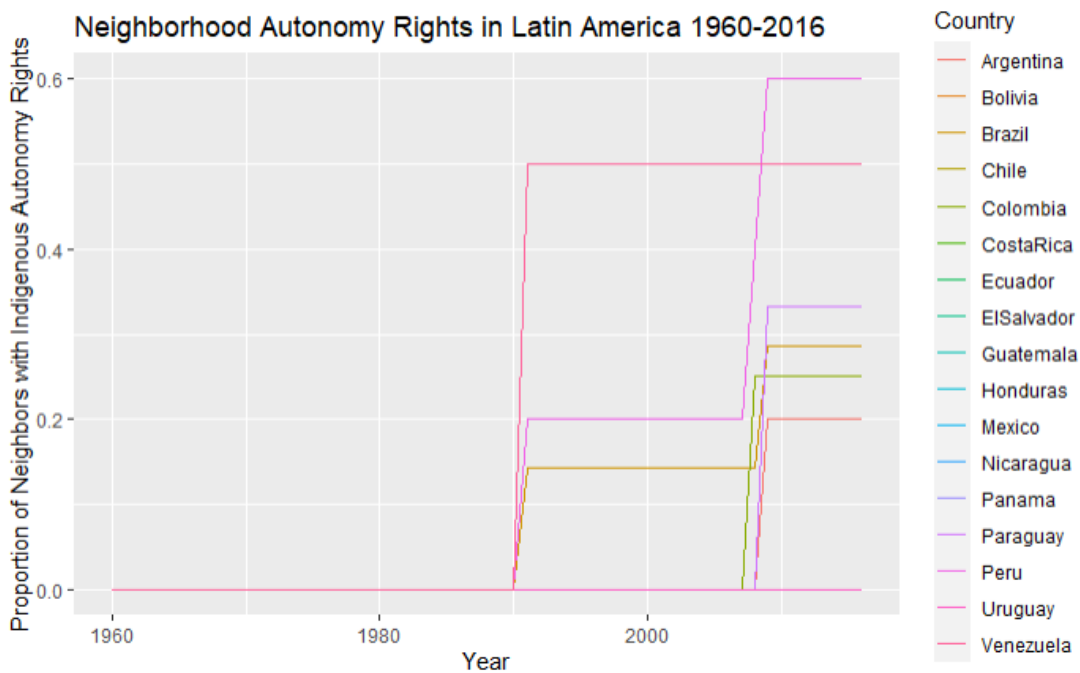
**Figure XVIII: Neighborhood Representation Rights in Latin America**



**Figure XIX: Neighborhood Resource Rights in Latin America**



**Figure XX: Neighborhood Autonomy Rights in Latin America**



***Indigenous Population Proportion***

Indigenous populations vary in their size vis a vis non-indigenous citizen. Conflict theory predicts that larger marginalized populations more credibly threaten the political status quo

(Doyle and Sambanis 2006; Esteban and Ray 2008; Fearon and Laitin 2003; Gurr 1993; Montavlo and Reynal-Querol 2005). States actors are more likely to engage in power sharing through constitutional reforms where indigenous peoples constitute a larger share of the state's total population. Large minority populations have higher mobilization potential and can create social and political unrest when these populations are dissatisfied with state power arrangements.

*H8: Indigenous communities with a high share of the total population will be more likely to obtain more constitutional rights.*

Larger minority populations have a higher likelihood of extracting political goods from the state apparatus and are more likely to have high mobilization capability. Continued non-representation of large, marginalized populations is untenable, and is more of a threat to national political stability. In these cases, original populations are more likely to negotiate constitutional protections.

As a historically politically marginalized peoples, indigenous representation in state data is lacking. Not only are census data in the region highly irregular, but some states do not include indicators for indigeneity. Furthermore, racial discrimination in the region discourages honest racial representation on state censuses, so minority status is often concealed. A study of ethnic classifications in the census of 19<sup>th</sup> century Latin American countries reveals that indigenous peoples and other minorities are underreported, and the populations of homogenous, white populations are exaggerated (Munck and Luna 2022, ch.2). This practice coincides with the marginalization of certain ethnic identities from the story of nationhood. In Brazil, racial classification has only been included since the 1980s, and was only offered to a sample of the population until 2000. Furthermore, the racial classifications until 2010 eliminated many indigenous identities altogether and forced groups into a choice of brown vs black and creates

further inaccuracies (Petruccelli 2015). The census has increased its representativeness and outreach since 2010, but actual population levels are far from accurate.

To address this issue, regional experts increasingly rely on data that measures indigenous descent through language use. This measure is more able to accurately capture the population size of ethnic minorities, since ancestral languages are passed down through the community, and are not a direct admission of heritage. From a linguistic perspective, indigenous populations and their evolution and changes are best based on the languages spoken by the various indigenous communities (Barbary 2015). Therefore, I choose to not use state census data for the population size of these ethnic minorities, and I instead rely on *the percentage of peoples that speak an ancestral language* to serve as a stand in. *Latinobarometro*, a private NGO based in Santiago, Chile, conducts extensive face to face public opinion surveys, and has created a thorough record of languages spoken in the region.<sup>10</sup> The resulting measurement is a percentage-based calculation of the proportion of the population that indicated that they speak an original language.

There is quite a range of estimated population sizes of native peoples in the region. These values land anywhere from close to 0%, as in Costa Rica (.01%), Venezuela (.11%), and Chile (.3%). Bolivia has a measured 31.9% of the population that is identified as native, and in Paraguay an astonishing 49% of respondents indicated that they spoke an indigenous language.<sup>11</sup> Overall, the average across the region is a 7.6% indigenous population, but there is quite the variation across country cases. The relative size of these populations will also play a part in which rights minority populations will eventually obtain. Larger populations have a higher mobilization capacity and potential to cause political instability, and should therefore, all else equal, be more successful in obtaining constitutional protections.

Importantly, this is an imperfect measurement of indigenous populations in Latin America. Efforts have only recently been made to record the number of citizens that identify as either indigenous or mestizo. Regional data that surveys mother languages to identify original communities still undercounts the total proportion of their populations. Indigenous population proportions are summarized on the table below

**Table 7: Indigenous Population Proportion Estimates in Latin America (2016)**

<b>Country</b>	<b>Indigenous Population Proportion</b>
Argentina	1.3%
Bolivia	31.9%
Brazil	3.4%
Chile	.3%
Colombia	1.3%
Costa Rica	.01%
Ecuador	2.5%
El Salvador	.01%
Guatemala	19.3%
Honduras	1.1%
Mexico	4.7%
Nicaragua	.5%
Panama	3.6%
Paraguay	49%
Peru	10.3%
Uruguay	.1%
Venezuela	.11%

Data is sourced from *Latinobarometro*, with a minimum threshold of .01% of the total population size.

### ***Ethnic Fractionalization***

Informed by similarly positioned conflict literature (Wegenast and Bosedau 2014; Cederman and Girardin 2007), the fractionalization level of minority populations is also accounted for when calculating the potential to exert political pressure and create instability.

Fractionalization is the degree to which minority populations are split into distinguishable sub-

groups. Native peoples may constitute most of the population, for example, but be broken down into hundreds of different original nations. These peoples often speak different languages and have unique customs and perspectives. The cooperative capability between hundreds of nations is lower than those that have fewer nations and more homogenous interests. When the interests of indigenous peoples across many different groups, they are also more easily exploited by state entities against each other. In simple terms, the more fractionalized these populations are, the more of a collective action problem these groups have. Fractionalization negatively impacts both mobilization capacity and negotiating power of native peoples.

In the following table I outline estimates of indigenous fractionalization among different national identities. The more fragmented the original peoples are into unique, distinguishable groups, the less they can coordinate political efforts across groups. Limited evidence presented by Munck and Luna (2022, ch.6) shows that indigenous political pursuits were divided between nations and led to limited rights compared to much more united women's rights efforts. Differences between groups limit their mobilization capacity and hinder the adoption of representation in the constitution.

Indigenous ethnic fractionalization is a simple count of different indigenous nations that are in state territory. Data for this variable was gathered from *Minority Rights Group International's* "World Directory of Minority and Indigenous Peoples," (2017). Various native communities and are distinguished by their spoken language. Different original nations speak different languages and is used as the indicator of separate indigenous groups. Simply, a different mother tongue represents a different ethnic group.<sup>12</sup> This measure accounts the number of different native groups within each country in the region through the entirety of the observation period.

**Table 8: Indigenous Fractionalization Estimates (2017)**

<b>Country</b>	<b>Indigenous Fractionalization</b>
Argentina	35
Bolivia	36
Brazil	305
Chile	10
Colombia	115
Costa Rica	8
Ecuador	14
El Salvador	9
Guatemala	22
Honduras	7
Mexico	68
Nicaragua	7
Panama	7
Paraguay	17
Peru	51
Uruguay	4
Venezuela	51

Data is sourced from *Minority Rights Group International (2017)*. Fractionalization is a measurement of how many different native languages are spoken in each country in the region.

The fractionalization data reveals some key findings. Brazil has the highest levels of native fractionalization with 305 different recorded groups. This is followed by Colombia, with 115, and then Mexico is next with 58 native populations. Uruguay has the least fractionalization with only 4 different native groups observed in this dataset.<sup>13</sup> The average fractionalization level of these populations is 45. This implies that there are often many competing interests between different nations and peoples in the push for political inclusion in Latin America.<sup>14</sup>

Though fractionalization is expected to have some degree of impact on the mobilization capacity of indigenous groups, its measurement is imperfect and remains static over the time period. The inclusion of two unchanging variables in statistical models destabilizes their output, fractionalization will not be included in statistical models used to predict indigenous rights

adoption. However, fractionalization is still discussed in following case study chapters to ascertain its impact on the adoption process.

**Table 9: Indigenous Population Proportion and Fractionalization in Latin America**

<b>Country</b>	<b>Population</b>	<b>Fractionalization</b>
Argentina	1.3%	35
Bolivia	31.9%	36
Brazil	3.4%	305
Chile	.3%	10
Colombia	1.3%	115
Costa Rica	.01%	8
Ecuador	2.5%	14
El Salvador	.01%	9
Guatemala	19.3%	22
Honduras	1.1%	7
Mexico	4.7%	68
Nicaragua	.5%	7
Panama	3.6%	7
Paraguay	49%	17
Peru	10.3%	51
Uruguay	.1%	4
Venezuela	.11%	51

Data is sourced from *Minority Rights Group International (2017)*. Fractionalization is a measurement of how many different native languages are spoken in each country in the region.

Examining both population data and fractionalization of ethnic groups side by side is more telling. For example, in Bolivia where there is a large native population, there is also a fractionalization level that is below the average. This suggests an increased mobilization capacity for these groups, and more coordinated efforts in creating constitutional negotiations that favor them. But the same may be said about Paraguay, which has much less favorable outcomes for indigenous populations, but still lands itself in the middle of the road with some more representative policies and 7 protective provisions total (see chapter 2). Brazil has the highest



rate of fractionalization with a low population size, which means the opposite: a weak capacity for indigenous mobilization. Colombia faces similar issues with its fractionalization ratio based on its native population size.

### **Data and Measurement Overview**

The variables discussed above will be used to test hypothesis that explain the varied constitutional rights of Latin America's indigenous peoples. Multiple models are run to account for all relevant inputs and control variables. The DV of this work is indigenous constitutional rights outcomes that fall into four categories: recognition, representation, resources, and autonomy. IV's of theoretical importance measured above include democracy, indigenous mobilization, indigenous political representation, resource rent dependence, and state capacity. These factors are expected to impact the likelihood of the adoption of indigenous constitutional protection. But the impact that domestic variables have on adoption varies, dependent on the current stage of the adoption process. A summary chart of the rights adoption process is presented in this chapter before the discussion of statistical results. The next section moves to discuss quantitative models and then the results and implications of their output.

### **Statistical Models**

The variables discussed in the previous section will be tested through quantitative modelling in this section of the chapter. I use survival modelling wherever possible to best represent the evolution of indigenous rights in state constitutions over time. Cox Proportional Hazards models are used to test the effects of input variables on the "hazard rate". The underlying assumption of this model is that timing matters and changing values of the

independent variables will either serve to increase or decrease the risk of an event (Bueno de Mesquita 1995; Hutchison 1988).

In this work, independent variables impact the hazard of indigenous rights adoption in the nation's constitution. Adoption models are divided according to rights type and run separately. Domestic inputs are assessed in terms of their impact on the likelihood of constitutional adoption of indigenous recognition, representation, resources, and resource rights across these models. Since the adoption of autonomy rights are rare, different models are used and discussed in sections below.

The resulting output of the survival models are hazard functions. The hazard function shows a variable's predicted impact on an event. A hazard ratio of 1 represents that the factor has no effect on the likelihood of an adoption event. A hazard ratio less than 1 means that a factor caused a reduction in the likelihood of an adoption event. Ratios greater than one show a positive impact on the likelihood of an adoption event.

For the adoption of indigenous autonomy rights, I use Firth logistic regression models. These types of models are created to measure the impacts of variables on rare events. Firth logistic modelling is ideal for outcomes with limited sample sizes. The model employs a penalty on the standard maximum likelihood function and creates less biased results for small sample sizes (Firth 1993). Autonomous indigenous rights only occur in three country cases and constitute a rarely observed outcome in the region. Outcomes for these rights are binary in the logit model. A value of 1 represents the adoption of autonomy rights in the national constitution, and non-adoptions are recorded as 0's.

Output from the logit models provide insight into which domestic factors significantly impact the adoption of autonomy rights. Though not as temporally accurate as the survival models used for the other three categories of indigenous constitutional rights, future chapters of this work will continue to address these shortcomings and continue to test factors that impact this type of indigenous rights adoption. This chapter now moves to present the results of these models along with a discussion of these outcomes.

### **Explaining Variance in Constitutional Outcomes for Indigenous Peoples in Latin America: Quantitative Results**

The following models present the results of the survival and firth logit statistical tests. Tables 10, 11, and 12 summarize the statistical results for the adoptions of indigenous recognition, representation, and resource rights in national constitutions. This is followed by table 13, which shows the output for penalized firth logistic models that test for impacts on the adoption of indigenous autonomy rights. Table 14 summarizes the findings across all models. Following these summaries, I summarize and discuss the meaning of these results, before offering this chapter's conclusions.

**Table 10: Determinants of Indigenous Recognition Adoption 1960-2016**

<i>Independent Variable</i>		Model 1	Model 2	Model 3	Model 4
<b>Democracy</b>	<i>Hazard</i>	.08		.00	.00
	<i>Coefficient</i>	-1.39(.15)	-----	-2.95(3.40)*	-2.51(2.35)**
<b>Indigenous Movement</b>	<i>Hazard</i>	.90	.77	1.02	4.01
	<i>Coefficient</i>	-.32(.28)	-.77(.26)	.04(.39)	1.49(3.75)
<b>Indigenous Political Rep.</b>	<i>Hazard</i>	1.57	2.73	.83	.53
	<i>Coefficient</i>	1.11(.64)	2.29(1.20)*	-.35(.43)	-.96(.35)
<b>Resource Rents</b>	<i>Hazard</i>			.56	.60
	<i>Coefficient</i>			-2.19(.15)	-1.50(.20)
<b>State Capacity</b>	<i>Hazard</i>	.30	.14	.09	.02
	<i>Coefficient</i>	-2.03(.18)*	-2.86(.09)***	-2.70(.08)*	-2.28(.03)*
<b>Judicial Strength</b>	<i>Hazard</i>		2.41		
	<i>Coefficient</i>		.51(4.18)		
<b>Neighborhood Effect</b>	<i>Hazard</i>		.03		.01
	<i>Coefficient</i>		-2.70(.03)		-1.99(.01)*
<b>Indigenous Population</b>	<i>Hazard</i>	1.00			.85
	<i>Coefficient</i>	.23(.02)			-1.44(.09)
<i>N</i>		368	368	252	252

DV = Recognition Rights Adoption in Constitutional Law. Exit Value = 1 Analysis conducted via Cox Proportional Hazard modelling. Summaries include Hazard Ratios and Coefficients. Standard errors in parentheses. \*\*\* p<.000 \*\*p<.01 \*p<.05

**Table 11: Determinants of Indigenous Representation Adoption 1960-2016**

<i>Independent Variable</i>		Model 1	Model 2	Model 3	Model 4
<b>Democracy</b>	<i>Hazard</i>	.01		.01	.01
	<i>Coefficient</i>	-2.22(.01)*		-2.15(.02)*	-1.94(.02)*
<b>Indigenous Movement</b>	<i>Hazard</i>	1.16	1.47	1.21	1.25
	<i>Coefficient</i>	.72(.24)	1.59(.36)	.85(.28)	.93(.30)
<b>Indigenous Political Rep.</b>	<i>Hazard</i>	3.78	5.69	2.76	5.75
	<i>Coefficient</i>	4.30(.24)***	4.01(2.47)***	2.79(1.01)**	3.31(3.03)**
<b>Resource Rents</b>	<i>Hazard</i>			1.06	1.09
	<i>Coefficient</i>			.79(.08)	1.04(.09)
<b>State Capacity</b>	<i>Hazard</i>	1.06	1.99	.40	1.81
	<i>Coefficient</i>	.05(1.10)	.64(2.16)	-.84(.43)	.64(2.30)
<b>Judicial Strength</b>	<i>Hazard</i>		.01		
	<i>Coefficient</i>		-2.55(.00)**		
<b>Neighborhood Effect</b>	<i>Hazard</i>		.01		.01
	<i>Coefficient</i>		-2.84(.00)**		-2.59(.02)**
<b>Indigenous Population</b>	<i>Hazard</i>	1.04			1.04
	<i>Coefficient</i>	2.05(.02)*			1.77(.02)
<i>N</i>		669	669	501	501

DV = Representation Rights Adoption in Constitutional Law. Exit Value = 1 Analysis conducted via Cox Proportional Hazard modelling. Summaries include Hazard Ratios and Coefficients. Standard errors in parentheses. \*\*\* p<.000 \*\*p<.01 \*p<.05

**Table 12: Determinants of Indigenous Resource Adoption 1960-2016**

<i>Independent Variable</i>		Model 1	Model 2	Model 3	Model 4
<b>Democracy</b>	<i>Hazard</i>	.01		.01	.01
	<i>Coefficient</i>	-1.20(.50)*		-1.36(.48)**	-2.72(.00)**
<b>Indigenous Movement</b>	<i>Hazard</i>	1.05	1.29	.92	1.74
	<i>Coefficient</i>	.23(.25)	1.03(.32)	-.34(.22)	1.54(.63)
<b>Indigenous Political Rep.</b>	<i>Hazard</i>	1.52	1.30	1.53	1.46
	<i>Coefficient</i>	2.51(.26)**	1.57(.22)	2.71(.24)**	2.13(.26)*
<b>Resource Rents</b>	<i>Hazard</i>			1.11	1.11
	<i>Coefficient</i>			1.84(.07)	1.71(.07)
<b>State Capacity</b>	<i>Hazard</i>	1.03	1.31	.59	.59
	<i>Coefficient</i>	.04(.88)	.29(1.24)	-.66(.47)	-.55(.57)
<b>Judicial Strength</b>	<i>Hazard</i>		.02		
	<i>Coefficient</i>		-1.88(.04)		
<b>Neighborhood Effect</b>	<i>Hazard</i>		.01		.00
	<i>Coefficient</i>		-3.54(.00)***		-3.46(.00)**
<b>Indigenous Population</b>	<i>Hazard</i>	1.01			.97
	<i>Coefficient</i>	.26(.02)			-1.31(.02)
<i>N</i>		665	665	495	495

DV = Resource Rights Adoption in Constitutional Law. Exit Value=1. Analysis conducted via Cox Proportional Hazard modelling. Summaries include Hazard Ratios and Coefficients.

Standard errors in parentheses. \*\*\* p<.000 \*\*p<.01 \*p<.05

**Table 13. Determinants of Indigenous Autonomy Adoption 1960-2016**

<i>Independent Variable</i>	Model 1	Model 2	Model 3	Model 4
<i>Democracy</i>	3.17(2.10)		1.80(2.22)	2.70(2.83)
<i>Indigenous Movement</i>	.82(.27)**	1.15(.28)***	1.18(.32)***	1.70(.43)***
<i>Indigenous Political Rep.</i>	1.82(.24)***	1.99(.24)***	2.29(.30)***	2.32(.35)***
<i>Resource Rents</i>			-.15(.05)**	-.17(.06)**
<i>State Capacity</i>	.26(.87)	.70(.88)	.88(.99)	.81(1.02)
<i>Judicial Strength</i>		2.91(1.10)***		
<i>Neighborhood Effect</i>		-.60(1.44)		-.19(1.50)
<i>Indigenous Population</i>	.01(.05)*			-.27(.08)**
<i>N</i>	933	933	776	776

DV = Autonomy Rights Adoption. Analysis conducted via Firth Logit for Rare Events. Standard errors in parentheses. \*\*\* p<.000 \*\*p<.01 \*p<.05

**Table 14: Summary Table of Indigenous Rights Adoption in Latin American Constitutions**

<i>Rights Adoption Type</i>	Indigenous Recognition	Indigenous Representation	Indigenous Resources	Indigenous Autonomy
IV's				
<i>Democracy</i>	<i>Negative</i>	<i>Negative</i>	<i>Negative</i>	
<i>Indigenous Movement</i>				<i>Positive</i>
<i>Indigenous Political Rep.</i>	<i>Positive</i>	<i>Positive</i>	<i>Positive</i>	<i>Positive</i>
<i>Resource Rents</i>				<i>Negative</i>
<i>State Capacity</i>				
<i>Judicial Strength</i>		<i>Negative</i>		<i>Positive</i>
<i>Neighborhood Effect</i>		<i>Negative</i>	<i>Negative</i>	
<i>Indigenous Population</i>		<i>Positive</i>		<i>Mixed</i>

## Discussion

### *Impacts of Democracy on Indigenous Rights Adoption*

Table 14 summarizes the results from all quantitative models. Results are discussed by domestic factors that influence the adoption of indigenous constitutional rights. Democracy negatively impacts the likelihood of adoption of constitutional rights in the recognition category. Simply, regimes with very low democracy scores are more likely to adopt indigenous recognition rights into constitutional law. Many indigenous recognition rights in Latin American constitutions are adopted early in the observation period when democracy scores in the region



are low. This signals that democracy may be a pre-condition for any indigenous recognition in national constitutional law.

Also contrary to expectations, democracy negatively predicts the adoption of recognition rights in the constitution. Regional patterns do not support the theoretical proposition that democratization facilitates the adoption of rights that both recognize populations as legitimate political actors and establish terms of equal political access. This challenges contemporary wisdom of rights expansion that associate democracy with expanded political inclusion to minority populations. Democracy is also negatively associated with expansion of resource rights ( $p < .05$  and  $p < .01$ ). This result shows that increased democracy negatively impacts the adoption of indigenous rights that correct political and societal imbalances based on indigenous status.

Per expectations, increased democracy scores are unrelated to indigenous autonomy in national constitutions. This supports the hypothesis that democracy does not positively impact rights that create divisive national identities and legitimate indigenous self-government.

### ***Indigenous Mobilization***

Indigenous mobilization was proposed to predict rights adoption across all categories after recognition, but especially after indigenous recognition is adopted in the constitution, legitimizing their political participation. But indigenous mobilization strength falls short of statistical significance across models that predict the adoption of recognition, representation, and resource rights. This result is surprising and contrary to expectations.

Indigenous mobilization is associated with the adoption of autonomy rights, however. Firth logit models show that mobilization strength significantly predicts the adoption of indigenous autonomy rights in the constitution ( $p < .05$  and  $p < .01$ ). These results provide

evidence that significant mobilization pressure will bring state entities to the table to negotiate rights that are considered more nationally divisive.

In sum, indigenous mobilization significantly predicts rights adoption in constitutional law. But its importance and positive impacts are felt later on during the rights adoption process at a regional level.

### ***Indigenous Government Representation***

Indigenous government representation is a positive influence on the likelihood of all indigenous rights adoption. First, indigenous representation in national government positively predicts the adoption of recognition rights in the constitution. States with increased indigenous representation are 4.01 to 7.07 times more likely to adopt indigenous recognition rights.

Similarly, indigenous representation rights adoption is positively impacted by indigenous representation in government. Increased representation make governments anywhere from 2.76 to 5.75 times more likely to adopt representation rights for original populations.

Increased representation is also related to the creation of resource provisions for original populations. A unit increase of indigenous political representation increases the likelihood of resource rights adoption by 1.46 to 1.53 times. These results show the continued importance of indigenous representation in government in order to facilitate the creation of protectional provisions for these populations.

Last, indigenous political representatives also motivate the adoption of indigenous autonomy adoption. High levels of indigenous representation in government are associated with the adoption of autonomy rights in the constitution at  $p < .000$ . Indigenous representation in the

national state apparatus makes it more likely that these policies are discussed and eventually implemented.

### ***Resource Rents***

A state's dependence on resource rents as a percentage of its national GDP is, at first, unrelated to the adoption of indigenous rights provisions. Resource rent dependence is unrelated to the creation of indigenous recognition, representation, and resource rights in the state constitution.

As expected, resource rents are negatively related to the adoption of indigenous autonomy rights in constitutional law ( $p < .01$ ). This is evidence that states who rely on valuable resources on indigenous lands are less likely to cede territorial control to the populations that traditionally call them home.

### ***State Capacity***

State capacity was found to be statistically unrelated to the adoption of any indigenous provisions across models. This is against theoretical expectations, which predicted that strong violent capacity and extractive ability at the state level would negatively impact the likelihood of more divisive indigenous provisions, such as resource and autonomy rights. However, regional patterns do not support this proposition.

### ***Controls***

The first control variable, the strength of the judicial branch is unrelated to the adoption of indigenous recognition in the constitution. Like democracy scores, the strength of the judiciary is negatively predictive of recognition rights in the constitution. Decreased judicial

independence makes a state almost twice as likely to adopt indigenous representation rights. This is a peculiar result. But as expected, a strong judicial branch is related to the creation of indigenous autonomy rights. This supports the perspective that a strong judiciary must be present in order to implement collective rights, plurinational courts, and territorial rights for indigenous communities. More work should be done to fully examine this relationship, and the negative relationship between strong judicial branches and adoption of indigenous representation rights.

Importantly, neighborhood effects did not have the predicted result as informed by recent literature. Simply, as regional neighbors increasingly adopt indigenous provisions, a state is less likely to adopt similar representation and resource provisions. This goes against expectations, which posit that the more neighbors adopt indigenous rights into national constitutional law, the more likely one is to follow suit. But results for representation and resource rights show a negative relationship, while for other rights adoption, neighborhood effects are insignificant. These results challenge our current knowledge on norm diffusion of human rights laws.

As another control, higher shares of native populations were predicted to positively impact rights adoption. But the results are mixed. Large indigenous populations are unrelated to the adoption of initial constitutional recognition. For the adoption of representation rights, on the other hand, large populations are associated with an increased likelihood of rights creation and implementation. Increased population proportions lead to a 4% increase in the likelihood of representation rights adoption for rights in this category. This result aligns with expectations, since state entities will negotiate access to representation for larger populations to prevent political instability. Indigenous population proportions are unrelated to regional patterns of resource rights in constitutional law. Last, in some models that predict autonomy rights adoption

population size positively impacts the process, and in others this result is negative. Future work should investigate this result more thoroughly.

## **Summary**

In sum, the substantive content of indigenous constitutional provisions impacts the likelihood of adoption. The base level right afforded to indigenous populations in Latin America is recognition in constitutional law. Beyond recognition, there is indigenous representation that establishes rights that create terms of equal citizenship in constitutional law. Resource rights come afterward and are the first to correct inequalities historically rooted in indigenous status. Finally, resource rights draw new national borders, and establish plurinational institutions. The results presented above shows that democracy is not positively related to any rights adoption for indigenous populations in Latin America. At most, recognition may occur early in the adoption process, leading to a negative score for democracy in this category of adoption. Democracy was also found to be negatively related to the adoption of rights that correct indigenous social and economic inequalities. Next, indigenous mobilization encourages the adoption of the most divisive rights – indigenous autonomy. But the importance of mobilization regionally comes later in the rights adoption process than theorized. Indigenous government representation is positively related to the creation of all indigenous provisions examined in this research. This provides clear evidence that indigenous representatives are key in the creation of protectional laws for these populations. Resource rent dependence negatively predicts the adoption of autonomy rights over resource rich lands. This is an important insight into the motives of national government when creating constitutional provisions. Governments are not likely to create indigenous autonomies where they are heavily reliant on resource revenues. Next, state capacity is found to be unrelated to the creation of all indigenous

provisions in state constitutions. Finally, control variables like judicial strength and population proportions produced interesting results and deserve future attention.

## **Conclusion**

The evidence presented by statistical models first show that democracy does not have the expected impact on indigenous constitutional rights adoption. Democracy is negatively related to the adoption of indigenous recognition in constitutional law, against conventional perspectives of increased representation under democratic transition. Democracy scores are also unrelated to indigenous recognition rights, which are theorized to be compatible with ideals of equal democratic citizenship. This is evidence against conventional wisdom, which argues that democracy is associated with rights that define terms of equal political access to marginalized populations. Last, democracy is negatively related to the adoption of indigenous resource rights that mobilize state political goods to address economic and societal imbalances. This is consistent with expectations, as democracy is not associated with rights that correct class and societal imbalances. But the overlapping ideals of democracy support private rights, which likely work against the adoption of indigenous provisions that protect original land and resources. Future work in this field should continue to examine this relationship.

Importantly, I find that the presence of indigenous mobilization efforts predicts the adoption of autonomy rights across the region during the observation period. These indigenous provisions are a focus of these movements, and regional patterns show that mobilization efforts are important for future rights adoption after initial recognition, as predicted in the theoretical section of this work. However, the measurement of indigenous mobilization strength is imperfect, and warrants more detailed analysis of the current variation of indigenous mobilization that will be carried out in case study chapters later in this dissertation. Impacts of

mobilization strength are also seen later on in the adoption process than theorized. Looking forward, future work should pursue to accurately capture indigenous mobilization strength more accurately across the region and examine these relationships.

Indigenous representation in national government is important for the creation of all indigenous provisions in state constitutions in Latin America. This result shows the importance of required government representation for marginalized, minority populations. Increases in indigenous representation positively predict the adoption of rights across all categories. These results show the importance of the inclusion of these communities in the central government, which is clearly related to the implementation of numerous minority rights.

Next, the state's reliance on resource rents is negatively related to the creation of indigenous autonomy provisions in constitutional law. This supports the theoretical prospect that the more invested the state is in lucrative resource in indigenous territories, the less likely the adoption of rights that protect lands from state and private encroachment. Last, state capacity is found to be unrelated to all indigenous rights creation over the observation period.

Chapter 4 goes a step further in testing the assumptions of this work's theories and hypotheses. Specifically, chapter four provides quantitative support for the temporal components of this work's theory. Survival and logit models are used to test the sequential order of indigenous rights adoption in Latin American constitutional law. Then, I move to test theories and quantitative results in country case level studies.

## **Chapter IV: The Evolution of Indigenous Constitutional Rights in Latin America: Incremental Access**

*“We feel we’re hated by those who govern Peru. That hatred was always there, but now people are getting organized to demand respect for our fundamental rights to life, to equality, and to our identity.” -Lucas Pari, representative of the National Union of Aymara Communities, 2023*

### **Introduction**

What is the overall path of indigenous rights expansion? Democratic literature suggests that constitutional rights expand to excluded groups in steps. However, these theories do not include the consideration of indigenous political minorities that have aspirations and identities that differ from those of the state apparatus. I argue that indigenous citizenship is expanded incrementally. From uniform constitutional exclusion, indigenous constitutional provisions take root in various forms in the region, but access follows a general path of incremental political access.

First, I briefly review literature that explains the expansion of democratic constitutional rights. This work finds that politically marginalized populations are slowly given access to rights that represent their communities. Particularly, basic civil rights are likely to be adopted before



class-based rights (Marshall 1950). Similar work shows the state's preference to adopt laws that benefit society as a whole versus those that serve particular populations (Benhabib 2005; Shaman 2003). Additionally, marginalized populations will struggle to expand their political rights against the interests of society at large (Koupman, et al. 2012). While these foundational theories are informative, they are Western centric, and do not consider the expansion of rights in other regions of the world. These studies also focus on citizenship in democracies with unified national identities. In contrast, indigenous populations have separate national identities, and the expansion of rights to include rights that support them are left undiscussed in current work.

After a discussion of the literature, I move to offer my own expectations that lay out the incremental adoption of indigenous rights provisions in constitutional law in Latin America. I argue that indigenous constitutional representation is adopted into domestic law in steps. Political access for original populations first takes the form of *recognition* in national constitutions. From this point, constitutional laws expand to *representation* rights that establish equal political rights to indigenous culture, education, and political mobilization. After indigenous groups are recognized as equal political citizens, *resource* rights that define guaranteed representation and state funding are adopted. Finally, *autonomy* rights that establish new institutions and indigenous regional self-government are adopted last in the rights expansion process. These rights are only adopted in states where other forms of indigenous rights were included in past iterations of the constitution. Simply, the evolution of indigenous rights in national constitutions are expected to follow the following integral steps:

*Recognition* → → → *Representation* → → → *Resources* → → → *Autonomy*

I test these theoretical expectations using survival and firth logit models. Statistical results in this chapter support the position that indigenous constitutional rights in Latin America

are adopted in an incremental nature. I now move to discuss relevant literature on the expansion of citizenship rights to politically marginalized populations before offering and testing my hypotheses.

### **Overview of the Literature: The Evolution of Political Citizenship for Marginalized Groups**

Marshall's (1950) foundational work on political citizenship argues that rights evolve out of the state's responsibility to represent its citizens. Constitutional rights evolve to allow the state's population to share in its national heritage and increase political inclusion of groups to establish a more representative regime. This position argues that broad civil rights precede the adoption of rights that provide a modicum of welfare to its citizens. The previously excluded working class in democratizing Europe achieved rights in this manner. The rights of marginalized groups are based on ideals of democratic *equality*. This contrasts with those rights that tackle socio-economic issues, or class *difference*. Only after equal political rights are in place can people contest for rights that correct societal inequalities. The logic is that rights that allow for individual freedom of expression are less difficult to implement than rights that correct inequalities. While there is sound logic in this theoretical timeline of rights expansion, it assumes that all state citizens share a common kinship or national identity. This perspective ignores the presence of ethnic minorities that identify as a different nationality than the one instituted by the state apparatus. Indigenous groups, for example, often have a separate national identity and their kinship is not tied to non-indigenous citizens. Additionally, indigenous rights aspirations are different than the ideals of equal citizenship discussed by Marshall (1950). Indigenous peoples not only seek to be recognized as equal, but also to correct historical

inequalities and reclaim regional sovereignties. Since Marshall's work is centered on Western ideals of citizenship, indigenous perspectives are not considered.

The overwhelming evidence produced by similar findings is that constitutional law prefers establishing rights of equality, that serve the public interest at large, and resist implementing rights that promote divisive identities and interests (Benhabib 2005; Marshall 1950; Shaman 2003). For example, ethnic minorities throughout Europe mobilized to claim rights after large populations immigrated to these countries and established communities. At first, minority populations successfully mobilized their electoral power and pushed for the expansion of citizenship. But strong anti-mobilization stalled the adoption of more inclusive rights that would provide these populations with more protection since 2002 (Koupman, et al. 2012). Groups against the expansion of rights to these communities argue that the constitution should represent the will of the people overall, and not serve specific populations. In Hungary, the post-communist constitution similarly promoted a united ideological national and ethnic identity as the base definition of citizenship. Traditional concepts of constitutional democracy in this case, and in others include only equal citizenship, and representation (Batory 2010). Yet, many western democracies, such as the UK, Spain, and Belgium are multiethnic states in their constitutional law. The research conducted here also finds that Bolivia and Ecuador are defined as plurinational, or consisting of many nations, as well. While scholars argue that constitutional rights overwhelmingly focus on creating equal political access, rights can evolve beyond this point and include national and ethnic differences. The process of constitutional change that leads to the adoption of these rights is left understudied, and the evolution of indigenous access to constitutional representation is absent.

Foundational theories on evolution of constitutional citizenship discuss mostly homogenous societies with kinship ties and unified historical national identities (Marshall 1950; Murray 2015). The composition of Latin American nation states is not so straightforward. Indigenous nations in the region have ties to national identities that are distinct from those of other citizens. Some native aspirations are even more divisive than those that correct legacies of class imbalances discussed in previous literature. Previous research in the field does not discuss the evolution of state citizenship to include indigenous rights. Additionally, the uniqueness of the indigenous political perspective, and the pathway to achieving rights of national *difference* are also ignored. Some aspirations of Latin America's original populations go beyond notions of democratic equality, and instead provide privileged access, representation, and the creation of new institutions. While at first the recognition of indigenous populations in constitutional law reflects equal terms of democratic citizenship, they continue beyond traditionally defined rights to correct historical economic and representative imbalances, and regional national sovereignties.

### **Theory and Hypotheses**

*Recognition → → → Representation → → → Resources → → → Autonomy*

I argue that indigenous constitutional representation in Latin America follows an incremental process. Simply, this means that constitutional rights expand to indigenous populations in steps. Native populations remained absent from the state-building process after independence and have only recently acquired recognition in national state constitutions. From this point, indigenous constitutional provisions have expanded.

As previous non-citizens, the recognition of indigenous peoples as legitimate citizens and political actors is the minimum threshold of constitutional protection for these populations. The

adoption of representation is *a necessary condition for further rights expansion*, and every country that has adopted indigenous rights into the constitution recognizes natives as political actors at the bare minimum. As outlined in chapter 2, recognition rights simply acknowledge indigenous populations as legal political participants and citizens and have no further implications.

The theory in this work argues that indigenous populations in the region were uniformly excluded from constitutional citizenship from the time of colonial contact through the state building process that followed. This remained unchanged until the 1930's when some countries began to recognize original populations as political citizens. In these adoptions, indigenous recognition simply legitimizes indigenous peoples as citizens and does not define access to political or economic resources.<sup>1</sup> As a population that was not included in foundational constitutional law, constitutional recognition occurs first in the rights adoption process.

*H1: Recognition of indigenous populations is a necessary minimum condition and occurs first in the rights adoption process.*<sup>2</sup>

The adoption of indigenous recognition picked up from the 1960's through 80's and gave way to the manifestation of another form of indigenous protections in the constitution- representation rights. The adoption of indigenous representation is the natural expansion of constitutional citizenship.

*Recognition Rights → → → Representation Rights*

Representation rights are highly likely to be adopted by states that have established indigenous recognition in previous iterations of their constitution. The theory here suggests that recognition of native citizens in the law either precedes or is adopted alongside indigenous

recognition rights in state constitutions.<sup>3</sup> Broadly, recognition of native citizens will come first, followed by recognition rights that promote political equality at the national level.

*H2: Indigenous recognition is adopted first or alongside other indigenous recognition in the national constitution.*

Constitutional representation provisions for indigenous populations promote ideals of equal democratic citizenship and access. These rights are the extension of laws that promote political participation and inclusion of indigenous communities as part of the national heritage. Once states acknowledge the original peoples as legitimate political actors, avenues of political access are opened to indigenous communities. Citizens are owed a bare minimum of entitlements from the government once recognized as political participants.

After constitutional representation is achieved, native populations are legitimized as equal political citizens in national law. Access to these political and legal channels allows communities to leverage for rights that better serve their peoples. At this point, constitutional provisions expand to representation rights that establish rights to indigenous culture, education, and political mobilization. These laws help equalize political recognition of indigenous communities in national law vis a vis other citizens.

Representation rights are argued in chapter 2 to be compatible with democratic ideals of representative citizenship. The adoption of rights that equalize indigenous peoples as citizens are non-divisive to a unified national identity. They also do not allocate specific state funding or representative thresholds in government. The adoption of indigenous representation rights is an extension of democratic citizenship to the nation's population at large.

According to previous literature, the adoption of representation provisions for indigenous populations is consistent with the promotion of unified national identities, and equal rights (Benhabib 2005; Marshall 1950; Shaman 2003). They promote the protection of indigenous cultures and practices, but without establishing laws of preferred or elevated status. These are not unlike those basic citizenship rights proposed by Marshall (1950) that promote equal political access. But these protections do not go beyond steps that establish systems of *equal protection*. They do not address inequalities in any specified way, nor do they establish quotas or budgeting systems that promote indigenous interests.

Only once steps are taken to establish equal citizenship can indigenous populations appeal for access to clearly defined political resources. After constitutional terms of equal citizenship are created, indigenous populations appeal for rights that correct inequalities and other societal gaps that inhibit political representation. Rights that correct economic and representative inequalities are defined as resource rights (see chapter 2) and allocate state funding to indigenous targeted programs and provide thresholds for native representation in political office. These laws are implemented with the intention of elevating indigenous status and guaranteeing the salience of indigenous issues at to national level. Resource rights adoption occurs after constitutional recognition is already present in constitutional law. Representation creates opportunities and political avenues that set the stage for more specifically targeted rights. Simply, representation rights predict the adoption of resource rights for indigenous populations in Latin America in future constitutional revisions.

*Representation* → → → *Resources*

Resource rights are acquired after equal access has been achieved. These rights provide targeted funding and thresholds for political participation for indigenous citizens, but function within existing institutional arrangements of the state apparatus.

*H3: Indigenous representation rights in the constitution predict the future adoption of resource provisions in national law.*

Finally, the adoption of resource rights in the past predicts the future adoption of autonomy rights in national constitutions. Previous access to political representation and resources increases the salience of indigenous political issues and perspectives. These states have also accepted indigenous status of difference vis a vis other citizens in the past, making them more amenable to changes that create new institutions for native populations.

*Resources → → → Autonomy*

Indigenous rights that establish new institutions and legitimate regional sovereignties are adopted last in the rights expansion process. Autonomy rights are adopted in states where indigenous resource rights are included in past iterations of the constitution. With increased access to state representation and resources, native populations can negotiate the creation of new institutions in the form of autonomy rights. Chapter 2 discusses autonomy rights at length, but in broad strokes they are rights that define territorial sovereignties of original nations, and create new systems of representation, such as the plurinational courts found in Bolivia and Ecuador. The creation of these types of rights in national law is a deviation from the typical legal structures that promote a united national identity. These will be the last type of rights to be acquired and their implementation occur in cases where indigenous citizens acquired rights that first established rights that correct indigenous inequalities.



*H3: Previous adoption of indigenous resource rights is associated with the future adoption of indigenous autonomy rights in the constitution,*

### **Summary of Theoretical Expectations**

Recognition rights are the minimum rights adopted to protect indigenous populations in regional constitutional law. Representation rights establish terms of equal political access for previously excluded populations and are adopted after or alongside recognition rights in national law. After representation rights are achieved in the constitution, steps are taken to adopt indigenous resource rights. These rights correct issues of class or status that have come as a result of historic political exclusion. For example, state directed funding toward indigenous programs like education, health, poverty reduction. These also include provisions that guarantee indigenous representation in state representative bodies like the legislature. Finally, after corrective resource rights is achieved, indigenous populations will pursue the establishment of rights that create regional autonomies and differentiate their national status in relation to the state apparatus. These constitutional rights adoptions are the most extreme in terms of re-defining political institutions and terms of indigenous citizenship and are adopted latest during the evolution of indigenous rights.

### **Data and Methods**

This chapter tests whether there is a sequential order to rights adoption. For this reason, I measure the adoption of indigenous rights across all categories over the observation period. Where state constitutions include indigenous representation, for example, it is predicted that these rights will drive future resource rights adoption. I measure the previous adoption of indigenous recognition, representation, resources, and adoption. Values for each variable are

recorded as either a 0 or 1, for the non-adoption or adoption of each category of indigenous provision.<sup>4</sup>

DVs in these models are the adoption of indigenous resource rights, and autonomy rights for the following sequencing models. Indigenous constitutional recognition is assumed to be the minimum threshold of state citizenship and is directly related to the adoption of all other categories of indigenous rights. Survival models that use indigenous recognition as a predictor of representation, resource, and autonomy rights in the constitution show a direct relationship between recognition and all other rights adoption. Simply, survival models that use indigenous recognition in the constitution as an IV collapse due to this close relationship. The research carried out here also finds that indigenous recognition in the constitution either occurs first, or alongside other rights adoption. Therefore, I assume that this is the first and most minimal step in the expansion of indigenous constitutional rights adoption.

The measurements for all other independent variables are the same as those discussed in the last chapter. Please refer to the data section of chapter 3 for a thorough discussion of these measurements.

### ***Testing the Ordered Expansion of Indigenous Constitutional Provisions***

The first set of models are conducted via survival modelling using cox proportional hazards. These results show the impact of adopted indigenous constitutional representation rights on the future implementation of indigenous resource rights. Survival models take timing into account, and shows which inputs predict the occurrence of resource rights adoption. The second set of models show the impact of indigenous resource rights on indigenous autonomy rights. Since autonomy rights adoption are a rare occurrence in Latin American constitutions, I again

use firth logit modelling. These logistical models are ideal for rare events, like the implementation of indigenous sovereignties in national constitutions.

This work argues that indigenous recognition in constitutional law is the minimum threshold of rights adopted for these communities. Survival models that test this relationship confirm these assumptions. This research finds that there is no case where indigenous recognition is either not adopted first in constitutions or alongside other provisions. What this means for survival modelling is that testing cannot be carried out. Since indigenous recognition is directly related to every other form of rights adoption, statistical models collapse and cannot give estimates for the relationship. Therefore, indigenous recognition in national constitutions serve as the minimal starting point of indigenous rights that evolve over time. The following models test the second hypothesis of this chapter, that indigenous representation rights predict the future adoption of autonomy rights. These models are conducted via survival modelling, which takes the timing of adoption into account. Simply, indigenous representation must clearly precede resource rights adoption to gain statistical significance.

**Table 15: Indigenous Constitutional Representation as a Predictor of Resource Rights Adoption**

<i>Independent Variable</i>		Model 1	Model 2	Model 3	Model 4
<b><i>Indigenous Const. Representation</i></b>	<i>Hazard</i>	7.62	4.84	6.66	5.46
	<i>Coefficient</i>	4.52(3.42)***	4.16(1.84)***	4.98(2.54)***	4.39(2.11)***
<b><i>Democracy</i></b>	<i>Hazard</i>	.00		.00	.01
	<i>Coefficient</i>	-3.20(.00)**		-2.96(.00)**	-2.09(.00)*
<b><i>Indigenous Movement</i></b>	<i>Hazard</i>	.42	.61	.40	.56
	<i>Coefficient</i>	-2.68(.13)	-1.18(.25)	-2.06(.15)**	-1.54(.21)
<b><i>Indigenous Political Rep.</i></b>	<i>Hazard</i>	1.14		1.12	1.18
	<i>Coefficient</i>	.79(.20)		.69(.18)	.94(.21)
<b><i>Resource Rents</i></b>	<i>Hazard</i>				1.13
	<i>Coefficient</i>				1.45(.10)
<b><i>State Capacity</i></b>	<i>Hazard</i>	3.28	1.04	2.32	.92
	<i>Coefficient</i>	1.13(3.45)	.03(1.74)	.71(2.75)	-.07(1.10)
<b><i>Judicial Strength</i></b>	<i>Hazard</i>		.03		
	<i>Coefficient</i>		-1.47(.08)		
<b><i>Neighborhood Effect</i></b>	<i>Hazard</i>		.01		.01
	<i>Coefficient</i>		-3.06(.00)*		-2.35(.00)*
<b><i>Indigenous Population</i></b>	<i>Hazard</i>				.99
	<i>Coefficient</i>				-2.06(.00)
<b><i>N</i></b>		665	665	495	495

DV = Resource Rights Adoption in Constitutional Law. Exit Value = 1. Analysis conducted via Cox Proportional Hazard modelling. Summaries include Hazard Ratios and Coefficients. Standard errors in parentheses.

\*\*\* p<.000 \*\*p<.01 \*p<.05

**Table 16: Indigenous Constitutional Resource Rights as a Predictor of Autonomy Adoption**

<i>Independent Variable</i>		Model 1	Model 2	Model 3	Model 4
<i>Indigenous Const. Resources</i>	<i>Coefficient</i>	.57(.20)**	1.04(.15)***	.55(.21)**	.50(.20)**
<i>Democracy</i>	<i>Coefficient</i>	.39(1.87)		.91(2.00)	1.39(2.24)
<i>Indigenous Movement</i>	<i>Coefficient</i>	.51(.17)**		.54(.18)**	.44(.20)*
<i>Indigenous Political Rep.</i>	<i>Coefficient</i>	2.00(.26)***		2.11(.26)***	1.99(.24)***
<i>Resource Rents</i>	<i>Coefficient</i>	-.25(.07)***		-.24(.06)***	-.14(.05)*
<i>State Capacity</i>	<i>Coefficient</i>		-.35(.49)		.02(1.05)
<i>Judicial Strength</i>	<i>Coefficient</i>		1.79(.96)		
<i>Neighborhood Effect</i>	<i>Coefficient</i>	3.50(1.48)*		3.30(1.46)*	
<i>Indigenous Population</i>	<i>Coefficient</i>	-.04(.05)	-.08(.03)*		
<i>N</i>		794	947	794	776

DV = Autonomy Rights Adoption in Constitutional Law. Exit Value = 1 Analysis conducted via Firth Logistical Regression modelling. Standard errors in parentheses.

\*\*\* p<.000 \*\*p<.01 \*p<.05

The above models show that the presence of indigenous representation rights in constitutions predicts the adoption of resource rights for these populations.<sup>5</sup> Previous indigenous representation rights in the constitution make a state anywhere from 4.84 to 7.62 times more likely to adopt future resource rights in the presented models ( $p < .000$ ). This result lends support to this chapter's second hypothesis, which posits that equal indigenous rights in the form of representation creates the conditions necessary for the future adoption of indigenous resource rights. Simply, terms of equal democratic constitutional representation is established before rights go on to correct historical inequalities. This model is consistent with expectations that there is an incremental nature to indigenous rights expansion.

Similarly, the presence of previous indigenous resource rights in the constitution is positively and significantly related to the inclusion of future autonomy rights for these populations. Resource rights predict autonomy rights across all presented models with a significance of  $p < .01$  to  $p < .000$ . These results lend further evidence that there is a sequential order of rights adoption, with lower thresholds of indigenous constitutional protections being predictive of the next level of political rights and inclusion.

Next, statistical models first show that democracy remains negatively related to the adoption of resource rights that correct indigenous economic and social inequalities and is unrelated to the adoption of autonomy rights. Democracy was expected to promote terms of equal citizenship in their modern constitutions. These results are consistent with the theoretical position that democracy does not motivate the adoption of divisive rights that serve specified ethnic populations.

Oddly, and inconsistent with previous results, indigenous mobilization strength was negatively related to resource adoption in one model where previous representation adoption was

included. But per expectations, indigenous mobilization positively predicts the adoption of autonomy provisions, consistent with findings in chapter 3. Per the results, strong indigenous mobilization remains important in the later stages of constitutional rights adoption.

Indigenous representation in national government does not have any impact in models that account for previous representation rights when predicting the creation of future resource provisions for indigenous populations in the constitution. But indigenous representation in state government remains a positive predictor of autonomy provisions in national law.

Next, resource rent dependence is unrelated to the creation of resource rights in these models. Per expectations, rent dependence is negatively associated with the adoption of autonomy rights in the constitution that protect native lands and natural resources. These results align with previous statistical outcomes and show the unwillingness of the state apparatus to hand over regional control to original populations where they are more dependent on resource rent revenue.

Neighborhood effects are negatively related to resource rights adoption for indigenous populations. An increase in neighborhood effects is associated with a predicted decrease of resource rights adoption by up to 99%. The same neighborhood effects, however, positively predict the adoption of autonomy provisions. Simply, the more a state's neighbors adopt resource provisions the less likely they are to do the same for resource provisions, but the opposite relationship is seen for indigenous autonomy rights adoption according to regional patterns and statistical results. This means that positive diffusion effects are only statistically present for the adoption of autonomy rights in a state's constitution, otherwise no positive diffusion effects are seen in regional patterns of constitutional change in Latin America.

Last, indigenous population proportions are shown to be unrelated to the patterns of resource rights adoption in the region's constitutional texts. But the output shows that states with smaller indigenous populations are more likely to adopt indigenous autonomy rights into constitutional law. Allowing the regional autonomy of smaller indigenous populations is less threatening versus allowing the same freedoms for larger indigenous groups. Survival models show that larger populations are predicted to reduce the likelihood of indigenous resource rights adoption by 8% per unit increase in model 4.

Overall, these models show evidence of a sequential order to indigenous rights adoption. The presence of indigenous representation rights predicts the adoption of future resource provisions, according to survival model output. The next section will go on to test the next step in this process: the adoption of indigenous autonomy rights.

## **Discussion**

Both sets of survival and logit models lend support to the main hypothesis of this chapter, that there is a sequence to the adoption of indigenous rights in national constitutions in Latin America. I find preliminary evidence that recognition of indigenous communities as political citizens is the minimum provision created in national laws to protect these communities. Survival models that test the relationship between indigenous recognition and subsequent rights adoption collapse. This work shows that indigenous recognition always occurs first, or alongside the adoption of other protectional provisions in the constitution. Given these results, I expect indigenous recognition to be the first step in the expansion of constitutional citizenship to these communities.



Survival models go on to test the relationship between indigenous representation rights, that protect rights to culture, education, health, and political representation, and the adoption of resource rights into national law. Resource rights go on to guarantee state resources to correct class and representative inequalities. The results here show that the presence of indigenous representation rights does predict the adoption of future resource rights in national law. These conclusions lend support to the theoretical propositions of this chapter.

When it comes to resource rights as a predictor of indigenous autonomy rights adoption in the constitution, first logistical models also provide support for the sequential model proposed in this chapter. Resource rights are found to predict the adoption of indigenous autonomy in the constitution, although this result is not consistent across all models.

Taken together, these results provide statistical evidence that there is a step-by-step process to indigenous rights expansion in national constitutions. Formerly excluded indigenous groups are first recognized as political citizens, followed by the adoption of representation rights that allow equal civil and political rights. Then come rights that correct economic and representative inequalities in the form of resource rights. Last, indigenous autonomy rights are adopted and define terms of self-government and national recognition of original populations.

Per expectation, increased levels of democracy do not positively predict either the adoption of indigenous resource rights, or autonomy rights. As outlined in chapter 1 of this dissertation, democracy is expected to expand indigenous recognition and representation in constitutions only. These rights are compatible with modern ideals of democratic citizenship based on equal access to state resources and political representation.

Also as expected, indigenous mobilization strength is positively related to the adoption of autonomy rights in national constitutions. Though the mobilization strength of indigenous groups is important later than expected, these results provide evidence that mobilized groups encourage state entities to adopt rights that otherwise would not be negotiated. These include rights that provide indigenous targeted funding, and rights self-government. Results from both this chapter and chapter 3 support this perspective.

Evidence for indigenous political representation shows that the inclusion of native representatives is key in the creation of rights that protect their communities. The models in this chapter show that increased indigenous representation is positively related to the adoption of both resource and autonomy rights in constitutional texts. These outcomes show further support to hypotheses that argue that minority representation in government increases the salience of issues that impact their communities.

Moving to controls, resource rent dependence is negatively related to the adoption of indigenous autonomy provisions. Rents were predicted to be negatively related to the adoption of both resource rights and autonomy rights for indigenous populations in constitutional law. These results show only partial support for these theories. Government investments and interest in rural, predominantly indigenous territories in states with high rent dependence disincentivize the creation of these rights. Simply, states that are dependent on natural resource wealth are less likely to allow indigenous autonomies in their territories. These expectations are not confirmed for the adoption of resource rights in the constitution, but are negatively associated with indigenous autonomy rights, as theorized.

Similarly, neighborhood effects are negative in the adoption resource rights adoption but is positive and significant in the first logit models used to predict the adoption of autonomy

rights. This is an interesting result and shows the first positive relationship between neighborhood effects and the adoption of autonomy rights, in particular. This result is positive evidence of a diffusion effect, where states adopt similarly aimed minority rights.

Some evidence is found to support hypotheses that smaller indigenous populations are more likely to live under governments that adopt autonomy rights into the constitution. Smaller populations relative to the rest of the state population are allowed protections that let original communities.

## **Conclusion**

This chapter argues that constitutional citizenship for Latin America's original populations occurs in steps. From uniform exclusion, indigenous recognition in the national constitution is the minimum political representation. From this point, constitutional rights evolve to take the form of representation rights that create terms of equal citizenship for indigenous populations. Only once terms of equal citizenship are present in the constitution can indigenous communities appeal for rights that correct historical economic and societal imbalances due to their minority status. From resource rights, which are fully compatible with existing institutional structures, rights evolve into autonomy rights that create new institutions and recognized national identities. Statistical models presented in this chapter offer supporting evidence to this perspective. Representation rights significantly predict the adoption of indigenous resource rights in national constitutions in Latin America. Resource rights then go on to predict the adoption of indigenous autonomy rights, that legalize indigenous self-governments and regional sovereignties. These results offer preliminary evidence of the incrementalism of indigenous rights adoption in Latin American constitutions. The tests of other independent variables confirm some of the findings from the previous quantitative models shown in chapter 3. Democracy is

shown to be unrelated to rights expansion that define specified indigenous resource and autonomy rights that are seen to serve only limited populations. Strong indigenous mobilization predicts the adoption of only autonomy rights in the constitution in the presented quantitative models. Results for indigenous representation are positively predicts the both the implementation of resource and autonomy rights, as expected. Results for indigenous population proportions are only negatively related to the state's establishment of indigenous autonomy rights, as smaller populations are less likely to be able to form formidable parallel states with these policies of self-determination. Resource rent dependence in these models is negatively associated with autonomy rights in the constitution. This result supports the position that state entities who rely on natural resource wealth are less willing to cede autonomy to minority populations in lucrative regions of state territory. Finally, state capacity is unrelated to the rights adoption process in this chapter's models.

The results of this chapter support theories of incremental rights. The next three chapters of this dissertation examine the conclusions of both chapters in the context of qualitative case studies. Hypotheses from both chapter 1 and chapter 4 are tested across these case studies and examine both the incremental process of adoption but also the domestic factors that impact the process along the way.

## Chapter V: Bolivia

*“They’ve been giving orders for 500 years, and now they want to take away our 13 years. They will take away my pollera. They will take away my voice,” Herlinda Cruz, coca farmer.*

### Intro

This chapter is the first of three state level case analyses to complement the nested modelling approach used in this dissertation. Country cases are identified according to rights outcomes, with each representing a high, medium, or low indigenous rights outcome. Joining statistical analysis with country case studies illuminates causal mechanisms, further tests the integrity of theoretical perspectives and quantitative results and can lead to the development of new hypotheses and mechanisms not observed in the bird’s eye view model (Lieberman 2005).

Bolivia represents the ‘high’ indigenous rights case in the Latin American region. It is currently the country with the most far-reaching indigenous rights adopted into constitutional law. Beginning in 1994, Bolivian law underwent three major revisions that resulted in new constitutional documents. Indigenous provisions range from generalized cultural protections and legitimacy, to the creation of indigenous judicial councils and autonomous zones (Constitution of Bolivia 2009). Comparatively, Bolivia affords its original nations the most legal autonomy and political access in its governing constitution.

Given the current status of indigenous representation in the nation constitution in Bolivia, current polls indicate a high indigenous satisfaction with the state’s government, political parties, and democracy in general (LAPOP). More importance is weighted on issues that currently

impact all of Bolivia's citizens, such as the economy and access to healthcare. But indigenous involvement in national politics has only increased since constitutional rights were adopted for these communities, and lowland groups are continuing to clamor for their own constitutional protection vis a vis dominant highland population (Hammond 2011; Rodriguez 2020).

This chapter argues that indigenous populations were excluded from political citizenship from the time of colonial contact. This exclusion continued through state-building and into the modern era. The colonial history of indigenous populations in Bolivia is like the other cases presented in this dissertation, and like others in the region. What differs is the eventual path that the evolution of indigenous rights takes in Bolivia relative to the other cases presented in this work. From political exclusion, indigenous rights adoptions in Bolivia's constitution expanded citizenship incrementally. Until 1994, the indigenous populations in Brazil did not have formal constitutional citizenship. But from these initial modest revisions, Bolivian constitutional law is the most representative of its indigenous populations in the entire Latin American region. At first, rights focused on general recognitions and legitimacy before future adoptions established plurinationalism, and finally, regional autonomies. I summarize and discuss the sequential nature of these adoptions, along with the contextual implications of the various indigenous rights included in the Bolivian constitution over the observation period. Bolivia supports theories that suggest incrementalism of political inclusion of previously excluded populations is a viable strategy for increased indigenous representation.

I first outline how Bolivia represents a case of high-level indigenous rights adoption. This is a clear case where *rights are expanded to previously excluded indigenous groups in steps*. First, state entities adopt indigenous recognition rights alongside some broad representation rights. Then, constitutional representation expands and moves to include resource provisions.

Finally, in the latest phase of indigenous rights adoption, more resource rights were adopted alongside numerous autonomy rights.

Then, this chapter moves to discuss the domestic impacts on the creation of indigenous constitutional rights. The Bolivian case shows that increased democratization facilitated the creation of indigenous constitutional recognition rights and other representational provisions in Bolivian law. High rates of indigenous political mobilization and political representation are also a preceding condition for the adoption of far-reaching provisions. Indigenous mobilization networks survived throughout the colonial era, and gained traction in recent decades, resulting in the adoption of far-reaching constitutional protections for their populations. Strong indigenous representation in national government is also associated with the creation of many resource and autonomy provisions. But the original populations in Bolivia are split among highland and lowland communities, the first of which are much larger, more mobilized, and represented by current constitutional arrangements. Therefore, high resource rent dependence in Bolivia has resulted in the protection of highland indigenous territories, but the continued encroachment of less represented lowland populations.

Finally, I assess the current political attitudes on indigenous rights in Bolivia. This is done through a brief survey of recent public opinion polls. In broad strokes, Bolivia's population sees many indigenous issues as resolved, and are much more concerned about universal issues such as access to health and education. Therefore, indigenous debates are not considered to be the most pressing of issues. This chapter then concludes by summarizing insights derived through this case analysis. I also recommend avenues for future research brought to light in these findings.

*Bolivia: A Brief History of Indigenous Constitutional Revisions*

## Colonization and State Building in Bolivia

Indigenous constitutional rights in Bolivia started at the same point as every other case in Latin America – from zero. The unfolding of Spanish occupation and indigenous domination in Bolivia is not unlike the other patterns of violence and forced labor seen in the rest of Latin America starting in the 16<sup>th</sup> century. Amazonian indigenous populations were used as disposable laborers alongside imported African slaves under Spanish occupation. Native peoples were not considered citizens, but were viewed as uncultured, and unable to use the land to its full potential. Regional European political and economic elites quickly established control of native lands, resources, and main waterways (Fabricant and Postero 2015).

During the formation of the Bolivian state as an independent entity from the Spanish crown, elite control was further solidified. Property rights created during the independence movement stressed that citizens of Spanish descent had an inalienable right to the land and its resources (Constitution of Bolivia 1826). Under these laws, indigenous peoples could not claim any of the wealth that came from the land, nor were they considered political citizens. These rights belonged only to those citizens of European descent.

With private property protections in place, political elites accelerated state and private led resource projects that primarily exploited indigenous lands. Specifically, increased rubber extraction in native communities destroyed many of the original lowland populations. Indigenous peoples were subjected to continued slavery on rubber plantations, often causing illness, death, and birth defects under cruel working conditions. Women of indigenous heritage have been, and continue to be, subject to torture and enslavement. The Bolivian state continued the mass imprisonment, torture, and rape of indigenous women on rubber plantations and eliminated entire communities throughout the *tierras bajas* (lowlands) (Fabricant and Postero 2015).



The enslavement of indigenous peoples across multiple rubber, sugar, oil, and hydrocarbon sites was recorded up to the 1960's. Corporate propaganda programs enticed native populations from the Andean highlands to come to lowland extraction sites for the opportunity to work and own land. Neither of these promises were true, and indigenous migrants were subject to forced labor and generational debt that continues into the modern era. Additionally, national laws granted private citizens and companies free reign to eliminate indigenous communities and claim their lands for personal gain (Fabricant and Postero 2015). As in other countries across the Latin American region, the colonial era brought the eradication of indigenous nations, and led to their subsequent political exclusion.

### **20<sup>th</sup> Century Shifts and Incremental Indigenous Rights Adoption**

Within a scope of 30 years, from a point of political marginalization, indigenous rights in Bolivia have evolved to become some of the most far reaching in the world. Indigenous constitutional protection went from non-existent to those that recognized and equalized political representation for these communities in the 1990's. Then, rights expanded to correct indigenous inequalities, and ultimately create terms of their autonomy in 2009. This section summarizes the incremental changes in indigenous rights in Bolivia in recent history.

The colonial model of indigenous political exclusion began to change in Bolivia during the 1960's. Instead of continuing policies of indigenous exclusion, the government shifted to expand human rights, such as the right to basic education, and the right to vote for "every citizen" (Schilling-Vacaflor 2010).<sup>1</sup> But a period of authoritarianism from 1964 to 1982 temporarily stalled continued efforts to expand political representation to politically marginalized populations.

Democratization beginning in and the Law of Popular Participation, initiated by President Lozada in 1994 would usher in a dramatic period of electoral engagement by indigenous sectors.] The law made it greatly easier for indigenous populations to participate in national elections. Electoral reforms were mobilized in 1995 and provided eligible indigenous adults with the identification documents needed to vote. Then, in 1995, the Law of Political Parties allowed indigenous communities to nominate their own political candidates (Kuppe 2002; Albó-Barrios 2006). This shift in the inclusion of indigenous populations as part of the state apparatus coincides with the first constitutional rights in Bolivia that protect their communities. Below is a summary table of indigenous rights adoptions in the Bolivian constitution since the extension of mass enfranchisement.

**Table 17: Patterns of Indigenous Rights Adoption in Bolivia**

<b>1994 Adoptions</b>	<b>Rights Category</b>
<i>Political Citizenship (Art. 171)</i>	<i>Recognition</i>
<i>Right to Language (Art. 171)</i>	<i>Representation</i>
<i>Right to Land Use (Art. 171)</i>	<i>Representation</i>
<b>2004 Adoptions</b>	
<i>Plurinationality (Preamble)</i>	<i>Resources</i>
<i>Right to Political Representation (Art. 26)</i>	<i>Representation</i>
<i>ILO 169 (Art. 11)</i>	<i>Representation</i>
<b>2009 Adoptions</b>	
<i>State Funded Indigenous Education (Art. 2, 80)</i>	<i>Resources</i>
<i>National Indigenous Language (Art. 5)</i>	<i>Representation</i>
<i>Collective Land Rights (Art. 31,32)</i>	<i>Autonomy</i>
<i>Right to Culture (Art. 33,100)</i>	<i>Representation</i>
<i>Guaranteed Representation (Art. 146, 147)</i>	<i>Resources</i>
<i>Plurinational Judiciary (Art. 179)</i>	<i>Autonomy</i>
<i>Indigenous Constitutional Council (Art. 196-204)</i>	<i>Autonomy</i>
<i>Regional Autonomy (Art.289-338)</i>	<i>Autonomy</i>
<i>National Borders (Art. 287)</i>	<i>Autonomy</i>
<i>Prior Informed Consultation (Art. 388-403)</i>	<i>Resources</i>

The Bolivian case demonstrates that where rights are adopted incrementally over time, indigenous provisions evolve to include more indigenous aspirations. From political exclusion, government policies first extended electoral rights to all citizens, though these provisions did not mention indigenous populations specifically. The next phase in indigenous rights adoption came in 1994, when populations were first officially recognized as political participants and were given representation rights that protected their language use and right to occupy state lands. It is from this point that indigenous political participation accelerated in Bolivia, and their political aspirations more visible on the national level. The next steps in rights expansion in Bolivia were taken in 2004, and extended indigenous provisions to include more representative rights and recognized the state as pluricultural. Finally, in response to strong indigenous political activity, the state's 2009 reforms were overseen by indigenous leaders in national government and went on to establish the most far-reaching provisions for original populations in Latin America. These include the creation of national indigenous borders, indigenous autonomy rights, and the creation of new institutions such as a plurinational judiciary. Where 60 years ago indigenous peoples were not allowed in the main squares of towns, they have now occupied executive office and possess rights that define regional self-autonomy.

### **Democracy and Indigenous Representation in Bolivia**

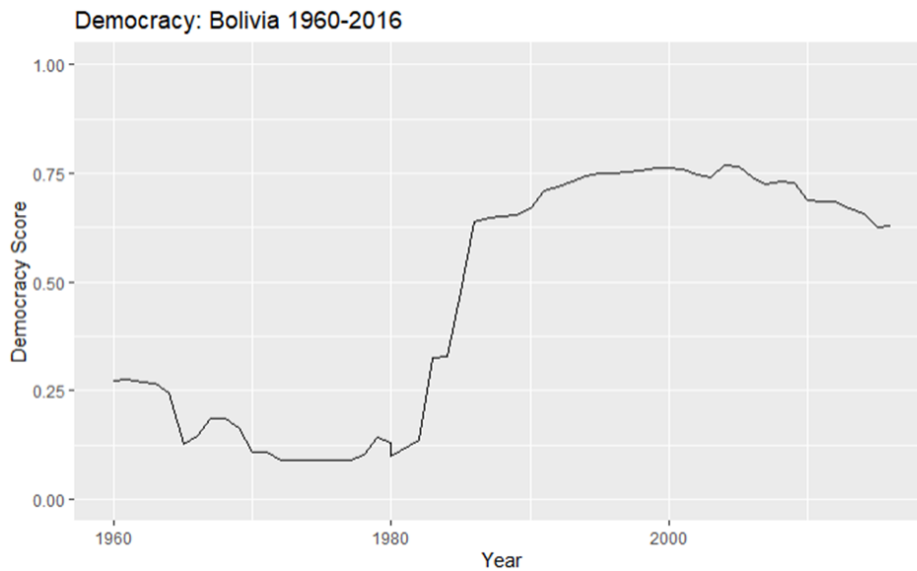
Contrary to the statistical results presented in previous chapters, democratization coincides with the expansion of indigenous rights provisions in Bolivia's constitutional law per theoretical expectations. In broad strokes, democracy preceded the initial recognition of indigenous populations in Bolivian law. Additionally, provisions that are congruent with rights of democratic equality were also adopted in this period, as hypothesized. This case provides support for the perspective that democracy encourages the adoption of laws that equalize access

to political goods for marginalized groups. However, the expansion of these rights to account for indigenous difference in class and national status do not come until well after this democratic wave. This section will discuss how democratic changes impacted the adoption of indigenous rights in the Bolivian constitution.

Though indigenous enslavement in Bolivia is on record up to the 1960's, the state apparatus began to shift its policies toward indigenous populations during this decade. Political perspectives that classified citizenship according to ethnic characteristics were abandoned, and policies promoting human rights, and equal access to political participation and education were expanded (Kuppe 2002; Albo-Barrios 2006; Schilling-Vacaflor 2010). Importantly, a political revolution led by the *Movimiento Nacionalista Revolucionario* party (MNR) in 1952 drastically reformed indigenous access to the electoral process. New laws abolished literacy and educational tests required to participate in Bolivia's elections (Burrier 2012). Original populations gained the opportunity to participate in national elections for the first time. However, a period of authoritarian rule paused these efforts at extended state citizenship until a future wave of democracy.

Democratization came again to the country from 1980. From this point, the nation's democracy score increased sharply from 1980-1995. The country's aggregate democracy score increased from .12 to .75 during this time period and has remained relatively steady since. Over the same period, the strength of Bolivia's judicial branch also increased- from .07 to .56. Overall, among the case studies presented in this dissertation, Bolivia has a higher democracy score than Chile, but the country's score is slightly lower than Brazil's, which is roughly .83. Figures \_ and \_ illustrate the change in democracy and judicial strength in Bolivia over time.

Figure XXI:



After the stabilization of democracy in Bolivia, indigenous political representation became a nationally salient topic. Lozada's government in 1994 worked to increase indigenous enfranchisement with the Law of Popular Participation. During the same year, the Bolivian state officially recognized its indigenous populations as political citizens in constitutional revisions as the state's democracy score began to stabilize (Constitution of Bolivia, 1994). These rights are consistent with those that create terms of equal democratic citizenship. Soon after, in 2004, further adoptions established Bolivia as a pluricultural state, or a state consisting of multiple legitimate heritages. This same document encouraged indigenous political activity and representation at the national level (Constitution of Bolivia, 2004).

Democracy ultimately brought two waves of constitutional reforms in favor of indigenous populations and increased their access to political representation at the national level. Original communities embraced a strategy of bottom-up political change through incremental access to political power. This path was pursued in lieu of full-on, violent political revolution (Carriere 2010). During this same period, the *Movimiento al Socialismo* (MAS) party of Evo

Morales, an indigenous presidential candidate, gained steam in what was called the “indigenous awakening” (Caressa 2014). The implications of the creation of a nationally representative indigenous party are discussed in later sections of this chapter. Additionally, the constitutional reforms of 2009 established Bolivia’s cities as intercultural communities. City councils of indigenous representatives were elected throughout the country. They pushed for culturally appropriate healthcare access and traditional medicine systems, which were established in free state centers since 2010 (Horn 2017; Tockman and Cameron 2014). The new constitution also facilitated intercultural education reform, alongside the legitimization of indigenous regional autonomies and collective rights (Constitution of Bolivia, 2009; Tockman and Cameron 2014).

In sum, Democratization in Bolivia is associated with the initial waves of reforms in the constitution that brought indigenous issues to the national political discourse. Beginning in the 1980’s, democratization and political reforms increased the representation and inclusion of marginalized indigenous populations in Bolivia. The expansion of universal suffrage coincided with the adoption of constitutional recognition of the original populations. Per expectations, but contrary to statistical results, this wave of democratization coincides with the adoption of rights that create terms of equal access to political citizenship. Democratization and the constitutional recognition and representation of indigenous populations also facilitated increased political representation that further impacted the adoption process. These implications will be discussed in future sections.

### **Indigenous Mobilization in Bolivia**

*“Historically, we have resorted to long marches as an extreme form of mobilization to draw attention and seek justice. First, we marched for a constitution that recognized our rights as Indigenous peoples. And for the past 13 years, we have marched to demand that those rights be*

*realized in practice.* - Ruth Alipaz Cuqui, indigenous leader of the Bolivian Amazon and general Coordinator for the Defense of Indigenous Peasant Territories and Protected Areas (CONTIOCAP) February, 2022 (CIVICUS 2022).

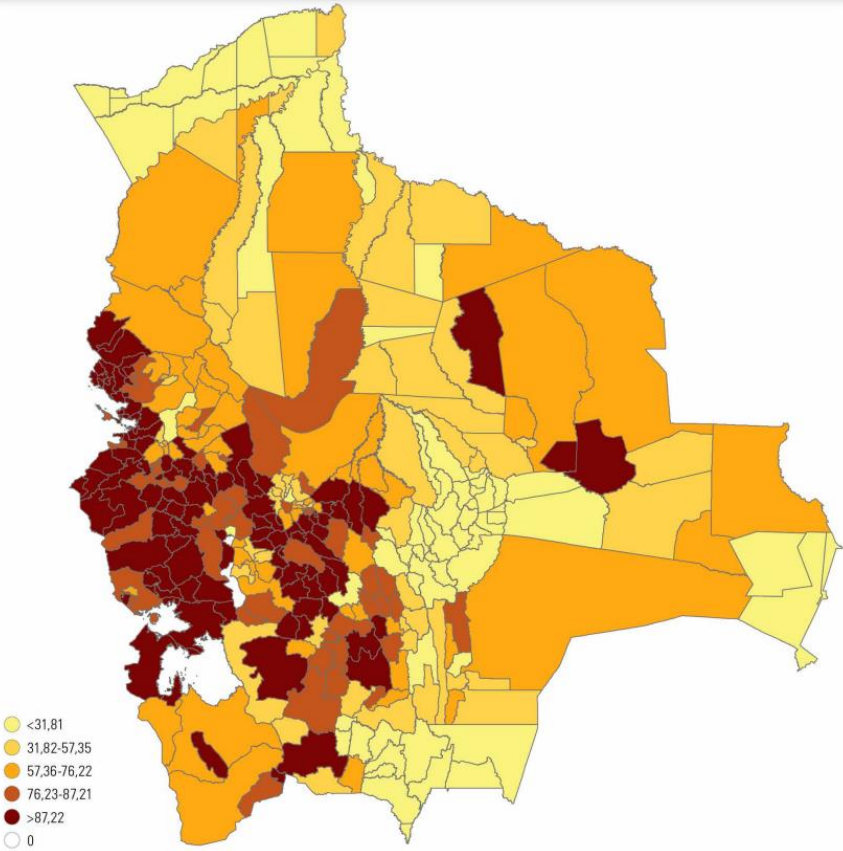
The population proportion of Bolivia's indigenous populations vis-à-vis other citizens is among the highest in the region. Roughly 32% of the country's population identifies as indigenous, second only to Paraguay, where 49% of peoples self-identify as having indigenous ancestry (Latinobarometro). High populations of native communities relative to the rest of the population give more leverage to their political claims and are associated with increased mobilization capacity. Higher numbers of marginalized citizens on the peripheral of society legitimately threaten political instability if they have substantial grievances.

Fractionalization among native populations in Bolivia is on the lower side compared to other countries in Latin America at a state-level view. There is record of 36 different original nations living in state territory, compared to over 300 in Brazil, and Uruguay with 4, the lowest levels of fractionalization. Low levels of fractionalization mean lower coordination problems among diverse communities and their political goals. Being on the lower end of the fractionalization spectrum, native populations in Bolivia are more likely to coordinate and mobilize, ultimately resulting in the negotiation of constitutional protection for their communities.

The original populations in Bolivia have indeed been the most successful in negotiations for constitutional rights for indigenous populations in national law. But a few large indigenous groups constitute the majority of indigenous populations in Bolivia. These groups are geographically concentrated in Bolivia's highland regions, and are primarily made of Aymara, Quechua, and Guarani indigenous groups. The distribution of lowland indigenous populations

are much smaller and more fragmented across Bolivia's lowland regions that are historically more heavily occupied by white economic elites. The following figure illustrates the concentration of large indigenous populations vis-à-vis primarily Spanish-speaking lowland occupation (e.g. non-indigenous). (UN ECLAC 2020).

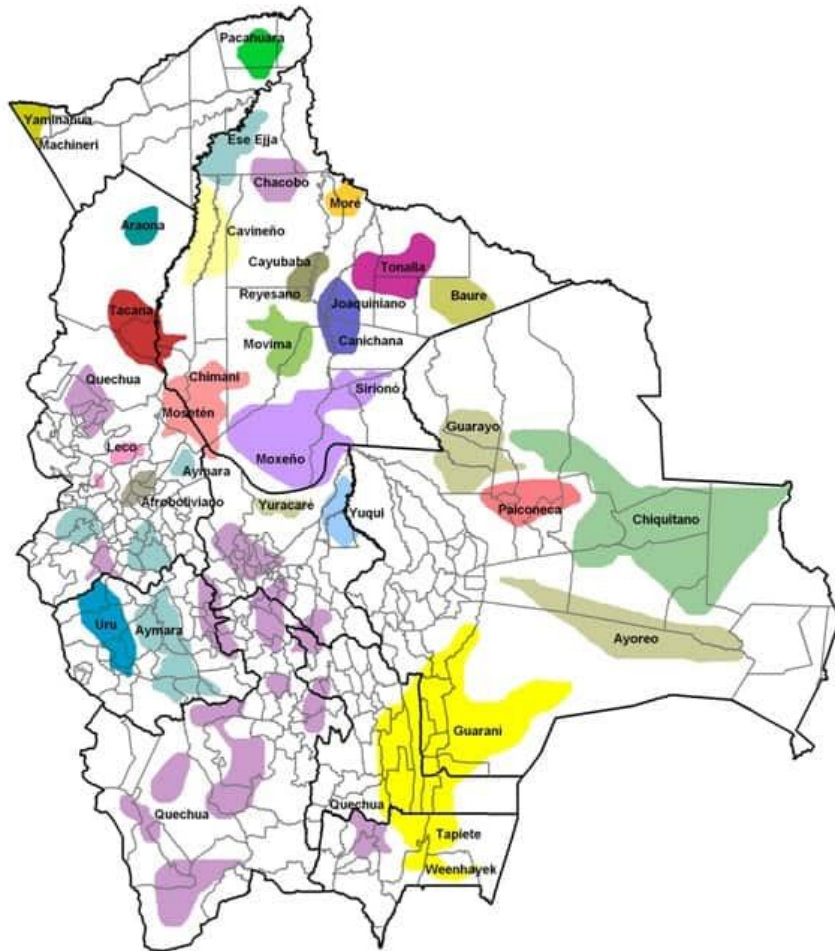
Figure XXII: Indigenous Populations in Bolivia



Map from ECLAC(2020)



Figure XXIII: Indigenous National Settlement in Bolivia



Map from UNFPA Bolivia (2008)

The larger indigenous populations, concentrated in the mountainous highland regions are made up of the Quechua, at 30% of the total population of Bolivia, and Aymara communities which constitute 25% of the total. The remaining 12% of the population that identify as indigenous are concentrated mostly in the lowland regions and are small in comparison. These indigenous communities range from only a few hundred to around 200,000 total, and some have had limited contact with the outside world and with Bolivian political institutions (Hammond 2011).

Therefore, much of the political presence observed from indigenous populations in Bolivia are likely to be through the lens of larger, more coordinated indigenous populations. Highland populations make up half of the total population in Bolivia and have similar settlement patterns. This leads to a more successful political coordination between the Aymara and Quechua populations across nations compared to the dispersed, small, and more fractionalized indigenous groups of the lowlands. This observation is indicative of indigenous political activity that are more likely to primarily protect the interests of highland indigenous populations.

In broad strokes, statistical results indicate low fractionalization among comparatively large native communities in Bolivia. There are 36 different indigenous nations identified in the region and constitute over 30% of the total population in the state. These features are expected to increase the capacity for indigenous political mobilization across these large communities and positively impact the adoption of indigenous constitutional rights (Doyle and Sambanis 2006; Fearon and Laitin 2003; Gurr 1970). This appears to be the case in Bolivia, at least among larger indigenous communities in the highlands where low fractionalization and high population proportions have helped facilitate the adoption of indigenous rights in the constitution.

The case study evidence indicates that the larger indigenous populations are more represented in current political arrangements. Highland groups have privileged access to political mechanisms and laws versus those from *las tierras bajas* (lowlands). Therefore, they are more represented by national law compared to other native populations. This is evidence shows that political rights among indigenous populations in Latin America can favor some groups to the detriment of others and put groups at odds after political representation for native populations is constitutionalized. These implications should be further studied in future work. However, the marginalization of smaller indigenous populations in the lowland has not hurt the political

coordination and mobilization efforts of highland groups that constitute a significant proportion of the indigenous populations in Bolivia.

Overall, indigenous population proportions are relatively high in Bolivia, with low fractionalization. These conditions favor strong mobilization and coordination among various indigenous groups. But most of the indigenous population proportion in Bolivia is made up of Aymara and Quechua populations, meaning that strong mobilization is likely to be the most visible among those indigenous communities.

### **Mobilization Capacity in Bolivia**

Along with high native population proportions, and low initial fractionalization overall, both which are associated with higher likelihood of political mobilization, Bolivia has the highest number of established movement headquarters for indigenous interests within its borders. Bolivia has six physical movement headquarters (Harvard Transnational Movement Database). Brazil, the medium rights case has half this amount (3), while Chile, a country with no current constitutional rights for native populations on record, has 0 established headquarters. Bolivia, with the strongest established indigenous movement presence, has also adopted the most far-reaching provisions for these populations as a result.

**Table 18: Record of Physical Mobilization Headquarters in Bolivia**

<b>Indigenous HQ Name</b>	<b>Year Est.</b>	<b>Location</b>
<i>Latin American Association for Human Rights</i>	1980	<i>Cochabamba, Bolivia</i>
<i>Andean Information Network</i>	1992	<i>Cochabamba, Bolivia</i>
<i>Latin American and Caribbean Agro-Ecological Movement</i>	1992	<i>Cochabamba, Bolivia</i>
<i>Earth Action International</i>	1992	<i>Cochabamba, Bolivia</i>
<i>World Coalition Against Water Privatization and Commodification</i>	2003	<i>Cochabamba, Bolivia</i>
<i>International Union for Conservation of Nature and Natural Resources</i>	2003	<i>Cochabamba, Bolivia</i>

In general, Bolivian indigenous movements have been the most active and successful in the region, with deep historical roots of mobilization recorded back to 1780 (Carriere 2010). Sustained mobilization of these groups, especially in recent decades, is strongly associated with their success in obtaining far-reaching constitutional provisions. Community structures remained intact under colonization. Indigenous communities in Bolivia strongly resisted colonial occupational forces, with many being successful in their pursuits. In many large indigenous populations, social structures remained strong and served as pre-existing networks for heightened ethnic mobilization that persisted into the modern era (Carriere 2010).

Early records of indigenous unions can be traced back to 1944, with the establishment of the *Federación Sindical de Trabajadores Mineros de Bolivia* (FSTMB), a union made up of primarily indigenous populations that worked in the state's mines. This organization served as one of the pillars for the creation of future political organizations. For example, indigenous leaders from FSTMB went on to lead the *Central Obrera Boliviana* (COB), or the worker's union confederation in 1952. These groups both embraced the strategy of representing the

interest of miners at the national level, who were mostly indigenous, along with the political interests of other working-class citizens (Chaplin 2010).

Indigenous ethnic consciousness increased in the 1960's as a rejection toward state policies of assimilation (Hammond 2011). This timing coincided with the creation of new indigenous movements and political organizations like the *Kataristas* and the *Confederación Sindical Unica de Trabajadores del Campo de Bolivia* (CSUTCB). Importantly, these organizations were made up of mostly highland indigenous populations (Schilling-Vacaflor 2010). The platforms of these organizations relied on appealing to large indigenous populations who were subject to continued political discrimination under the Bolivian state apparatus. They also demanded that, as poor rural workers, they were subject to economic discrimination as well.

By the 1970's, NGOs began to invest into local indigenous mobilization networks and focused on issues of indigenous political rights in Bolivia. NGOs backed the creation of four separate indigenous organizations during this time period (Chaplin 2010). In 1979, the COB organization of indigenous peoples specifically backed the creation the CSUTCB, a single confederation of indigenous and working-class social movement groups (Schilling-Vacaflor 2010). These movements were critical in asserting the autonomy of indigenous movements in Bolivia, which were manipulated under the *Movimiento Nacionalista Revolucionario* (MNR) party. MNR continued policies of indigenous repression and political from dictatorial rule into the early 70's (Chaplin 2010). Investment in mobilization establishments accelerated along with democratization in the country from the late 1980's according to the data citing headquarter establishments. The success of indigenous movements through the 1970's and early 1980's ensured independent indigenous political participation.

The year 1992 marked the 500<sup>th</sup> anniversary of the Spanish invasion. This event prompted heightened ethnic mobilization and a resurgence of indigenous political identification and recognition of oppression. The same year, the *Consejo Indígena del Pueblo Tacana* (CIPTA) formed a council for funding organizations that support indigenous rights in Bolivia. Indigenous organizations, such as the *Confederación Indígena del Oriente Boliviano* (CIDOB) also expanded from being just concentrated in the highland regions, to include some of those in the lowlands (Schilling-Vacaflor 2010). Overall, sustained ethnic mobilization since the 1990's had political success in the 1990's. 1994's constitutional adoptions were the first to recognize indigenous populations as political participants and protect their culture and use of language. The growth of indigenous organizations and their access to NGOs and funding entities is associated with these adoptions.

Native communities showed strong activity throughout the early 2000's. Aymaran and Quechuan communities are credited with playing a major role in stopping the privatization of water by Bechtel in the "water wars" of 2000. The privatization of water resources would have disproportionately hurt poor and rural populations and make water unaffordable. A majority of those impacted were also indigenous. Amid massive protests largely taking place in Cochabamba, the military moved in to suppress the unrest, and the government ultimately cancelled privatization plans (Forero 2004; Carriere 2010; Vargas and Viviana 2015).

These groups mobilized again to protect natural resources when a US proposed gas pipeline threatened ancestral lands and resources. This conflict, termed the "gas wars" was fought by a coalition of indigenous groups and other labor movements. Again, the most mobilized indigenous groups came from highland communities. But during the gas wars, indigenous groups demanded the drafting of a new constitution. Ultimately, indigenous

movements blockaded major highways throughout La Paz, and the pipeline plans were cancelled by the government. Amid continuing unrest, serving President Sanchez was removed from office soon after (Albro 2006; Caressa 2014).

The strong turnout of indigenous groups in both the water and gas wars signaled that they could credibly impact government plans and policies. After these political successes, indigenous movements began to demand reforms to Bolivia's democracy. By 2004, there were over 20 different NGOs looking to collaborate with indigenous social movements toward achieving more representative rights for their populations and strengthen their organizations. Organizations included the Wildlife Conservation Society (WCS), Conservation International (CI), which greatly supported the creation of protective land rights for indigenous populations (Lopez Pilla 2014). With the backing of these organizations, mobilized groups stressed the need to push for new constitutional arrangements from the government.

*“Ustedes tienen que llevar este mensaje a nuestras bases. Todos tenemos que hablar de un solo discurso: nueva Constitución, refundar el país. Estamos de un solo pié, de un solo sentir. Esto lo tenemos que demostrar al país. Nos vamos a hacer escuchar y hacernos oír de nuestros hermanos urbanos,” Román Loayza, 2004*

*“You need to carry this message to our bases. We all need to speak of a new discourse: a new constitution, a refoundation of the country. We are of one footing, and one feeling. We have to demonstrate this to the country. We are going to make ourselves heard by our urban brothers,” Roman Loayza, 2004. (Valencia and Egidio 2009)*

Ultimately, the political goals of indigenous movements were realized. The constitutional committees in 2004 and 2009 both made drastic changes in response to indigenous grievances,

and officially established Bolivia as plurinational- or recognizing the existence of multiple nations within the territory (Constitution of Bolivia 2004; Constitution of Bolivia 2009). COB leader, Pedro Montes, called for constitutional change:

*“Esta no es una marcha cualquiera, al llegar a La Paz, seremos un milon y de alli no nos moveremos sin convocatoria al referendum,” - lider de la COB, Pedro Montes 2008*

*“This is not just any march, once we arrive in La Paz, we will be one million strong, and from there we will not move without the government calling for the referendum,” - leader of COB, Pedro Montes 2008. (Quiroga 2008).*

Such strong mobilization efforts did result in constitutional changes. Indigenous political goals went from the periphery of society to establishing these communities as not only political participants, but ultimately as sovereign entities with the right to self-government. The strongest mobilization networks of original populations in Bolivia are overall associated with the most constitutional protections in national law.

Importantly, since these successes in indigenous mobilization and constitutional reform, there are more recent marked divides in their political goals. Autonomy, especially in the lowland regions, is constrained by continued resource extraction projects. But these groups, though smaller in number, have been more politically active in recent years. In 2011, the *Tsimanes, Moxeteres, and Yuracares* protested the building of highways through native lands. But many highlander indigenous citizens, such as the Aymara and Quechua, marched *in favor* of its construction. Some highland communities view lowland populations as underutilizing the land, alongside stereotypes of lowlanders being less educated and civilized. It is no coincidence that 11 of the 13 recognized indigenous territories are in the highland Andean region, compared



to only 2 in the lowlands. Regional lowland autonomy is framed as against the national interest, and strong indigenous movements actively support projects in these regions (Caressa 2014; Tockman and Cameron 2014).

Despite recent conflict among indigenous mobilization efforts, there is evidence that they are becoming more active and assertive in their respective territorial regions. Indigenous movements took over state functions to protect their lands in 2021. They share information with each other about potential threats to their lands, using advanced satellite technologies. These resources allow groups to identify poachers, forest fires, and threats to water sources (Praeli 2021). Communities can effectively coordinate, self-govern, and protect their lands where the central state apparatus has failed to do so.

In sum, Bolivia is on record as the country with the most active and successful indigenous social movements. Strong social networks have allowed groups to coordinate efforts and facilitated constitutional revisions that established the state as plurinational. Importantly, the number of indigenous mobilization headquarters increased after democratization in the 1980's. Many indigenous movement headquarters were established prior to and after the initial recognition and representation of these citizens in constitutional law. This case shows that strong movements were present prior to the adoption of any indigenous rights in the constitution, but their strength continued to grow after they were. The ongoing success of these movements also helped create a national constitution that is the most inclusive of its native populations to date. But since the successes of 2009, there is increased evidence of divides amongst highland and lowland communities and their political interests, and therefore, differences in their mobilization efforts. Highland peoples are much more likely to support state policies, especially those that are developmental projects in "underutilized" lowland regions. Despite recent divides and tensions

among regional native populations, Bolivian indigenous movements remain strong, and demonstrate the ability to self-govern and mobilize resources to protect their lands and resources.

### *Indigenous Representation in Bolivian Government*

This case shows that once indigenous political participation was constitutionally legitimized in 1994, indigenous political parties were able to grow, and ultimately occupy the executive office. Indigenous groups' political goals shifted to reorient Bolivia's democratic structure and gain national representation. Indigenous political mobilization was also associated with the removal of two Bolivian presidents through 2004. The establishment of the MAS party, led by indigenous representative Evo Morales, represented movement to "decolonize" Bolivia's constitution (Fletcher 2009). Under MAS, further indigenous rights provisions were added to Bolivia's constitution. These include both resource and autonomy rights. This result partially supports statistical results in chapter 3 and 4 that show indigenous representation as a motivator for the adoption of autonomy rights into constitutional law.

Bolivia has had the most extensive indigenous representation in national government over the past few decades. Native populations were first recognized in the constitution in 1994, legitimizing their claims to political office and representation. The *Movimiento al Socialismo* (MAS) party was created soon after in 1998, with foundational ideologies that promoted indigenous identity, and anti-neoliberal policy positions. The party and the presidency illuminated indigenous political platforms in the country and facilitated the change of multiple national laws in favor of native communities.

The party was originally formed as an alliance of unionized peasant organizations. The MAS platform stressed terms of Bolivian decolonization, indigenous constitutional

representation, and recovery of the state's indigenous values to protect Bolivia's land and resources. The party aligned with common grievances against neoliberal policies that accelerated natural resource extraction. Tangibly, this meant a commitment to the reduction of neo-liberal policies that disproportionately hurt poor and indigenous populations (Caressa 2014; Fletcher 2009). Morales had broad appeal across a large underrepresented indigenous population, and poor agrarian workers who had until recently been absent from the national political discourse.

President Morales ultimately won his campaign for presidency in 2006. Voters clearly endorsed a platform that stressed the central government's need to protect Bolivia's lands and natural resources. With 54% of the presidential vote, it was the first time in recent Bolivian history where a presidential candidate won an outright majority (Hammond 2011). The MAS party and its leader, Evo Morales, held executive office from 2006-2019 and positioned indigenous peoples as the caretakers of the nation. MAS promoted policies that endorsed indigenous populations as the caretakers of the nation. As the self-proclaimed leader of the Aymara peoples, Morales also promised to renegotiate terms of indigenous constitution citizenship (Caressa 2014; Horn 2017).

Under the MAS government, Bolivia became constitutionally multicultural and plurinational. The reforms adopted under Morales in 2009 guarantee indigenous representation in the state legislature, with two seats reserved for indigenous representatives in the senate, and one seat in the lower chamber (Constitution of Bolivia 2009). To facilitate representation, indigenous administration was dispatched as ministers of the state to all state department capitals (Caressa 2014). Increased representation on the national level allowed peoples to focus on properly defining indigenous rights from within the state apparatus.

This new government forced political elites were forced to renegotiate regime structure and access to political and state resources for indigenous populations. During his presidency, a new constitutional assembly was created to constitutionalize formal recognition of indigenous autonomy in 2009. The state officially became plurinational and recognized indigenous nations in its territorial borders after constitutional debates resulted in the adoption of a new document. Legally, state authorities share power with multiple indigenous nations under a system of legal pluralism under the current constitutional structure. This includes the existence of plurinational justice system that recognizes ethnic justice and claims (Constitution of Bolivia, 2009; Horn 2017).

Importantly, many communities have been able to install their own representatives and indigenous justice systems under the new laws of the 2009 constitutional changes made under MAS. But the legal process is highly complex and requires the help of legal experts to assist communities to obtain their special legal status. As it turns out, as Evo Morales is the self-proclaimed leader of the Aymara people, most recognized territories are in the Aymara and Quechua highlanders, who also have more access to political infrastructure and more easily navigate the legal technicalities of acquiring regional autonomy. Again, though Bolivia has the most far-reaching indigenous protections in its national constitution, advantages after these adoptions favor highland populations compared to those in the lowlands. Indigenous interests and policy preferences have become increasingly oppositional between these regions and peoples.

But even though these reforms afford Bolivia's original nations the most freedoms compared to other countries in the region, these rights have not been claimed without difficulty. Between 2009 and 2019, only 3 of 33 claims for indigenous self-government in their respective

national territories have been approved (Rodriguez 2020). Many regions, mostly those in the lowlands or *tierras bajas*, are subject to continued encroachment and its communities find difficulty in navigating legal systems for proper representation (Hammond 2011). Most regional protections continue to be claimed by highland communities.

Similarly, the Aymara and Quechua groups are the largest, most favored populations under constitutional law. Most legally recognized lands, 11 of the total 13 currently recognized, are in the Aymara and Quechua highlands. There are only two protected original nations in the lowlands, which is occupied by various smaller indigenous communities. Not coincidentally, most extractive projects in recent years have been in *las tierras bajas* (the lowlands). Highlander indigenous communities consistently backed recent state led extraction projects in lowland regions. Representatives from highland communities cite the need for these projects, since the indigenous nations in the lowlands are unproductive, and not using the land to its full potential (Caressa 2014; Tockman and Cameron 2014).

In broad strokes, the larger populations of the highland Aymara and Quechua nations are much more represented and aligned with the current Bolivian government. Smaller indigenous populations in the lowland regions, however, consider issues of state encroachment unresolved. President Evo Morales who was in office from 2006-2019 was the self-proclaimed leader of the Aymara peoples, the largest indigenous group in Bolivia. Constitutional adoptions under his government favored highland culture, such as the mention of Aymara holidays as nationally recognized holidays without mention of those of lowland nations (Constitution of Bolivia, 2009; Caressa 2014). As the leader of highland indigenous interests, communities in these regions are more likely to support state policies, even to the detriment of other native communities (Caressa 2014; Fabricant and Postero 2015).

Physical encroachment between communities has escalated since the 1980's. The collapse of the mining industry led many highland populations to relocate to lowland territories. This mass movement itself began to stir tensions and claims to land rights in the region. Still, many Aymara and Quechua see it as a necessity to "civilize" lowland populations. Older Quechua and Aymara men continue to purchase young indigenous women as wives in the region for only a few pesos to carry out this task (Caressa 2014).

This physical occupation occurs alongside political encroachment into the lowland regions. The constitutional revisions adopted in 2009 created mechanisms for native consultation before projects that impact ancestral territories (Constitution of Bolivia, 2009). During the *Territorio Indígena Parque Nacional Isiboro Sécura* (TIPNIS) project, which was a highway infrastructure project funded by Brazil, indigenous citizens were consulted. But not the populations from the ancestral nations that would suffer from the project. Instead, the consulted indigenous citizens were from larger populations that traditionally supported his policy positions. The project also allowed for easier migration of displaced coca growers from the highland into these lowland territories via highway (Caressa 2014; Tockman and Cameron 2014). The project was completed in 2017, and was backed by colonial rhetoric from Evo Morales himself, who called on young men to claim indigenous women and sway their political opinion on the project:

*"If I had the time I would go and woo the Yuracare companeras and convince them not to oppose the road. That is, young men, you have instructions from the President to seduce (conquistar) the Yuracare women so that they won't oppose the building of the road,"* – President Evo Morales (Caressa 2014).

The MAS party and Morales continued these transgressions while also becoming increasingly centralized and focused on retaining political power over representing indigenous

interests. During his second term beginning in 2010, his government actively worked to reduce and silence indigenous movements that opposed state led extraction projects. His government during its second term weakened many indigenous movements, especially in the lowlands, and his government did not pursue any further constitutional reformations to protect original nations. Morales also weakened and packed courts from 2009 to 2019. Over 80% of judges remain temporarily appointed to federal posts and are subject to politically motivated investigations (Human Rights Watch 2022; Rodriguez 2020; Tockman and Cameron 2014).

Ultimately, Evo Morales was accused of electoral fraud in the 2019 presidential elections. Amid social unrest and political violence, Morales resigned as the president of Bolivia on November 10, 2019. A military government took power after he stepped out of office, and indigenous flags and other cultural symbols were removed from government buildings (Human Rights Watch 2022; Rodriguez 2020). This was a disappointing end to an era of indigenous representation in the highest office of government.

Nonetheless, Bolivia is still the country that provides the most representation for its native populations under current political arrangements. This representation sharply increased after the adoption of indigenous recognition and representation into constitutional law in 1994. Afterwards, legitimized indigenous political parties were elected to the highest national offices, including the presidency. After these successful elections, President Evo Morales oversaw the institution of various indigenous resource and autonomy rights in the 2009 constitutional reforms. Most recently, in 2010, the Minister of Justice and Institutional Transparency created a directorate for the protection of indigenous nations and peoples of Bolivia (Lima 2022). The same year, the state created the People's Conference on Climate Change, which renegotiated environmental and land protections in the original nations (Rodriguez 2020). This case supports

statistical evidence that shows indigenous representation in national government motivates the adoption of indigenous autonomy rights into the constitution. But future work must consider the ongoing divides in the political representation of different indigenous nations, which is far from equal. Nonetheless, indigenous mobilization has led to many successful constitutional revisions in Bolivia. The right to indigenous constitutional protection of their communities remains strong.

*“No estamos usurpándole nada a nadie, se nos viene criminalizando, acosando, persiguiendo, diciendo que estamos cometiendo intromisión. Hay organizaciones que firman para dar paso al gobierno, pero nosotros, si no hubiéramos hecho esa lucha férrea en nuestro territorio, hace mucho que muchos de los proyectos se hubieran empezado a ejecutar,” - Ruth Alipaz, lidresa Uchipiamona 2022.*

*“We are not usurping anything from anyone, we have been criminalized, harassed, prosecuted, and told we are committing interference. There are organizations that sign off on the government, but we, had we not waged that iron fight in our territory, many [extractive] projects would have been started and carried out long ago,” Ruth Alipaz, Uchipiamona leader, 2022.*

(Astrid 2022)

### **Resource Rents and State Capacity in Bolivia**

When it comes to state motivations to guard land and resource rights, Bolivia has fluctuating dependence on its natural resources, from anywhere to 5% to 15% of the country's total GDP. In recent decades, the government has pursued economic policies that accelerate resource exports and is comparatively one of the most dependent countries on its natural resources. Fluctuations in exports are caused by its resource curse- prices for natural gas and other minerals boom and bust along with their values in the international market (ECCLAC



2012; Tockman and Cameron 2014). State capacity of the government to control native territories and extract wealth, however, is low in Bolivia, and barely reaches positive values over the observation period (See Model). Despite a boom-bust cycle of resource prices and a low state capacity for resource extraction in native lands, low intensity conflict is sustained in indigenous territories over access to valuable natural resources, especially natural gas (Horn 2017; Mahler and Pierskalla 2015).

Figure XXIV:

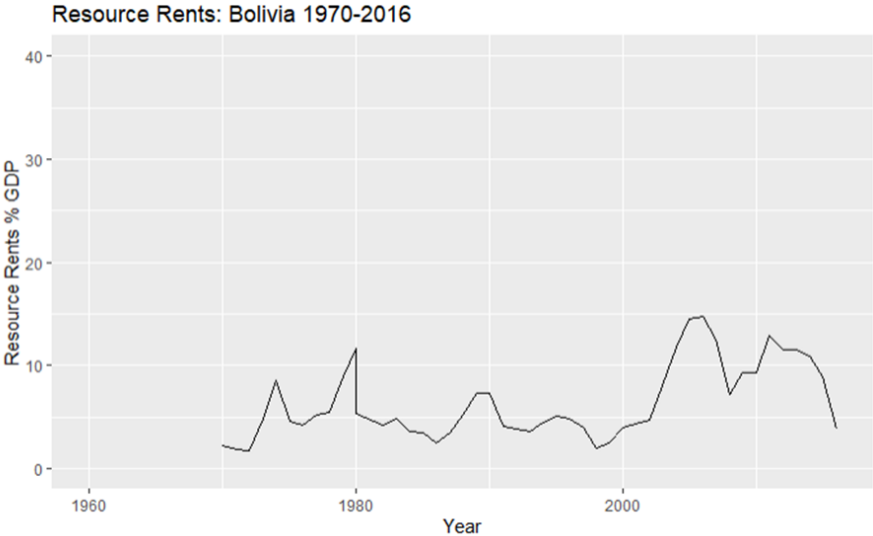
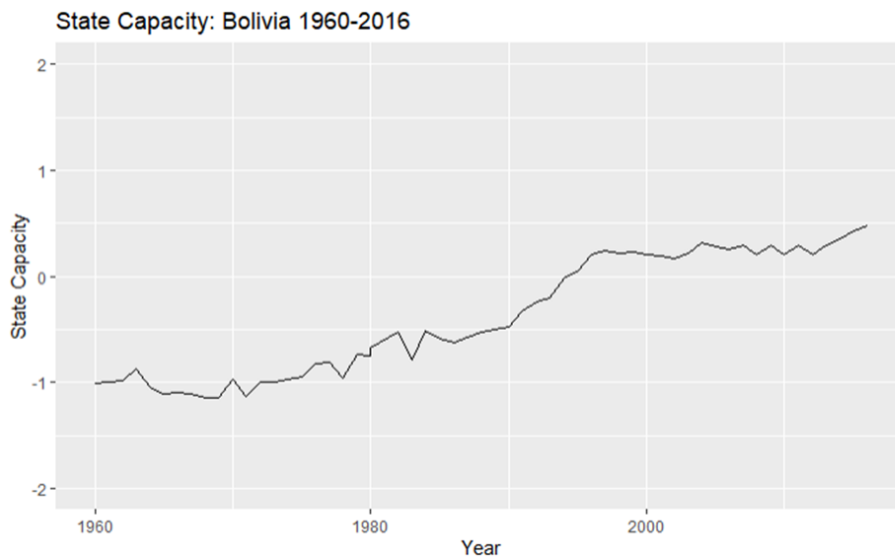


Figure XXV::



Since the colonial era, Bolivia has been reliant on the extraction of non-renewable resources to the detriment of native lands. Hundreds of years of reliance on exports, state-owned resources, and high inequality created an entrenched extractive economic model, that even indigenous president Evo Morales promoted them under his term. After Bolivia's wave of constitutional reforms, autonomies to land remain constrained where the state and private companies find resource wealth. The executive branch and national constitutional law stresses that while indigenous peoples do have claim to their ancestral territories, ownership does not translate to subsurface resources, such as hydrocarbons, metals, and other non-metals (Tockman and Cameron 2014). Though native populations have the right to prior consultation before extractive projects, as of 2022, only 3 of 33 indigenous claims for territorial autonomy have been approved by the state due to these economic interests (Rodriguez 2020). Many extractive projects are continued in the lowland regions of Bolivia, which are rich in natural resources and occupied by smaller, more fractionalized indigenous communities.

Since 1994 the Bolivian state has slowly decentralized its protection over natural resource industries and diversified Bolivia's economy. The timing coincides with the creation of indigenous political party MAS, and the growth of indigenous political mobilization. Along with elite supported decentralization came the withdrawal of state support and protection of mineral exports, which disproportionately hurt indigenous communities and their local economies through the encroachment of private companies and interests. Indigenous movements and political parties challenged the interests of economic elites that supported state decentralization of protective policies, and successfully helped to remove two presidents (Sanchez in 2003, and Mesa in 2005) that failed to nationalize Bolivia's natural gas industry. Indigenous populations, then more represented in the national government under an indigenous party and president were able to challenge the interests and supported market reforms (Eaton 2007).<sup>2</sup>

In addition to these recent tensions, ongoing low intensity conflict between indigenous groups and state and private groups over resource projects has continued mainly in the lowland territories over the past three decades. Political campaigns and violence against indigenous communities in these regions is sustained despite their legal claims to the land. Threatened territories include Bolivia's capital province, the Andes Ibaneza in Santa Cruz, and Oropeza in Chuquisaca. These lands contain many of the resources that the government sees as non-productive and in need of economic development. They also contain the most natural gas in the state (Mahler and Pierskalla 2015). Additionally, lowland indigenous populations are much sparser and less densely populated in these lowland territories vis a vis non-indigenous (Hammond 2011). Simply, more natural gas equals higher levels of violence in indigenous lowland regions over extractive projects. Between 2010 and 2020 the Center for Legal Studies and Social Research, a Bolivian non-profit organization, found that more than 42% of lowland

territories were subject to illegal occupation, illegal burning, and deforestation (Human Rights Watch 2021).

Despite a low state capacity measured by quantitative means, recent analysis shows that state presence in indigenous territories is increasing in recent years. State security forces currently occupy lowland indigenous regions at much higher levels. Occupation is carried out in the interest of securing access to natural resource wealth. Human Rights Watch (2021) finds increased rates of illegal detentions, sexual violence, and torture of indigenous populations in the lowlands. Illegal imprisonment and torture occur alongside forced labor, a continued legacy of colonial slavery. Security forces carried out multiple massacres against native communities in both Cochabamba and La Paz in the past decade (Human Rights Watch 2021).

Bolivia has historically embraced a model of resource extraction and exportation, despite a volatile boom and bust cycle of resource value on the international market. High levels of resource dependence did not impact the adoption of constitutional rights for native populations. Levels of state investment and occupation of lucrative native territories in Bolivia has led to the protection of less lucrative highland regions, but continued exploitation of lowland indigenous nations. Ultimately, only some indigenous groups have benefitted from recent constitutional revisions. Increased indigenous representation in the constitution and in the national government facilitated the creation of rights that protect the indigenous right to land, autonomy, and consultation over resource projects. Constitutional provisions, as currently defined in Bolivia's constitution, establish the right to representation, and autonomy rights for all indigenous nations in Bolivia. But currently, highland communities with larger populations are those that have most successfully benefitted from these national laws. In broad strokes, legal avenues are complex and difficult to navigate. Highlander communities have much more success establishing the right to

self-government according to national law. Lowland communities are left vulnerable to encroachment, state occupation, and violence in the name of profitable resource extraction (Hammond 2011; Lopez Pila 2014; Fletcher 2009).

State occupation of the lowland regions in the interest of resource extraction is strong, despite a low state capacity score. While these factors were expected to restrict the adoption of indigenous rights that protect their land and resources from state and private encroachment, this is not the case in Bolivia. Instead, the adopted provisions disproportionately benefit highland indigenous populations, the Aymara and Quechua. Strong occupational forces, and ongoing violence in lowland regions restrict access to constitutional protections for the smaller indigenous groups that have ancestral roots in these territories. The occupation and exploitation of the lowlands is likely to continue if current divides in indigenous representation is not corrected. Central government entities stress the state ownership of natural resources and continue to use occupational security forces to procure them.

### **Looking to the Future of Indigenous Rights Adoption in Bolivia: Public Opinion**

Given that Bolivia's constitutional law currently includes the most extensive indigenous rights in the region, it is unlikely that they are to expand much further in the near future. The Latin American Public Opinion Project gathered public opinion data on perceptions of indigenous political rights in Bolivia after the most recent constitutional reforms of 2009. These revisions were those that established multiple indigenous resource and autonomy rights that both strive to correct historical inequalities, but also allow for indigenous self-representation and government. Previous work using this data finds most support of indigenous representation is among female, young, left leaning, and poorly educated citizens (Fernandez 2019). These

features also describe citizens that are more likely to support environmental protection, and the lower educated class overlaps with indigenous identification.

But overall, citizens see issues such as economic crisis, unemployment, and poverty as the most important political issues in the country, not indigenous issues. Data from *Latinobarometro*'s public opinion project in 2022 show that indigenous autonomy and environmental issues are categorized as low priority amongst Bolivian citizens: 18.3% of respondents cited the economy as their number one concern for the country. Unemployment came in at 12.8%. But issues such as discrimination by race and human rights earned scores of 1.1% and .5% respectively. Moreover, the poor are considered the class that is most discriminated against amongst polled citizens, and only 8.4% think that indigenous citizens currently face the most discrimination in Bolivia (*Latinobarometro Case Report: Bolivia 2022*). There is a clear focus on neutral political issues in modern political discourse. These issues focus on policies that impact all Bolivian citizens, and indigenous issues considered peripheral concerns amongst the general population.

In the Bolivian government, legislative deputies in the 2010 congress similarly discount the importance of indigenous issues. The most important issues identified are similarly neutral issues that impact all the country's citizens. Most deputies cite unemployment (74.4%), government corruption (66.27%), education (60%), economic production (48.2%), and illegal drug trade (47.7%) as the most pressing government problems. This compares to only 20.27% of deputies listing indigenous human rights as a main concern to the current government (PELA). Results from these opinion polls match that of the public- non-indigenous issues that impact all citizens are the issue areas take precedence in modern political discourse in Bolivia.

Indigenous citizens have different political views compared to non-indigenous Bolivians. First, significantly more indigenous respondents consider themselves “politically mobilized;” 33.6% of indigenous respondents self-identify as politically mobilized, versus only 18.1% of non-indigenous respondents. Native populations are also slightly more satisfied with the current state of democracy in Bolivia (62.6% highly satisfied) compared to non-indigenous citizens (55.2%). Additionally, 60.4% of indigenous citizens view political parties as necessary to advance political rights. Faith in parties also remains high among non-indigenous citizens as well, with 56% of respondents indicating them as necessary (LAPOP; Inguanzo 2011). Overall, differences are minimal apart from higher indigenous political mobilization. However, similarities in attitudes about democracy and political parties show that native populations have just as much trust in Bolivia’s political institutions, if not more than the public at large. This is likely a result of the representativeness in the Bolivian constitution. Rights adopted in the past decades include not only access to universal democratic rights, such as education and healthcare, but also allows for regional indigenous sovereignties, plurinationalism, and new courts. Comparatively, these are the most expanded constitutional rights for indigenous populations in the region, and many groups have reason to look positively at the current state of democracy in Bolivia.

In sum, Bolivian citizens and politicians do not see indigenous political issues such as autonomy and racial discrimination as important under its current government. Instead, there is much more support for neutral issues that impact all the state’s citizens. These issue areas include topics such as unemployment, the economy, and political corruption. Problems such as indigenous land protection, and discrimination are peripheral interests. Since all survey data presented in this chapter was collected after all constitutional reforms in Bolivia, which were

substantial, the timing impacts the results of the data. It is likely that many respondents see some indigenous issues as resolved by previous constitutional negotiations, indigenous and non-indigenous citizens alike. Polling data suggests that indigenous respondents are very satisfied with democracy in Bolivia, and faith in the political system is consistent across all respondents.<sup>3</sup>

As Bolivia's constitution contains the most far-reaching indigenous provisions in the Latin American region, further expansion of these rights in the near future is unlikely. Attitudes across Bolivia's population show that indigenous specific issues are not considered important in the modern political discourse. Perhaps many of these issues are continued resolved, since the Bolivian government adopted various indigenous constitutional rights over the past 30 years. Similar attitudes are seen in Bolivia's legislature, where deputies consider universal issues more pressing. Importantly, economic shocks that do impact all Bolivia's citizens top the list of current issues facing the country. After its resolution, attitudes may again change and/or diverge between indigenous and non-indigenous citizens.

## **Discussion and Conclusion**

In Bolivia, the expansion of indigenous constitutional citizenship occurred in steps. From complete political exclusion established through colonialism, the first indigenous rights were adopted into the constitution in 1994. The first indigenous rights in Bolivia included recognition as national citizens, and the right to culturally appropriate education. From this point, rights further expanded in 2004's iteration of the constitution, which moved to establish a plurinational state and encouraged indigenous political participation. Finally, revolutionary reforms in 2009 led to the adoption of various rights that legalized indigenous regional autonomies and created new, representative political institutions. This method of rights adoption in Bolivia's



constitution supports statistical results in chapter 4. Simply, indigenous rights expand in steps, from indigenous recognition, to representation, and finally resource and autonomy provisions.

Due to the wide range of indigenous protection included in Bolivia's active version of its constitution, many citizens and politicians do not consider indigenous issues as political problems that the state needs to immediately address. This attitude is carried across indigenous citizens, non-indigenous citizens, and legislative deputies. Bolivia's indigenous rights in the constitution are currently the most far reaching in the entire region and sets an example for other countries globally. In respect to these constitutional changes, the average citizen's political attention is focused on non-indigenous issues. Recent survey data shows that Bolivia's citizens and legislative representatives consider issues such as economic performance, unemployment, and access to universal healthcare as the most pressing issues in society versus indigenous issues. In fact, the poor class is considered more discriminated against amongst polled citizens, and only 8.4% of respondents see indigenous peoples as facing the most discrimination in Bolivia (Latinobarometro Case Report: Bolivia 2022). After the adoption of indigenous resource and autonomy rights in 2009 that legitimized indigenous claims to regional self-government, it is evident that many consider the current status of indigenous constitutional citizenship satisfactory for the time being. This puts into question whether the incremental expansion of indigenous rights will continue in Bolivia.<sup>4</sup>

Democratization also played a role in early constitutional amendments that established indigenous recognition as political citizens and protection of their cultural heritage. Democracy scores in Bolivia increased through the 1980's and stabilized in the early 1990's. Bolivia's first indigenous rights adoption in the constitution were adopted soon after in 1994. These events support theories from chapter 1, that argue that democracy facilitates the adoption of indigenous

constitutional provisions that are compatible with modern ideals of democratic citizenship.

Simply, democracy is associated with rights that define indigenous peoples as equal citizens with equal status and protection. But this relationship does not apply to rights that are seen as serving specifically indigenous interests, or those that create divisive national identities. After democratic consolidation in Bolivia, additional domestic factors motivate the adoption of indigenous resource and autonomy rights.

The political mobilization of indigenous communities has had a positive impact on the constitutional citizenship of the original peoples of Bolivia. Indigenous populations constitute a large proportion of the total population in Bolivia at 32% of the total population. Additionally, they are fragmented among 36 different national identities, which is a medium level of fragmentation vis a vis other states in the region. Large populations that are not highly fragmented are posited to be associated with stronger indigenous political mobilization potential. This is indeed the case in Bolivia, where indigenous mobilization is among the strongest and most active in Latin America. Strong social networks that survived through colonization allowed groups to effectively coordinate political efforts. Indigenous groups mobilized and sat in on multiple constitutional councils, including those that adopted multiple indigenous resource and autonomy rights in 2009. But since the successes of 2009, there is increased evidence of divides amongst highland and lowland communities and their political interests, and therefore, differences in their mobilization efforts. Highland peoples are much more likely to support state policies, especially those that are developmental projects in “underutilized” lowland regions. Despite recent divides and tensions among regional native populations, Bolivian indigenous movements remain strong, and demonstrate the ability to motivate constitutional change. Here, the strength and institutionalization of indigenous political movements increased after

democratization in the early 1990's. This means that strong indigenous mobilization preceded the adoption of all indigenous provisions in the Bolivian constitution and played a positive role in these revisions along the way.

Another positive predictor of indigenous rights adoption in the constitution, indigenous government representation, is also strong in the Bolivian case. The country's constitution legitimized indigenous political participation beginning in 1994, which legitimized indigenous political party, MAS, that ultimately occupied executive office. This government, led by an indigenous executive, oversaw the adoption of the most extensive indigenous constitutional rights in the entire region. These results support theoretical arguments that indigenous government representation brings salience to specifically indigenous issues that leads to the adoption of resource and autonomy rights. Without indigenous representation, these issue topics go unnoticed and are unlikely to be included in future constitutional law.

Against theoretical expectations, economic reliance on models of resource extraction did not influence the adoption of Bolivia's constitutional provisions that protect indigenous communities. This includes those that protect original territories from state and private encroachment. Statistically, Bolivia's state capacity is low, and is associated with all indigenous rights adoption per results in chapter 3. But only some indigenous groups have been able to effectively defend their constitutional rights against invasion. Lowland indigenous communities, which are much smaller and more fragmented, are left vulnerable to exploitative resource projects, state occupation, and violence.

In sum, Bolivia followed a trajectory of incremental rights adoption. Previously excluded indigenous populations were at first afforded equal recognition and rights in the constitution. Then, more rights were adopted that are based on indigenous difference and structural

inequalities. As expected, democratization preceded the initial adoption of indigenous constitutional citizenship. As democracy stabilized, however, the strength of both indigenous mobilization and government representation oversaw the adoption of constitutional rights that allocated state resources to original populations and established autonomies. Chapter 1 theorized that strong indigenous movements would emerge after initial constitutional representation is adopted. But in Bolivia, pre-existing networks oversaw the adoption of all constitutional revisions, even before indigenous constitutional citizenship was established. Therefore, strong indigenous mobilization is associated with the adoption of all indigenous rights in Bolivia, since pressure from these groups was sustained prior to, and through, all constitutional changes after democratization. Per expectations, indigenous political representation oversaw the adoption of indigenous autonomy rights in Bolivia that mechanized regional self-government for original populations. In contrast to theoretical expectations, Bolivia's high investment in natural resource rents and heavy occupations of resource rich regions in recent decades have not hindered the adoption of indigenous constitutional protections. Finally, recent divides in indigenous political interests between Bolivia's highland and lowland populations should be further studied in future work. On the ground, larger highland indigenous populations have been more politically mobilized and represented by current constitutional arrangements and national representation. Smaller, more fractionalized and politically absent lowland populations continue to experience under representation.

## Chapter VI: Brazil

*“Indigenous people have constantly been the subject of discussions and deliberations without proper participation. At this specific moment, this gathering is even more important considering that we have a government that is anti-indigenous, fascist, anti-environmentalist and anti-human rights. I see myself as a spokesperson who will take the indigenous voice further, to fight for the defense of our rights so that we prevent further violations. It is also incredibly important to raise more sympathy and empathy among politicians in congress, who represent Brazilian society.”*

*Joênia Wapichana, Brazil’s first indigenous congresswoman, 2022*  
*(Beldi De Alcantra 2023)*

### Introduction

The Brazilian case represents countries that fall in the “medium” range of adopted indigenous constitutional rights. Unlike Bolivia, rights do not extend to provisions that allow for regional self-government or indigenous national sovereignty. But also unlike Chile, the Brazilian government managed to adopt some constitutional changes that protect native citizens. The constitutional status of indigenous populations in Brazil falls in-between, and allows for indigenous recognition as political citizens, and a few other representational provisions.

Taking a country case level approach complements the large n statistical models employed in earlier chapters and strengthen causal inference where similarities are found. Case

analysis also identifies additional hypotheses and causal mechanisms that may be missed in regional patterns and observations (Lieberman 2005).

The limited constitutional status vis-à-vis high tier countries means that original populations in Brazil are still fighting for more legal protection. Citizens may recognize that political discrimination against indigenous populations exists, but there is a preference to focus on political policies that universally impact society (FPA 2010). Only recently have indigenous populations gained national political platforms and are pushing for the recognition of their lands and resources alongside the few rights that have already been adopted in the Brazilian constitution. However, state interests continue to be at odds with the creation of such laws (Machador and Loures 2020; Hanna, Langdon, and Varclay 2015).

First, I summarize the repression of indigenous political participation from the colonial era onward. From this point of exclusion, indigenous rights in constitutional laws evolve to have different forms and various degrees of political access. I discuss the evolution of indigenous rights in Brazil's constitution, along with their categorization and political implications. The Brazilian case supports the argument for incremental adoption and is at an earlier stage of the adoption process than Bolivia, the previous case.

After analyzing the evolution of indigenous rights in the Brazilian constitution over time, I move to discuss domestic factors that impact the adoption process. Democratization in the 1980's coincides with the creation of indigenous recognition and representation rights in the 1988 constitutional overhaul. This is consistent with theoretical expectations that democratization facilitates the implementation of equal rights to politically excluded groups.

Next, indigenous populations in Brazil are overall expected to have a lower mobilization capacity, since the original nations make up a small portion of the country's total population

(3.4%), and they are fractionalized across more than 300 different nations. Historical restriction of indigenous mobilization also impeded the strength of social movement networks in these communities. But indigenous mobilization has increased in the past decades and is now at a moderate level compared to other countries in the region. These movements are associated with the adoption of the first, and only, constitutional changes made to represent the original populations of Brazil. This evidence suggests that mobilization was important earlier in the rights adoption process than expected. But indigenous movements have not yet gained enough traction to motivate the adoption of resource and autonomy rights in the national constitution.

Low levels of indigenous political representation in national government during the observation period means that grievances such as land rights and autonomy are largely left on the periphery. Recent shifts to a more friendly regime under Lula da Silva have reignited the hope that indigenous populations may yet see laws that protect their lands and resources.

Finally, although rent dependence in Brazil is on the lower side, heavy government involvement and extractive capacity have thus far blocked efforts to expand indigenous rights to resource and autonomy provisions. Simply, state interests work against the adoption of indigenous rights in the constitution that protect original lands from encroachment.

Then, I assess the potential for future rights adoption based on public attitudes with a brief summary of recent public opinion polls. Importantly, only some Brazilian citizens recognize indigenous political issues as something in need of immediate government attention. Most respondents consider universal rights to health, education, and welfare as the most pressing issues facing indigenous populations today.

This chapter concludes by summarizing key findings and discussion points, offering insights for future research where needed.

## **Colonization and State Building in Brazil: Creating Indigenous Political Exclusion**

The Portuguese began its colonial campaigns in Brazilian territory in the 1500s. Upon the arrival of Portuguese forces, the crown instituted a policy of indigenous eradication to pave way for uninhibited resource extraction. Portugal authorized total war against Brazil's indigenous inhabitants, and the land's populations were subjected to disease, enslavement, and ultimately, genocide (Schwartzman and Pakararu 1996). Under occupation, native populations were considered ethnically inferior, and unable to politically govern themselves. They were established as non-citizens of the Portuguese colonies in Brazil.

Brazil declared independence in 1822. Nine years post-independence, the newly sovereign state continued institutions of indigenous non-citizenship. The Brazilian government created laws that defined indigenous populations as incapable of autonomous interaction with "civilized" society. These laws defined native peoples custodians of the state, with the government overseeing their rights. The perspective of indigenous custodianship was further entrenched in the 1916 Brazilian code, which categorized indigenous citizens alongside the mentally handicapped for whom the state needs to exercise rights for (Rodriguez 2002).

The legal code of 1916 also established the national values of the Brazilian state, that stress individual rights and private property alongside the restriction of native citizenship. The government's continued position was that indigenous citizens were not capable of political participation. This legislation left the original populations on the political periphery, with no constitutional protection or path to legitimate self-representation. The practice and recognition of indigenous custodianship continued until constitutional reforms retracted these laws in 1988.

The colonial legacies of indigenous repression in Brazil are like those found in other countries in the region. Colonial killing campaigns turned into legalized political repression and



exclusion. Indigenous citizens were considered equal to the mentally handicapped and under state custodianship until recently. Below, I outline constitutional revisions that created indigenous rights in Brazil over the past decades before moving to discuss the impact of domestic influences on indigenous rights adoption.

*Evidence of Incremental Adoption? Indigenous Constitutional Rights Over Time*

The only revolutionary shift in indigenous constitutional rights in Brazil were adopted in 1988.<sup>1</sup> These rights include the general recognition and protection of indigenous cultures and practices (Article 215), state elementary education in native languages (Article 210), the right to occupy land and use resources (Article 231), and mechanisms to bring suit if their communities are put in danger because of resource extractive projects (Article 232) (Constitution of Brazil 1988). This is a drastic shift in policy regarding indigenous peoples, who were considered non-political actors in the prior draft.

**Table 19: Patterns of Indigenous Rights Adoption in Brazil 1988 Adoptions**

	<b>Rights Category</b>
<i>Political Citizenship (Art. 22)</i>	<i>Recognition</i>
<i>Right to indigenous education (Art. 210)</i>	<i>Representation</i>
<i>Right to culture (Art. 215)</i>	<i>Representation</i>
<i>Right to property (Art. 231)</i>	<i>Representation</i>
<i>Right to sue after encroachment (Art. 232)</i>	<i>Representation</i>

In 1988, indigenous recognition and representation provisions were all adopted into constitutional law in the same year. From this point, rights have failed to expand further. Though indigenous rights have not changed since the adoptions made in 1988, this case offers some evidence of theories of incremental expansion argued in chapter 4. Recognition is the necessary minimum constitutional adoption needed before other rights can be present. Here, indigenous recognition is adopted alongside various representation rights. Importantly, these rights are argued to align with the natural progression of equal democratic citizenship.

Indigenous constitutional rights in the Brazilian case do not yet include those that correct class inequalities, guarantee indigenous representation, or legitimize community self-government. Naturally, this would be the next step in the expansion of indigenous constitutional citizenship.

Indigenous rights provisions in the current version of the Brazilian constitution are abbreviated in the table above. Rights both recognize indigenous peoples as citizens and facilitate equal right to indigenous culture, language, and education. Though the 1988 version of the constitution created legal precedent for indigenous land occupation and territorial claims, subsequent reforms outline state ownership of native lands and resources in the interest of the general population (Article 109, Constitution of Brazil Actual). Indigenous populations can also sue on behalf of their communities, but only *after* the damage is largely done, or when projects are already underway. Furthermore, there are no specialized courts created to oversee indigenous legal claims.<sup>2</sup> The state's federal judges and legislative councils are responsible for settling these disputes (Article 20, 109, Constitution of Brazil Actual).

In sum, the Brazilian constitution recognizes and represents its native populations, but only to a point. The text includes laws that create terms of equal citizenship, ones that are highly compatible with modern democratic legal structures and terms of equal citizenship. While indigenous citizens have been afforded rights that establish equality, to a degree, the constitution in Brazil stops there. The laws do not include rights that are viewed as serving the indigenous few or as divisive to national identity.

Next, I discuss the domestic impacts on the adoption of these rights. Then, I will briefly assess public perception and salience of indigenous issues, which gives insights into current discussions of minority rights in Brazil.

### **Democracy and Indigenous Rights Adoption in Brazil**

The legal status of indigenous peoples in Brazil remained largely unchanged from independence until the occupation of an authoritarian military regime from 1964-1984. Under military rule, the state oversaw all indigenous properties, incomes, and their travel was restricted and subject to approval by authorities (Rodriguez 2002). Indigenous citizens were subject to increased state surveillance under this regime, and they were not afforded the right to represent themselves in state politics. The state embraced policies of indigenous assimilation into Brazilian society alongside these restrictions.

During this same period, the state engaged in violent campaigns against native populations in the name of economic interests. Particularly, the government pursued policies that expanded the rubber industry and engaged in warfare with native communities that stood in the way of the building of plantations. Communities that were not killed in resource rich territories were forcibly removed from their lands to pave the way for various government led economic projects. The acceleration of these ambitious policies coincided with Brazil's "economic miracle" that saw increased exports and economic growth (Schwartzman and Pankararu 1996). The state remained committed to neo-liberal policies that prioritized global growth that relied on natural resource exports. The military regime's interests aligned with the suppression of native political rights in favor of economic projects that exported natural resources from ancestral lands. In regions where native communities stood in the way of these projects, the government engaged in all-out war against them (Alfinito Veira and Quack 2016).

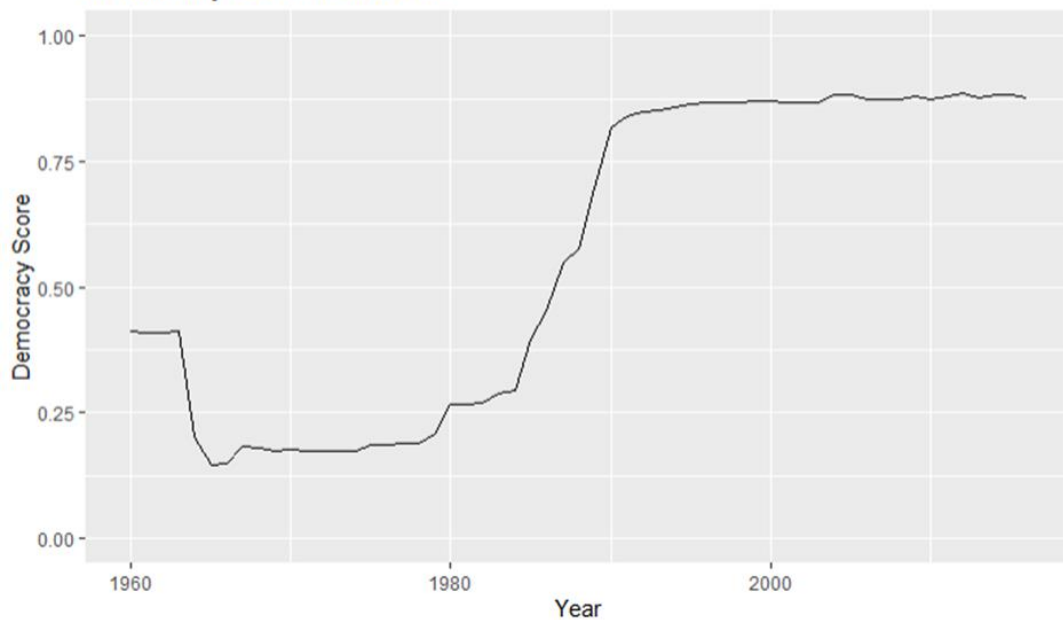
The government's suppression of indigenous political activity and policies of assimilation continued throughout the entirety of military rule. Not only were native peoples not recognized as political citizens during this time, but they were seen as an inferior group that needed the guidance and custodianship of the state. Where they stood in the way of economic projects, the

military led violent attacks against native communities. These policies continued through 1987, including the Brazilian army's "*Projeto Calha Norte*", the north tributaries project, that reduced contiguous native territories by creating national parks, reserves, and forests to fragment them. The creation of these special territories established pathways for logging and mining industries that can now easily travel through ancestral territories (Schwartzman and Pankararu 1996). A shift in the government's policies towards its native populations did not come until a democratic regime came into power.

Democratization came to Brazil during the *abertura política* or political opening period from 1974-1988. Support for the military regime's economic policies waned with this democratic turn, and discussions of the political status of indigenous peoples began. In 1986, the democratizing government proposed revisions to the national constitution. Eight indigenous community leaders from various nations ran as candidates for the national constitutional council (Rodriguez 2002). Though none were elected due to lack of political resources and representation, these candidacies exemplify a new indigenous involvement in national politics during turn toward democracy. It is from this point that national constitutional law is amended to include various indigenous rights provisions.

After democracy came to Brazil in the 1980's, the government formally adopted a new constitution in 1988. At least 35 indigenous community leaders attended constitutional debates during the formulation of the new constitutional document. Ultimately, the new text ended the policy of land fragmentation in ancestral regions and established the state's first protective rights for native populations (Constitution of Brazil 1988; Rodriguez 2002). Below is a graph of Brazil's democracy score over time. In 1988, Brazil adopted a more representative constitution with the nation's first indigenous rights.

Figure XXVI:  
Democracy: Brazil 1960-2016



Since 1988, democracy scores in Brazil have remained relatively stable. The same can be said for the status of indigenous constitutional representation. Since the 1988 revisions, no progressive movements have been made to protect indigenous interests. The constitutional rights adopted during democratization were general indigenous recognition, the right to culture, education, the right to bring lawsuits when endangered, and the occupation of state-owned land (Constitution of Brazil 1988). Since the adoption of these laws, native communities have taken suits to federal courts, which have upheld the indigenous right to occupy lands since 1994 (Schwartzman and Pankakaru 1996).

The adoption of indigenous recognition and representation in the national constitution coincided with democratization in Brazil. After its transition out of authoritarianism, the state dismantled old laws that fragmented indigenous lands and pushed ethnic integration. The 1988 constitution established native peoples as political citizens, and offered some equalized rights, such as access to education, and the right to language and culture. Since democratization, no

further provisions have been adopted in the interest of native populations in Brazil. Native populations have encountered both friendly and non-friendly governments under democracy. The future potential for indigenous rights adoption relies more on the attitudes of the government in power, rather than increasing democracy scores in recent decades.

In broad strokes, Brazil's case of democratization aligns with theoretical expectations. Democracy coincided with the adoption of indigenous recognition and representation rights, which chapter 1 argues are compatible with ideals of equal democratic citizenship. This result differs from quantitative results, which show that democracy scores are negatively related to the initial recognition of indigenous populations in constitutional law.

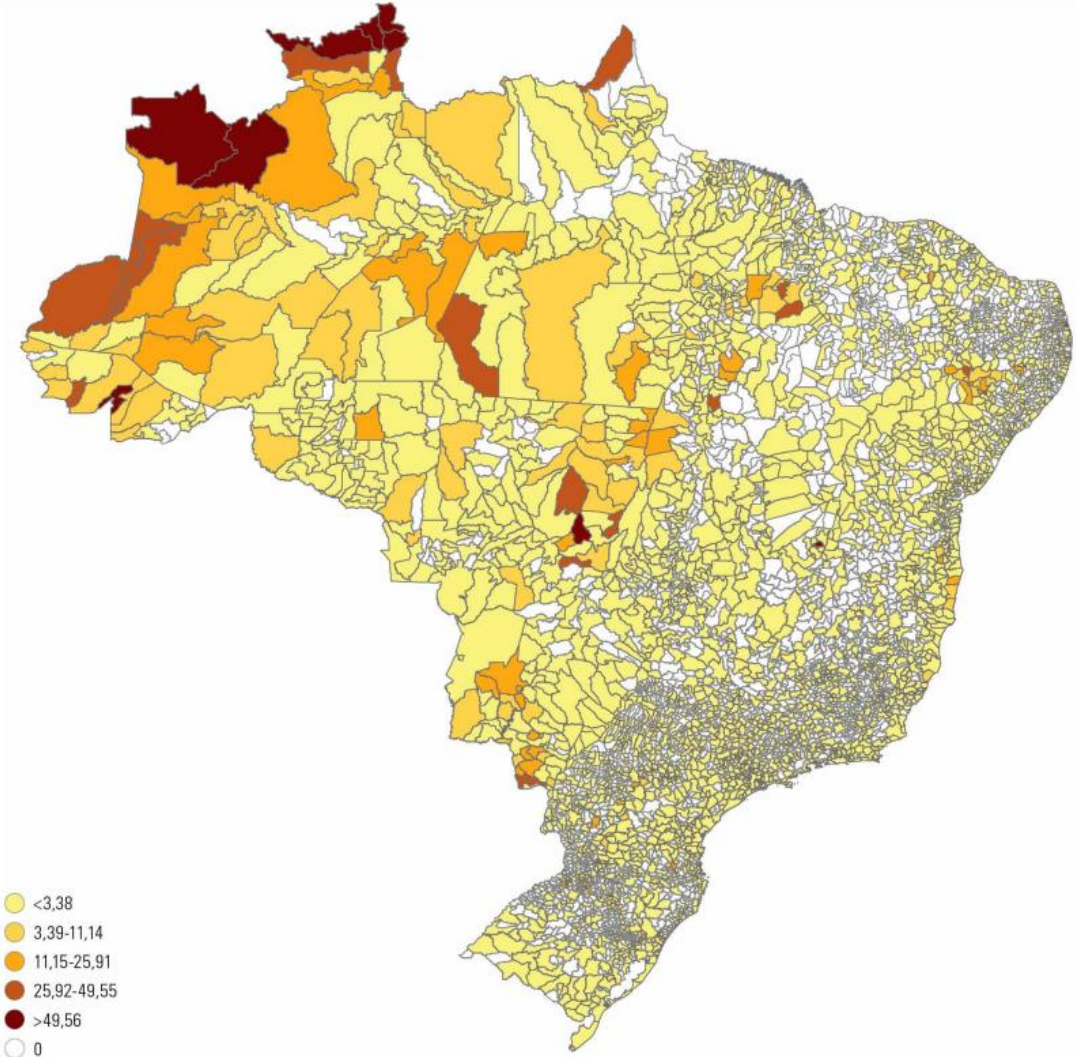
### **Indigenous Mobilization in Brazil**

The estimated proportion of indigenous citizens is 3.4% of Brazil's total population. This proportion is higher than Chile's (.03%) but is still small relative to other nations in Latin America. For example, Bolivia's indigenous population proportion is 31.9%, and Paraguay is approximately 49% indigenous (Latinobarometro). These communities live in some 546 different regions and have ancestral claim to 11% of Brazilian territory (Schwartzman and Pankararu 1996). Small population proportions are expected to limit the mobilization capacity of indigenous social movements, as outlined in chapter 1 of this dissertation. This case supports statistical results that show that small indigenous populations proportions are more likely to live under governments that adopt indigenous recognition and representation rights in the constitution. But small populations have thus far not gained access to either resource or autonomy rights in Brazil's national constitution.

A long history of government campaigns aimed at reducing and fragmenting indigenous nations limited the threat of indigenous mobilization capacity. Under authoritarianism in the 1960's, the government pursued policies of native suppression and eradication. These years represent the height of Brazil's economic miracle. Its military government cut through entire native communities, such as the *Panaru* land in the Amazon. Over two thirds of the small community of 350 natives were killed in a few days. The remaining survivors were forced onto reserves in the nationally founded *Xingu* indigenous park, over 120 miles away from their original homelands. State and private encroachment continued in cases like this throughout Brazil as the economy boomed on the back of extractive projects in ancestral lands.

Policies of indigenous land reduction and fractionalization instituted under Brazil's military regime continued until the 1980's. During this period, the *Yanomami* peoples were crippled by continued state and private land invasion. *Yanomami* lands, roughly 23.5 million acres in size, were reduced by 70% under the state's economic campaigns in 1987. Indigenous populations continued to be reduced by illegal invasions by loggers, miners, ranchers, and small farmers by 1990 (Schwartzman and Pankakaru 1996). Below is a rough estimate of indigenous populations and their recent settlement territories.

Figure XXVII: Indigenous Populations in Brazil



Map from ECLAC (2020)





data. Overall, there is an increase of 2% indigenous identification between national census data in 2000 and 2010 (Bastos et al. 2017). Simply, this represents a change in national perspectives on ethnic identification. National surveys were changed to ask which languages were spoken in the home to measure indigenous populations, as opposed to the ambiguous mixed categories of past surveys.

Of these indigenous populations, there are 305 recorded different original nations with ancestral roots in Brazilian territory (Latinobarometro). This means that there are over 300 original nations living in the state, with different languages, customs, and ancestry. Most populations reside in the north of the country, where they make up 48.8% of the rural population, and 19% of the urban population. Native peoples also constitute 33.8% of the northeastern urban population (Bastos, et al. 2017; McSweeney and Arps 2005). Indigenous interests are therefore not only split among the conflicting views of different nations, but also between urban and rural perspectives of living.

In sum, political campaigns that dismantled native populations in the past, the presence of hundreds of different indigenous nations, and splits between rural and urban interests signals a potential coordination problem among indigenous groups. These factors are predicted to make it more difficult for groups to focus political efforts, and negatively impacts rights outcomes. Nonetheless, native citizens in Brazil have overcome some of these coordination problems to obtain indigenous recognition and representation in national constitutional law. But strong groups are needed for the adoption of resource and autonomy rights in the constitution, and these rights are absent in current Brazilian law.

Brazil also lands in the mid-tier category for indigenous social movement strength. The Harvard transnational movement database recorded the presence of 3 social movement

headquarters in Brazil, significantly more than in Chile, but less than in Bolivia, where there are currently 6 headquarters (Harvard Transnational Movement Dataset 2020). This indicates a presence of indigenous mobilization networks in Brazil, although not as strong compared to other nations in the region, including Bolivia.

**Table 20: Record of Indigenous Mobilization Headquarters in Brazil**

<b>HQ Name</b>	<b>Year Est.</b>	<b>Location</b>
<i>Committee for the Defense of Human Rights in the Southern Cone</i>	1977	<i>Sao Paulo, Brazil</i>
<i>Platforma Interamericana de Derechos Humanos, Democracia, y Desarrollo</i>	1992	<i>Rio de Janeiro, Brazil</i>
<i>Mercosur Social Forum</i>	2003	<i>Curitiba, Brazil</i>

In more recent years, Brazil’s government shifted its policies to legitimize indigenous political mobilization. In 1967, the government established the national indigenous foundation, FUNAI, to formally negotiate rights with indigenous populations. Communities also benefitted from domestic and transnational advocacy networks that promoted indigenous protection. For example, the Catholic Church backed the creation of the *Conselho Indigena Missionario* (CIMI), the indigenous missionary council, and the Ecumenical Center for Documentation and Education (CEDI), the largest NGO in Latin America that tracks and documents indigenous issues (Rodriguez 2002; Schwartzman and Pankararu 1996). The state facilitated the creation of these state organs long before constitutional provisions for native populations were adopted in 1988. They were also created during the early years of authoritarianism, and social movements began to emerge in the later years of military rule.

After Brazil’s transition out of dictatorship, indigenous movements emerged in earnest. The transition from military rule also ended the state’s indigenous custodianship laws. As legitimate political actors, community leaders began to attend congressional meetings whenever important issues were debated. By the 1980’s, indigenous movement coalitions became key in

pushing for national constitutional reform. These far-reaching alliances included the Union of Indigenous Nations (UNI), the Council for the Articulation of Indigenous Peoples and Organizations in Brazil (CAPOIB), numerous scientific and environmental organizations, and indigenous rights organizations such as CIMI, the Brazil and the Indigenist Work Center (CTI), Oxfam, and Cultural Survival, among others. The main aim of the efforts of this coalition was to procure indigenous representation in the national constitution (Carvalho 2000).

Thirty-five representatives from different original nations ultimately attended national constitutional debates from 1987-88 (Alfinito Veira and Quack 2016; Rodriguez 2002). During this time, native leadership became acquainted with political procedures, and institutional frameworks. The 1987 constitutional debates, with sustained indigenous presence and mobilized support, led to the state's adoption of constitutional rights for these communities for the first time in national history. The following excerpt describes the defense of proposed indigenous amendments to the constitution.

*“No dia quatro de setembro de 1987, chegara o momento da defesa das Emendas Populares, perante o Plenário da Comissão de Sistematização. De todas as Emendas, as da Nações Indígenas (n. 40) e Populações Indígenas (n°39) foram as últimas a serem apresentadas, num plenário esvaziado. [...] Primeiro a falar, o coordenador da UNI, Ailton Krenak, fez a defesa da Emenda das Populações Indígenas. De paletó branco, ao discursar perante o plenário de sistematização, Ailton pintava o rosto com tinta negra a base de jenipapo e declarava, denunciando a campanha antiindígena deflagrada pelo Estadão,”*

*“On September 4, 1987, the time had come to defend the Popular Amendments, before the Plenary of the Committee on Systematization. Of all the Amendments, those of the Indigenous Nations (n. 40) and Indigenous Populations (n°39) were the last to be presented in an empty*

*plenary. [...] First to speak, the UNI coordinator, Ailton Krenak, defended the Amendment of Indigenous Populations. In a white jacket, when speaking before the systematization plenary, Ailton painted his face with a black ink genipap base and declared, denouncing the anti-indigenous campaign triggered by the Estadão,” (Barbosa and Gonzalez Brasil Fagundes 2018).*

Despite the absence of a committee to speak their plights to, indigenous organizations continued to make their case on a national stage. After sustained indigenous grassroots involvement and pressure, the 1988 constitution recognized and provided some equal rights to native populations. Article 232 of the document encourages the creation of indigenous organizations on the local and regional level (Constitution of Brazil 1988). Post constitutional recognition, indigenous mobilization networks continue to grow stronger in Brazil.

Since the late 1980's communities have reacted when they are put in harm's way. For example, in 1989, the *Kayapo* peoples organized the first meeting of indigenous peoples of the Xingu national reserve. This gathering was attended by over 600 community leaders, government officials, and 300 national journalists to protest *Eletronorte*, a state-owned electric company that planned construction in ancestral territories. These protests forced the companies to change their plans.

Similarly, in 1996, indigenous citizens mobilized when over 1500 private lawsuits were filed in Brazilian courts that made claim to indigenous lands and resources. The response was a march of over 300 native community leaders and their supporters (Rodriguez 2002). Most recently, strong indigenous mobilization took place in 2014, when indigenous groups stormed the national congress building. Around 2500 protestors occupied the capital of Brasilia, and blocked access to the state's federal buildings and ministries. Indigenous protestors delivered a list of demands to the Supreme Court, including the prosecution of two congressmen with a

record of making racist remarks against native communities. One member includes Senator Eduardo Heinze, who claimed that “the government is in bed with the Blacks, Indians, gays, lesbians, and all other losers”. After these protests, the government promised that all anti-indigenous legislation would not be approved without the full consensus of congress members. (Hanna, Langdon, and Vanclay 2015; Rodriguez 2002).

The establishment of governmental organs that discuss indigenous issues, and the legitimization of indigenous political movements and activism in 1988 reforms created avenues for indigenous political activism. Despite small populations and high fractionalization, sustained movements in Brazil helped pressure the state into the adoption of indigenous recognition and representation rights in national law. But no further adoptions have been created in the Brazilian constitution since, although movements continue to sit in on policy discussions, and react with mass mobilization when the interests of native communities are endangered in legislative discussions.

Indigenous mobilization in Brazil continues to rise, especially considering recent political events. Under far right-wing President Jair Bolsonaro (2019-2022), indigenous populations suffered. Bolsonaro’s political platform relied on radical changes to the state’s treatment of indigenous populations in Brazil through heightened land and resource encroachment. Upon election into office, he weakened FUNAI and de-legitimized indigenous claims to original lands. His presidency was backed by non-indigenous ruralists, evangelicals, and the military, and implemented ethno-centric political policies that revived anti-indigenous politics in the modern era that ultimately . President Bolsonaro himself declared that “there will not be another square centimeter of [indigenous land] demarcated,” (Domingos Neto and Gurreiro Moreira 2023).

Below, indigenous leader Jeonia Wapichana from the village of *Wapichana* describes current demands of these movements, who have suffered under previous president Bolsonaro, and hope for change under current President Lula da Silvia.

*“Nosotros queremos acciones concretas, efectivas y necesarias ahora, no de aquí a 10 años. La COP coincidió con la entrada de Lula Da Silva y se lograron una serie de compromisos. Él fue muy enfático en señalar que todos somos responsables de la crisis climática y Brasil cumple un gran papel en la Amazonía. Y los pueblos indígenas son necesarios para proteger los bosques, las nacientes de agua y el uso sustentable de recursos. Entonces hay que proteger a los defensores de la Amazonía que están siendo asesinados. Están muriendo de malaria y de la contaminación por mercurio. Hay que tomar acciones urgentes,”*-Jeonia Wapichana del pueblo Wapichana (De Lourdes Beldi de Alcantra 2023).

*“We want concrete, effective actions, and these are needed immediately. The COP was created in conjunction with the entrance of Lula Da Silva, and a series of commitments to indigenous people were reached. He was very empathetic in pointing out that we are all responsible for the current climate crisis and that Brazil plays a great role with the Amazon. And indigenous peoples are necessary to protect the forests, water sources, and non-renewable resources. So, you must protect the defenders of the Amazon that are being killed. They are dying from malaria and mercury contamination. Urgent actions must be taken,”* - Jeonia Wapichana of the Wapichana village (De Lourdes Beldi de Alcantra 2023).

There is hope that sustained indigenous involvement and appeal for representation at the national level will continue the expansion of indigenous protections in Brazil's constitution. Statistical results in this work show that strong indigenous mobilization is associated with the adoption of both resource and autonomy rights, both of which are not yet present in the Brazilian

constitution. Although indigenous movements are active in Brazil, the quantitative measure used in the past chapter shows that indigenous movement presence is moderate in the country. The evidence presented here suggests that indigenous movements in Brazil are not strong enough to negotiate the adoption of indigenous resource and autonomy rights, both of which are associated with strong indigenous mobilization.

But this case also presents contrasting evidence to the statistical results from previous chapters. Simply, that moderately strong indigenous mobilization presence is associated with the adoption of indigenous recognition and representation rights in 1988. Sustained indigenous mobilization and involvement in the negotiation of this version of the constitution helped ensure the adoption of these revisions. This case demonstrates the early importance of movements in procuring rights. If the strength of these movements and their coalitions continue to grow, they are likely to procure more rights in the future. But as of now, no further constitutional adoptions have been made. Overall, the Brazilian case shows that indigenous mobilization is associated with the adoption of indigenous recognition and representation but is perhaps not yet strong enough to negotiate wider reaching provisions.

#### *Indigenous Government Representation in Brazil*

Like Chile, there is no constitutional law that ensures indigenous representation in national politics in Brazil. The two countries also share a history of custodianship laws placed on indigenous populations. In 1831, Brazilian legislators ruled that native peoples could not act for themselves and were not allowed to own property (Rodriguez 2002). The state was the legal caretaker of indigenous citizens, and like all states in this study, native populations remained non-represented in national political discourse through state building.



But investment in indigenous representation in Brazilian politics shifted in 1967. The government created *Fundação Nacional do Índio* (FUNAI, The National Indian Foundation) that discusses indigenous political issues between indigenous representatives and state deputies. Soon after the creation of FUNAI, *el Cenro Ecumenico de Documentacao e Informacao* (CEDI) was created to document national information on indigenous populations in Brazil. CEDI began its data collection on native issues in 1976 and remains one of the largest organizations that documents information and statistics about indigenous populations in the region. Just two years later after this, Brazil's indigenous populations formed the first national indigenous organization, the Union of Indigenous Nations (UNI) in 1978.

UNI increased the salience of indigenous issues in Brazil and coordinated efforts across Brazil's numerous indigenous nations. UNI's creation coincided with waning support for authoritarianism in Brazil and the opening of increased political opportunities for indigenous citizens. Eight indigenous candidates formally participated in the 1986 elections for the constitutional assembly (Rodriguez 2002). Though none were elected to be on the council in 1988, the Brazilian government adopted constitutional reforms that protect indigenous populations. Community representatives also learned valuable information about the political process.

But democracy in Brazil remains elite dominated, and no further adoptions were made to ensure indigenous representation in politics since the 1988 reforms. Some significant change came during the Lula presidency, which oversaw the legislature's adoption of the UN's ILO 169 in 2004 (UN). But the suggestions outlined in the convention are not yet ratified into constitutional law. The adoption of the UN's indigenous rights remains symbolic in Brazil.

President Jair Bolsonaro, however, actively spoke out against indigenous political interests during his government. He infamously stated that the “American cavalry were the competent ones because they eliminated their native populations, and now do not have this [indigenous] issue in their country,” (Marquez and Rocha 2015). Indigenous representatives have accused Bolsonaro of genocide caused by his policies that accelerated the destruction of the Amazon Forest, home to most Brazil’s indigenous populations. At the beginning of his presidency, Bolsonaro defunded institutions that protected the environment and indigenous interests. Encroachment into indigenous lands accelerated during under his government, and the situation escalated to the point that indigenous lawyers have taken their case to the international criminal court (ICC) for the investigation of genocide and war crimes (Krenak Naknanuk 2021). The progress if indigenous representation eroded under this presidency, and no new constitutional rights were adopted.

In a close election, Lula was re-elected over incumbent Bolsonaro in 2022. The new government took office on January 1, 2023. Many citizens are hopeful that there will be a shift in the treatment of indigenous populations. In recent polls, 39% of the population stated that President Lula had done more for native communities than other recent presidents (FPA 2010). There is hope that the state will resume its adoption of indigenous protections established in constitutional law under the new government. Indigenous communities hope that the change in regime will result in the adoption of further indigenous protections and reverse the damage that was done under the Bolsonaro regime.

*“La politica de Bolsonaro, ha sido una política de muerte para los pueblos indígenas, ahora vemos en Lula una esperanza..... Las políticas de pueblos indígenas tuvieron sus comienzos en el reconocimiento en la constitución de 1988 y tuvieron sus avances con la*

*demarcación territorial pero estos procesos comenzaron a frenarse a partir de los años 2000, cosa que no se había revertido durante los gobiernos del PT en Río Grande do Sul. Ahora con Bolsonaro empeoró drásticamente en sólo un mandato y espero que sea solo este y nunca más vuelva a acercarse a poder ganar algo en este país.”*

*"Bolsonaro's political platform has been a policy of death for indigenous peoples, now we see hope in Lula.....The policies of indigenous peoples had their beginnings of [political] recognition in the 1988 constitution and had advances with territorial demarcation but these processes slowed down from the 2000s, and this has not been reversed during the PT governments in the Southern Rio Grande. Now with Bolsonaro, he drastically worsened our political status in just one term, and I hope that he never comes close to being able to win in this country again," - indigenous representative, Bruna Ukay (Delgado 2022)*

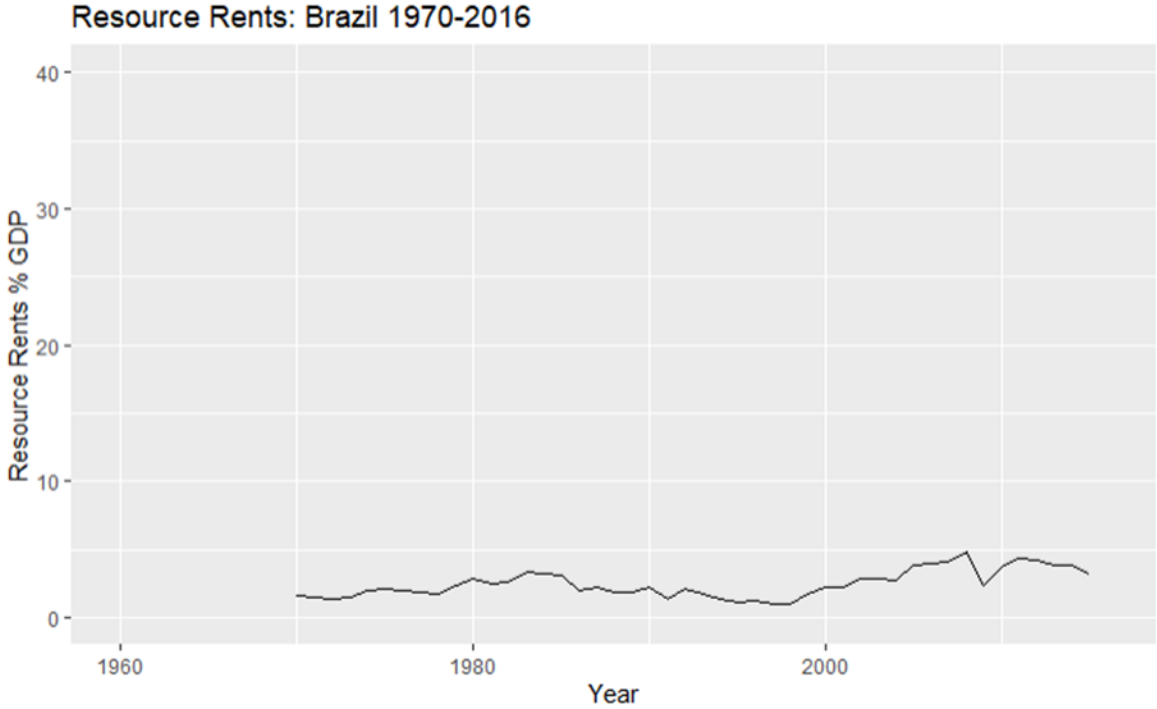
Overall, low political representation in Brazil at the national level lend some evidence to theoretical propositions that indigenous representation motivates rights adoption. There are currently no national laws that require indigenous representation in national government bodies in Brazil. Indigenous representatives bring relevant issues for their communities to the negotiating table when they otherwise would be peripheral concerns the central government. The Brazilian case partly supports this theory. But this case confirms the results of statistical models in chapter three, that low representation is associated with constitutional rights that create democratic equalities, like the recognition of native communities as political citizens, and representation rights such as the right to health and education. This is exactly the outcome that we see in the Brazilian case. Though representation of native populations in government is not constitutionally required, there are some efforts at government implementation and the adoption of equal rights despite low representation, such as the creation of deliberative bodies that discuss

indigenous issues. Since indigenous representation in Brazil is relatively weak, however, rights have not been adopted beyond those that create terms of equal political access.

### Resources and State Capacity in Brazil

Like many other countries in the region, Brazil has a government that is heavily invested in its natural resources. But its dependence as a total percentage of its GDP only hits 5% between 2007 to 2008 at its highest point. Average rent dependence lands Brazil at around 3% total natural resource rents as a percentage of its national GDP (WB). The state has a fairly high extractive capacity compared to other countries in the region, although it is lower than Chile's on average (WB).

Figure XXIX:



Although indigenous activism and constitutional rights have been present since the 1980's in Brazil, state interests regarding resources still threaten the well-being of these communities and endanger their way of life. During the 1987 constitutional debates, two laws were proposed to protect Amazon regions from indiscriminate mining projects. But these laws were ultimately rejected, and congress continues to have sole approval power over state led extractive programs (Constitution of Brazil 1988).

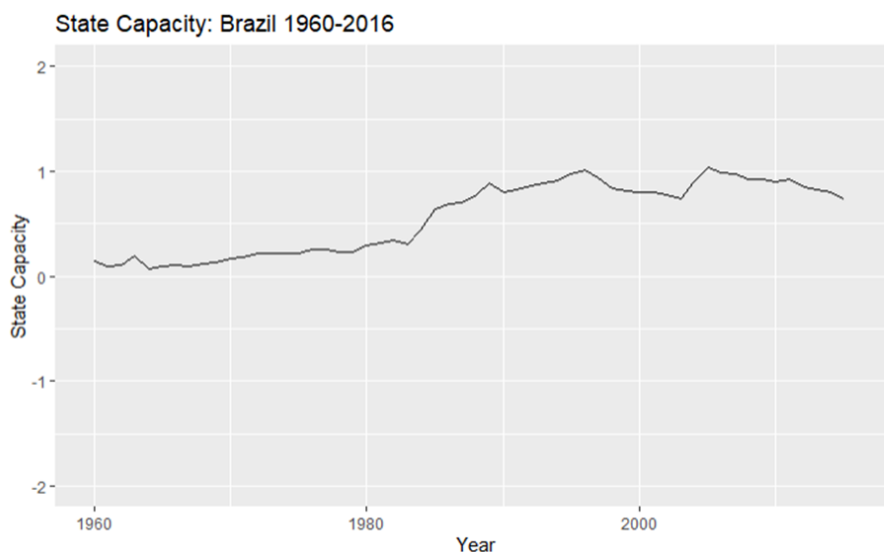
After Brazil's democratic transition, indigenous mobilization faced ongoing resistance from the military, which pursued state sponsored mining projects, and land claims from regional military political elites from the former regime. Although the 1988 removed policies that promoted indigenous land fragmentation, private titleholders and military leaders contested indigenous land claims that resulted from the revised laws. These lawsuits cited the need for the protection of private property and economic efficiency over the limited interests of indigenous communities (Constitution of Brazil 1988; Schwartzman, Araujo, and Pankararu 1996). The contestation against indigenous claims to land and resources continue, and legal cases remain in the hands of Brazil's state department of justice, per constitutional decree.

In addition to petitions against native land claims in the judicial branch, there are numerous lobbyists in Brazil's national congress that actively work against the adoption of indigenous rights. These groups include large contractors and companies in the hydroelectric and foresting sectors. Recently, the legislature approved the creation of the Xingu River mega-dam to be built in ancestral lands. The project was completed in 2016 and was voted through Brazil's legislature as in the best interest of national well-being (Hanna, Langdon, and Vanclay 2015).

Mass military campaigns against native communities to secure natural resources and land have not occurred since democratization in the early 1990's. But state police forces still

demonstrate the capacity to suppress indigenous political activity when challenged. During the 2014 Brasilia protests led by indigenous community leaders, police greatly outnumbered protestors and quickly suppressed the crowds. State police were heavily armed with tear gas, crowd control bombs, rubber bullets, and 3 helicopters that it used to silence the protests (Hanna, Langdon, and Vanclay 2015). Though the government ultimately gave in to some indigenous demands, the state clearly demonstrated that they have the advantage in violent capacity. Statistical evidence shows that state capacity in Brazil trends on the slightly higher than average side relative to other regional cases.

Figure XXX:



Currently, the non-protection of indigenous lands and resources in constitutional law facilitates the exploitation of their resources and sacred lands. Continued land invasions, illegal mining activities, and the compounded crisis of the Coronavirus pandemic, have created an ongoing emergency for vulnerable indigenous communities. Increasingly, the invasion of

indigenous lands has created dangerous health conditions for these vulnerable populations (Machado and Loures 2020). Below, an indigenous representative from these endangered communities where mining activity has increased describes her point of view.

*“Quando o vice-presidente diz que lideranças Munduruku apoiam o garimpo, é mentira. Essas pessoas que são ouvidas pelo governo não são respeitadas pelo povo Munduruku, menos ainda pelos caciques, pois não são consideradas lideranças. Isso porque liderança é aquele que luta pela vida de seu povo, aquele que luta pela defesa de seu povo, não destruindo o território e muito menos defendendo os empreendimentos do governo..... Sendo mulher e mãe, mesmo com os filhos no colo, sempre acompanhei os caciques nas reuniões e nas ações contra as invasões, contra a destruição da mãe terra, sempre denunciemos à mídia e à imprensa que o governo não estava e não está fazendo nada pela defesa do território e pela defesa da vida dos povos indígenas. Quando ocorrem as assembleias sempre tem essas denúncias,”.*

*“When the vice president says that the Munduruku peoples were consulted, this is a lie. This is because these [government] meetings are very small, and the caciques never participate. In the big meetings, with the real leaders, those people who defend the mining projects go to these meetings just to cause harm. The caciques decide for the majority, but those leaders with other interests will always go there to interfere. We, the women, leave our homes, leave our children, and go along with the warriors to protest and expel these miners from our land.....Being a woman and a mother even with my children in my arms, I always accompanied the chiefs to the meetings and actions against invasions, against the destruction of mother earth, we always decreed to the media and the press that the government was not, and currently is not, doing anything for the defense of the territory and lives of indigenous peoples.*

*When the assemblies take place, there are always complaints such as these,*” Kabaiwum Munduruku of the Munduruku village (Machador and Loures 2020).

Indigenous communities recognize the need to expand constitutional rights to further protect their lands and resources from continued encroachment. The health of these populations is closely linked to the environmental integrity of these resource rich regions, a fact which is not currently recognized in Brazilian constitutional law. Efforts to ensure the protection of indigenous land and resources is a current point of contention in Brazilian politics.

Overall, resource rent dependence in Brazil is on the lower side compared to the other cases examined in this work. But its strong state capacity and consistent involvement in indigenous, resource rich regions, alongside ongoing private suits against native land claims in court suggest that the state is likely to resist the adoption of future indigenous provisions in the constitution. Moreso, the state, while not having engaged in massive violent campaigns against native communities in defense of national claims to land and resources, has demonstrated the capacity for violence and suppression against indigenous protests when needed. State security forces are equipped to deal with politically active minority populations and can sufficiently suppress indigenous mobilization, as demonstrated in 2014. Statistical models in chapter 3 show that states with a strong state capacity are less likely to adopt any types of indigenous rights into constitutional law. In Brazil, native peoples are recognized and afforded some representative rights like the protection of culture and education in the 1988 version of the constitution. Therefore, this case partly supports quantitative conclusions. Rent dependence is on the lower side, but the government continues to show vested interest in the resources overwhelmingly located in indigenous territories. Consistent with previous statistical results, state investment in natural resources first motivates the adoption of rights that establish equal citizenship, like



recognition and representation rights, but is not associated with the adoption of resource or autonomy rights. Brazil's government was willing to adopt some rights that establish equal access to Amazonian regions but have failed to legitimize indigenous claims to the futures of those lands and resources.

### **Public Perception of Indigenous Rights in Brazil: Future Potential Protection?**

Next, I will use recent public opinion data to further explore the evolution of indigenous rights in Brazil's constitution. This includes an analysis of current attitudes on indigenous issues and the potential for rights to evolve beyond those already adopted.

Many Brazilian citizens recognize that there is currently injustice in Brazil's political system against its indigenous populations, even though indigenous populations have some representation in the current iteration of the nation's constitution. In a recent survey, 79 % of respondents said that injustice against indigenous populations exists, depending on the region in which they reside.<sup>6</sup> Before Jair Bolsonaro's presidency in 2019, many citizens considered that the situation for native populations had improved, especially under President Lula from 2003 to 2010; 43% of respondents note their condition as improved under the Lula regime (FPA 2010). Under Bolsonaro, on the other hand, indigenous land recognition came to a halt, enforcement of existing land protections was eroded, regulations were dismantled, and no further constitutional protections were adopted into law.

Though injustice against indigenous citizens is widely accepted as an issue in Brazil, many remain oblivious to their current demographics or specific political pursuits. Basic

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<sup>6</sup> For example, 79% of those polled in the Northeast, 82% in the capital Brasilia, and 85% of citizens in the south recognize that there are current injustices in Brazil when it comes to its native populations (FPA 2010).

knowledge about the status of indigenous peoples is strikingly low. For instance, 61% of respondents in a survey data report that they have no idea how many native citizens reside in Brazil today. Moreover, 43% of respondents do not know what current indigenous rights and national directives exist in national law. But most think the government needs to defend whichever rights the state has adopted for native communities under the 1988 constitutional text (FPA 2010).

There is some supportive evidence that Brazilians both recognize some indigenous issues that are not yet protected in constitutional law. But many see universal issues as most important for indigenous communities, including equal access to health, and education that are already protected in the current version of the constitution. When it comes to citizens recognizing indigenous issues outside of those rights already adopted into law, a large proportion of respondents noted that land conflict and invasion as issues in need of the most attention (34%). Land rights are not currently defined for indigenous populations in constitutional law. Their adoption would be an expansion of indigenous rights provisions to include resource protection, depending on the substantive content of the adopted laws. But many citizens consider access to basic universal rights such as healthcare (29%), education (18%), anti-discrimination policies (16%), and the protection of culture (15%) as the primary issues that need resolving (FPA 2010). The protection of these basic rights was adopted in 1988 alongside the recognition of indigenous populations as political citizens. This signals public attitudes that lean toward keeping indigenous rights equal in nature. In broad strokes, while some citizens recognize land claims as the most important issue that needs to be solved for Brazil's indigenous populations, many consider issues that impact all citizens as more important, such as universal healthcare, education, and job access. The results of public attitudes are overall mixed, with some

recognition of the need to expand protection beyond current constitutional arrangements, and others seeing universal, already adopted rights as in need of the most governmental attention.

The public broadly perceives the need for the government to protect indigenous populations from private business interests. Most citizens do not blame the federal government for current indigenous struggles. Instead, most respondents in a recent survey blame large foresting companies (44%), compared to only 11% who state that the government is at fault (FPA 2010). The federal government is seen as an entity that needs to come in and defend indigenous citizens from the exploitation of large extractive companies, instead of being a part of the problem preventing indigenous freedoms. These responses also show attitudes that the government need to address protecting indigenous populations from private interests as a strategy for improving their status.

Public opinion research tells us a few things. First, citizens recognize that there is injustice against native populations in Brazil under the current constitutional arrangements. But while some recognize indigenous aspirations such as land and resource protection that go beyond those laws in the current constitution, others cite issues such as access to healthcare, and education as preeminent. This also indicates some preference toward universal rights, versus rights that establish special indigenous land and resource access. Next, most respondents see large foresting companies, or *madeireiras*, as the primary threat to indigenous wellbeing. Only a small number of respondents see the federal government as a primary problem, but rather consider it the force that protects indigenous communities from private interests. While some citizens note the need for indigenous rights to land, a significant portion stress instead the need for access to neutral universal rights versus autonomy.

In sum, Brazil's citizens are highly supportive of the government serving indigenous rights to education, healthcare, and non-discrimination. A significant number of respondents did identify indigenous land issues as the most pressing issue facing these populations. This is evidence that there may be some public tolerance for the expansion of indigenous constitutional citizenship to include rights that protect ancestral territories and resources. However, significant numbers of respondents in this survey data identified universal issues as the most important, so the evidence is mixed. Importantly, Brazilians stress the need for the government to protect indigenous communities from private interests. This contrasts with state, or national interests, that are carried out for the general good of the population. Finally, a significant proportion of citizens know little about the current status of indigenous constitutional rights in Brazil. Overall, I conclude that there is some recognition for the expansion of indigenous rights beyond their current definition in Brazil's constitutional protections despite this fact. But many citizens' perceptions align with the continued protection of current rights and against private interests, but they do not consider the need for protection against state encroachment in the name of national interests.

Though mass support is not the only indicator of the likelihood of indigenous communities to gain expanded in the near future, public opinion indicates the salience of these issues on the ground. Under democratic institutions, politicians are not likely to respond to demands that are not universally popular among their constituents. However, in the future, other work should further study indicators for the implementation of indigenous constitutional protection, including the independence of the legislature.

## **Discussion**

The case of Brazil supports theories of incremental rights adoption. Here, indigenous recognition was adopted alongside various representation rights that expand equal democratic citizenship to previously excluded groups. Recognition of indigenous populations as political citizens is either adopted first or alongside other representative provisions, as seen in this case. If indigenous constitutional rights expand in Brazil, it is likely that they will take form as resource rights, as recognition and representation rights are pre-established.

Public opinion polls show some recognition of the need to address indigenous issues concerning land titles and rights, but many also see universal rights such as healthcare, education, and representation as the most important issues in need of solving. Overall, polling data is mixed, but leans the preference to address very limited indigenous issues that do not recognize the federal government as an instigator to current problems. Surveys suggest that some of the public recognizes the need for further protection of indigenous ancestral lands, but the federal government is largely not considered an instigator. These perspectives may create issues for future constitutional changes that define indigenous resource and autonomy rights.

Per theoretical expectations, democratization in Brazil coincided with the adoption of indigenous rights that are compatible with modern democratic ideals of equal citizenship. Democracy is expected to be associated with indigenous rights that promote equal access to political goods and representation. But it does not motivate the creation of indigenous rights that correct historical economic and political inequalities or create divisive national identities. Thus far, this is the case in Brazil. Without other motivating factors, rights that establish political access based on indigenous status have not been adopted.

The indigenous population proportion in Brazil is low and is highly fractionalized among hundreds of different nations. Additionally, movements were historically repressed under

restrictive authoritarian regimes. But recently indigenous mobilization networks have emerged. Brazil is recorded as a mid-level country for indigenous mobilization strength, per recorded mobilization headquarters from the Harvard transnational dataset (2020). Additionally, indigenous mobilization was legalized prior to the state's democratization, and protest activity continues despite heavy state suppression. Indigenous movements and coalitions of NGOs and other environmental groups were key in pushing for indigenous protection in 1988's iteration of the constitution. However, they have not yet gained the momentum needed to motivate state implementation of more rights for their communities. These groups are expected to continue to grow in strength, and push for the adoption of more indigenous protection in constitutional law in Brazil in the near future.

There is still no required indigenous representation in national government in Brazil. As in earlier chapters' statistical models, low indigenous representation in government is associated with the adoption of indigenous recognition and representation rights. This is the case seen in Brazil. Furthermore, strong indigenous representation in government is associated with indigenous autonomy rights in the constitution. Absence of strong indigenous representation in government is associated with the non-adoption of these rights, which is the current case in Brazil. Future work should continue to watch these shifts in indigenous representation in the country, which are changing in recent years. It is likely that with increased indigenous representation in national political bodies, issue salience will increase and motivate the expansion of constitutional protections for these populations.

Last, government policies show a direct interest in the extraction of lucrative resources, particularly in the Amazon regions predominantly occupied by indigenous communities. Additionally, the comparative state capacity of the Brazilian government is on the higher end in

the region and has been used to suppress indigenous uprisings and occupy indigenous territories in recent years. In broad strokes, a strong state capacity and interest in natural resources has blocked the adoption of resource autonomy rights for indigenous populations that protect original lands from encroachment.

## Chapter VII: Chile

*"Pinochet tried to homogenize us by saying that we are all Chileans and that there is no room for any other identity. Many Mapuche had to abandon their language and culture because expressing it was linked to communism and could put their lives at risk," Jaime Cuyanao, of the Mapuche nation.*

### Intro

The Chilean case represents the low-level indigenous rights outcome. The active constitution has no formal recognition of indigenous populations. Taking a case level view of a null case such as Chile allows important insights to be gathered from an outlier country, which can inform further comparisons in the future. This analysis is part of the nested design used in this work, which joins statistical analysis with in depth study of causal mechanisms on the ground (Lieberman 2005).

Currently, Chile is one of only two nations in the Latin American region to not recognize its indigenous population in constitutional law. Recent attempts to replace the Constitution in 2022 were rejected by Chilean citizens and leaves the status of native peoples in the state unchanged. They have no legal right to their culture, language, lands, or resources, and remain on the periphery of state politics. Moreover, recent attempts to legalize a new, highly inclusive document that established social rights for all citizens, as well as numerous protections for



indigenous groups was rejected. Concerns centered around the opinion that some indigenous rights were “too much for too few” and ran the risk of dividing national interests (IPSOS 2022; NYT 2022). But indigenous groups in Chile continue to push for their recognition on the nation's current constitutional council despite these setbacks.

First, this chapter will summarize the colonial and state building process in Chile, and how this process excluded indigenous populations from constitutional representation. Then, I discuss the non-adoption of indigenous rights in Chilean constitutional law over time. The arguments of previous chapters posit that the content of indigenous rights have implications in their likelihood of adoption. Additionally, rights should be adopted via an incremental process that expands indigenous access to political resources in steps. Since there is an absence of both indigenous provisions in the constitution, and only a failed constitutional referendum in recent years that did not follow the path of incremental adoption, public opinion data is used to fill the gaps. Recent polls offer insights into national divides over the content of the recent proposed draft of the constitution that failed to pass. Results show that there is a divide over the content of some proposed indigenous rights in the constitution that are seen as “too much for too few”. Additionally, respondents rejected the suggestion of providing extensive rights to original populations, like regional autonomies, as a political group that was previously excluded from protection. Simply, Chile has not adopted indigenous rights into national constitutional law as of 2022. A proposed document that included sweeping protections for these communities was rejected, with the absence of incremental adoption and overrepresentation of indigenous groups seen as main issues.

After establishing the current status of indigenous representation in Chile, I move to examine domestic factors that were found to be key in the rights adoption process. These include

democratization, indigenous mobilization capacity, and state resource dependence and extractive capacities. Overall, this chapter finds that the current indigenous non-representation in the constitution is due to a few key factors. First, there is a lack of incrementalism in the adoption of indigenous provisions into constitutional law. Recent attempts of reform include expansive rights that are seen by constituents as too much political access for formerly absent indigenous groups. Democratization has not impacted the adoption of indigenous rights in Chile, and violent suppression under authoritarianism dismantled mobilization networks, leaving them weaker today. The result is that indigenous populations are still not represented in constitutional law. Similarly, there is no recent indigenous representation in national governmental office, and key indigenous issues remain unrepresented in the national political discourse. Finally, high state investment in natural resources and a high relative state capacity and involvement in indigenous territories has facilitated the continued exploitation of indigenous rights to land and resources. These factors are found to inhibit the expansion of all indigenous rights in the Chilean constitution.

### **Colonization and State-Building in Chile: The Creation of Indigenous Constitutional Exclusion**

The Spanish colonized the region that would become the state of Chile beginning in 1540. These campaigns destroyed entire native populations, restricted their access to ancestral lands, and disallowed them a role in political life. Indigenous populations that were not subjected to violent policies of genocide were enslaved and used as the main labor force for agriculture and mining projects. These projects expropriated the land's wealth and sent it directly to the European continent (Jofre 2007). From this point in history native populations were barred from political activity and citizenship.

The exploitation and marginalization of indigenous peoples continued from independence through the state building process. The Chilean state was officially founded in 1818, and its new government immediately began plans to dismantle indigenous communities even further and sold off native lands to non-indigenous citizens at an increasing rate (Lucic 2005). From 1860-1883, the state carried out a policy of military conquest in the indigenous Araucania territory. But the state met fierce resistance from the Mapuche nation, and the result was full out warfare between the new, independent Chilean government, and its original peoples. The result of the conquest was further decimation of native populations, and the creation of 3,000 indigenous reserves where remaining populations were forcibly relocated. Between 1884 and 1919, the Mapuche nation was largely eradicated, and those that survived were forced onto national reserves. Their lands were sold off as private property, and are now owned by transnational companies, like Ralcohydroelectric in the native AltoBioBio region (Jofre 2007). At the conclusion of this era, the Mapuche nation was left with less than 5% of its original territories (Rodriguez and Carruthers 2008).

After reducing and restricting remaining native populations, the Chilean government created policies that established a homogenous Chilean national identity. Coined as “*Chilenización*”, or “*Chilenezation*”, the state pushed a white, or European, identity, and excluded indigenous populations from national citizenship (Postero, Risor, and Montt 2018). In this way, Chilean nation-building ideologies reinforced racial hierarchies that elevated white European ancestry and negated the existence of indigenous peoples.

Consistent with cases across the region, the colonial period was one that meant the genocide, enslavement, and the desecration of indigenous communities. Spanish colonial law deemed native populations as non-citizens, barring them from political rights and protection. The

fate of the original nations did not change when the colonies in Chile declared their independence from the Spanish crown. Instead, indigenous peoples were gathered into and restricted in reservations by Chilean forces and excluded from national citizenship. These conditions set the precedent for continued marginalization of indigenous political interests in Chile's more recent political history.

### **Summary of Indigenous Rights Adoption in Chilean Constitutional Law: Non-Incremental Adoption of Rights in Chile**

From the institution of the nation's first constitutional document in 1818, indigenous populations have remained excluded from representation at the national level. As of 2022, Chile remains only one of two nations in the Latin American regions to not adopt any indigenous rights provisions. Therefore, there can be no summary of current rights provisions that protect these populations in national law. This research finds that there is no mention of indigenous constitutional protection in any version of these laws in Chile.

Just as there can be no discussion of indigenous rights provisions in this discussion of Chilean law, but there is also no historic evidence of incremental representation for their communities. The most recent attempt to revise the constitution included the input of indigenous leadership in its drafting, and the head of the committee is a *Mapuche* representative. Proposed indigenous provisions in the document included not only political recognition and the representation of their communities, but also the creation of new plurinational institutions and rights to self-government. The following sections will first outline domestic impacts on rights adoption. Then, I will briefly discuss public opinion on the current referendum in Chile, which shows evidence that the absence of an incremental adoption process of indigenous constitutional rights hurt the likelihood that the proposed document would pass referendum.

## **Democracy and Indigenous Constitutional Rights in Chile**

Recent political history in Chile includes both periods of democracy, and decades of violent authoritarian rule. A shift to democracy did not motivate the adoption of equally representative rights for native citizens. Quantitative models presented in chapter 3 show that states with lower democracy scores adopt indigenous recognition and equal rights early in the democratization process and is negatively associated with the adoption of indigenous resource rights. But the evidence presented here suggests that recent decades of indigenous laws that repressed indigenous participation have not yet been done away with completely.

Violent policies of indigenous removal from land instated in the colonial era accelerated under recent authoritarianism in Chile. Anti-indigenous policies became entrenched and remained after the end of this authoritarian era. Despite the country's relatively high democracy score in recent years, there is continued repression and destruction of native lands and populations despite some governmental attempts to adopt more inclusive laws. Shifts in democracy have not yet impacted the status of indigenous constitutional representation in Chile. Below I will outline a brief overview of recent democracy in the Chilean state and its impact on the status of indigenous constitutional citizenship.

In 1970, Salvador Allende was democratically elected as president of the Chilean republic. His Socialist platform included agrarian reforms that, by 1972, returned 69,436 hectares of stolen land to 201 Mapuche communities (Lucic 2005; Rodriguez and Carruthers 2008). This period represents a shift in state attitudes toward indigenous citizens, although no constitutional rights were adopted for their communities under the Allende presidency.

Allende was removed via military coup in 1973, and all agrarian reform policy in favor of indigenous communities came to a halt. The military government under general Pinochet reformed national laws to favor state interests. These interests included expedited extraction of Chile's natural resources, most of which exist on native lands. Of the previously recovered Mapuche lands under Allende, 28.36% of lands were returned to private property owners, 33.08% were given to campesinos, 6.94% were transferred to institutions, and 31.62% were publicly auctioned. Overall, native lands were divided into 26,000 private land deeds (Lucic 2005). Pinochet decreed the prohibition of traditional land use by indigenous communities under law 2.568, and furthermore established laws of state paternalism over indigenous peoples. These laws outlined state ownership of indigenous lands, resources, and communities, in the interests of native peoples, who were deemed unable to govern themselves (Rodriguez and Carruthers 2008).

From 1979-1982, the government repressed indigenous political movements and activity, disallowed their political participation, and employed campaigns of suppression and imprisonment where communities were deemed an issue. Over 80 indigenous community leaders went missing during this time, while the state imprisoned countless other native activists (Lucic 2005). Where the previously elected president began to embrace indigenous communities, authoritarian rule under a military government was especially harsh to indigenous citizens in Chile.

The constitution instituted by the Pinochet regime conceived the Chilean nation as ethnically white, and homogenous. Constitutional rights created during this era stressed equality regarding rights, and indigeneity remains absent in national law. While many of the countries in Latin America were adopting some sort of indigenous recognition into their constitutional law,

Chile remained gripped by authoritarianism and a constitution that defined the nation as ethnically white and prohibited the traditional use of native lands.

Democracy ultimately came to Chile late in the 1980's after a highly orchestrated exit by the Pinochet regime. However, the democratizing state of Chile would inherit the repressive constitution enacted under the previous military dictatorship. This included lifetime appointments for political elites, many of whom were allies of Pinochet. Additionally, the rights of civilians were restricted in favor of military authority. In broad strokes, the constitution of this democratizing regime was not put in place by a nationally representative body and remained authoritarian in nature (Couso 2011).

This period was the first peaceful one for the nation after decades of violent military rule. However, democracy did not fully stabilize in the region until the 1990s. But indigenous populations remained absent from constitutional law despite high gains in democracy scores. The restrictive constitution from the Pinochet era is only now being debated and rewritten. Despite democratization and a shift in the treatment of indigenous communities, deep rooted issues remained.

The transitional Aylwin government continued the use of harsh repression of indigenous political activity. The state punished indigenous political activists under anti-terrorism and security laws that included harsh jail sentences for community leaders and citizens. Aylwin also remained committed to the pursuit of hyper extractive neoliberalism, and the mass export and commercialization of Chile's natural resources in predominantly indigenous territories (Lucic 2005; Rodriguez and Carruthers 2008).

Under the same democratic government in 1993, attempts to reform the constitution to include rights protecting indigenous representation, education, development, and access to land were rejected by a group of conservative senators. Future endeavors to recognize indigenous peoples in the constitution by President Lagos in 2004 were ignored by Congress and native citizens remained absent from national law (Lucic 2005; Postero, Risor, and Montt 2018; Rodriguez and Carruthers 2008). The UN's ILO 169 was ratified by the government in 2008, but these laws were never adopted into national constitutional law (UN; Constitution of Chile Actual). Indigenous practices, such as the dissemination of native languages and culture in public schools, for example, remains legally unconstitutional in Chile under the current document.

Finally, Chile's elections have been riddled with issues in native communities since democratization. Issues historically include low indigenous voter turn-out, missing ballots from original communities, and widespread voter registration errors. Indigenous representation in the state's democratic elections remains underrepresented. Most recently, right wing leader Sebastian Pinera was re-elected in 2018. He continues to pursue neoliberal resource extraction and embraces a hegemonic view of Chilean national identity (Postero, Risor, and Montt 2018; Rogriguez and Carruthers 2008).

Recent shifts toward democracy in Chile have been insufficient in creating indigenous constitutional representation. Some leaders acknowledged native issues, but all have failed to facilitate actual changes in the law. Many politicians, including former President Pinera, support an ethnically homogenous national identity. Current President Bolic (elected to office in 2022) oversees the country's constitutional referendum that proposed expansive social rights, including numerous native provisions. The reforms have, until this point, failed, and Bolic's political opposition name some indigenous rights a danger to the nation's unity and sovereignty (El Pais



2022). Native populations remain underrepresented in Chile’s recently established democracy, and their place in its historically exclusive society is still a debated topic.

In sum, Chile experiences a very recent history of violent authoritarianism. This era brought accelerated resource extraction and repression of native populations throughout the state. Though Chile experienced increased democracy scores since the late 1980’s with the removal of the authoritarian Pinochet, Chilean leaders have failed to implement constitutional changes that would benefit its native citizens. Instead, indigenous political activists continue to be punished under harsh anti-terrorism laws as threats to national security. Current constitutional negotiations are ongoing, but Chile’s native populations remain unrepresented under current national law and indigenous inclusion is considered a threat by many to national unity.

Figure XXXI:

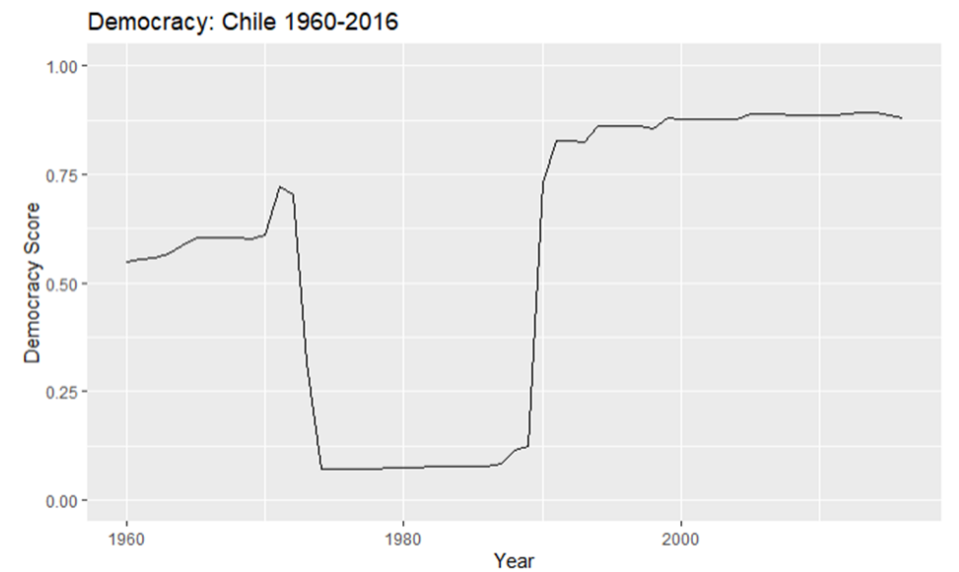


Figure 32 plots Chile’s democracy score from 1960 to 2012. Democracy scores remain low throughout the 1980’s during military rule. A sharp increase begins in the late 80’s and is followed by a high score from the 90’s on. Notably, Chile’s democracy scores from the 1990’s

are slightly higher than both Brazil, the medium indigenous rights example, and Bolivia, the state with the most native protections in the constitution. But the Chilean constitution remains without constitutional provisions for its indigenous populations.

### **Indigenous Mobilization in Chile**

The estimated indigenous population proportion in Chile is one of the smallest in the region- 0.3% of the national population. This means that the proportion of indigenous to non-indigenous citizens is very low, and the potential for indigenous mobilization to cause sustained political instability is comparatively low. Sustained campaigns of indigenous assimilation remained intact in Chile through the 1980's military dictatorship, and further dismantled existing populations and indigenous organizations. Low populations are posited to lead to low likelihood of political representation in constitutional law, and the results of this case study counter statistical conclusions which show that smaller indigenous populations are more likely to gain access to constitutional recognition and equal rights (see Chapter 3).

Along with having one of the smallest indigenous population proportions in the Latin American region, Chile's native groups are the least fractionalized with only three different recognized groups. Theoretical prospects argue that less fractionalization *facilitates political coordination among groups and promotes indigenous mobilization capacity*. Simply, there is less room for discord among the differing political interests of various indigenous nations. The Chilean case does not represent this proposition. Low native fractionalization has not helped secure any constitutional representation for these groups in Chile as of January 2023. But this case does support statistical models that show that higher fractionalization, or more separate indigenous nations, are more likely to live in a state that adopts rights that are both equalizing and divisive.

Compared to the other country cases in this chapter, Brazil and Bolivia, the indigenous share of Chile's national population is much smaller. Chile's native communities have much less leverage in terms of population size vis a vis other citizens due to their low mobilization capacity. This not only limits the legitimacy of indigenous claims to representation at the national level but makes it highly unlikely that they will achieve rights beyond those that establish terms of equal citizenship. Small native population proportions in Chile are theorized to hurt the prospect of the adoption of native constitutional rights due to their limited mobilization capacity against entrenched national institutions.

Of the native populations in the Chilean state, the *Mapuche* are the largest group with territorial roots in the southern *Auracania* region. The second largest group is the Aymara, but most Aymara live in Bolivia, and there are fewer in Peru. The smallest Aymara population resides in Chile, comparatively (Jofre 2007). The map below outlines indigenous population estimates as a total percentage of the region. Then, Table 16 lists estimates of indigenous group populations in the Chilean state.

Figure XXXII: Indigenous Populations in Chile



Map from ECLAC(2020)

Table 21:

**Indigenous Groups in Chile, Census 2002**

<i>Mapuche</i>	604, 349
<i>Aymara</i>	48, 501
<i>Atucameno</i>	21, 015
<i>Quechua</i>	6, 175
<i>Rapa Nui</i>	4, 647
<i>Colla</i>	3, 198
<i>Kawashkar</i>	2, 622
<i>Yamana</i>	1, 685
<i>Total</i>	692, 192

\*Estimations from Lucic (2005): Challenges in Chilean Intercultural Policies

Overall, there is a concentration of regions in the north, and a few scattered throughout central and southern Chile where indigenous peoples make up at least half or more of the population. Notably, many of these regions are also less sparsely populated overall. Total census estimates in raw numbers show a fairly low indigenous population proportion that is dispersed throughout the Chilean state.

As expected, low population numbers contribute to a low mobilization capacity. But this is not the only issue facing indigenous movements in Chile. Indigenous populations in Chile have had periods in which they were militant. But state efforts and suppression effectively culled these movements in recent political history. The result is a weak capacity for indigenous mobilization, and non-existent constitutional representation. Without sustained grass roots movements over time, native populations in Chile have lacked the force to bring state entities to

negotiate constitutional provisions in their favor. Weakened indigenous mobilization harms prospects for the negotiation of constitutional rights on the behalf of the original populations.

From 1860-1863 indigenous communities fought to resist state led land seizures and military conquests. The original nations were defeated and dismantled by Spanish forces during this campaign. Those that survived these state-led campaigns were relocated to national native reserves, and the state embraced policies of indigenous paternalism. The state pacified existing indigenous movements under military occupation and increased surveillance (Jofre 2007; Postero, Risor, and Montt 2018; Rodriguez and Carruthers 2008).

In the early 1960's, mobilized Mapuche communities played a major role in the next wave of indigenous movements. These groups were credited with the adoption of preliminary land reform policies during Salvador Allende's presidency in 1972. Furthermore, sustained Mapuche revolutionary movements led to the recovery of nearly 70,000 hectares of ancestral land. But 1979 marked the beginning of intense indigenous repression under authoritarian rule. Indigenous political movements and groups became illegal, and key community leaders were imprisoned for political activism and protest activities (Lucic 2005; Rodriguez and Carruthers 2008).

Native mobilization was so harshly repressed under the Pinochet regime that there are no indigenous organization headquarters recorded as established in Chile for the entirety of this observation period. Though the *Harvard Transnational Movement Organization Dataset* likely underestimates indigenous mobilization on the ground, Chile's score of 0 relative to Brazil's score of 3 and Bolivia's of 6, signals that native communities in Chile lack the mobilization networks present in other countries. Organizational networks were harshly stamped out under authoritarianism, and this repression crippled native mobilization far into the future.

Recent instances of indigenous political mobilization are evidence that movement networks are beginning to recover. For example, militant indigenous groups participated in violent land invasions against Forestal Mininco. But the state deployed the military to subdue these efforts to protect their lands. Mass police brutality and imprisonment of native citizens continued into the early 2000s (Rodriguez and Carruthers 2008). As of 2016, the quantitative score for indigenous social movement presence in Chile remains 0, representing a continued weak capacity for native mobilization.

Small populations and legacies of repression of indigenous activities, taken along with proxy scores for mobilization strength suggest that Chile has a weak capacity for indigenous mobilization. Under these conditions, indigenous movements in Chile are not strong enough to positively impact rights adoption. This case shows evidence that without sustained mobilization, the adoption of indigenous provisions is unlikely. These results confirm the findings of statistical models, where indigenous social movements positively predicts the adoption of resource and autonomy rights for indigenous citizens (see chapters 3 and 4).

### **Indigenous Political Representation in Chile**

There is no required political representation for indigenous citizens in Chile. The country is constitutionally considered a “*mestizo*” nation, and discussions about indigenous issues were absent on both the left and right side of politics until recently. The state created the executive Council for Indigenous Development (CONADI) after democracy resumed in the 1990’s with the aim to negotiate representative rights for native citizens. However, the executive has historically hand-picked both the indigenous and non-indigenous council members and included state representatives such as the head of the ministry of agriculture, planning and development, and the state general secretary (Rodriguez and Carruthers 2008). Given the issues of state

centralism and elitism present in CONADI, it has become an extension of state interests that is used by party leaders to continue extractive projects in the original nations' lands. The organization has also failed to negotiate the adoption of constitutional rights, as promised.

Currently, native populations are hoping to increase their political representation through the negotiation of a new constitution. Seventeen of 155 seats are reserved for indigenous representatives on the constitutional committee, and the committee leader is a Mapuche woman. She promises to ensure that the interests of the original nations are represented in the new text. But the content of the new constitution is still being debated, and a draft was rejected in 2022. The protected representation of native populations in state government is left up in the air, for now.

In Chile, there is no guaranteed indigenous representation in national government. Even indigenous political councils, such as CONADI, are considered politically corrupt and highly centralized. The absence of native representation in Chile's national government means that many indigenous issues have not been brought to the nation's political agenda. Many indigenous issues remained non-salient to the general population until recent attempts at constitutional referendums beginning in 2019. Low political representation for native populations means that they are unlikely to secure constitutional protections. The Chilean case supports this theoretical position, as low representation coincides with low representation across all rights categories.

Results presented in chapter 3 also show that indigenous political representation positively predicts the adoption of autonomy rights into national law. Some of these rights, like the state's recognition of indigenous nations, and their collective autonomous rights, were included in the July 2022 draft that was rejected via popular referendum (Constitution of Chile; Draft July 2022). However, survival modelling suggests that indigenous representation in



government *precedes* the adoption of autonomous rights for original populations. In Chile, indigenous communities did not have state representation in political office before the attempted adoption of autonomous rights. This shows that the timing of indigenous political representation matters, and it is constitutionalized prior to autonomous rights.

In sum, there is a continued non-representation of indigenous communities in Chilean national politics. CONADI is considered highly corrupt, and only recently have indigenous citizens been consulted on a constitutional committee. The political underrepresentation of these populations means that their grievances are left out of mainstream political policy, and the salience of these issues has remained low in the national government. Future work should continue to examine the recent changes in indigenous political representation in Chile, and how these impacts rights outcomes in the future.

### **Resources and State Capacity in Chile**

Chile, like many other states in Latin America, has a history of resource dependence and economic models that rely on their extraction. High resource dependence is theorized to repress the adoption of indigenous constitutional provisions. This is because state economic performance highly relies on natural resources that reside in native lands. States with a high capacity to extract resources and exert physical control over their territories similarly restrict rights that establish native autonomies and protection of resources. This makes the state more capable of intervening and exerting control over valuable lands, and less likely to cede protective resource rights and regional autonomies. The Chilean state has increasingly occupied native lands. Private companies are allowed to do the same. Recent state occupation and intervention negatively impacts the likelihood of indigenous rights that protect these lands and its resource wealth. The

country case of Chile supports this position, but high resource dependence and state capacity to extract these resources has helped block rights adoption for native populations.

Under the authoritarian Pinoche regime, laws were created that allowed the military government to hand out individual land and water deeds to non-indigenous citizens across all original nations. The goal was to make native land more profitable in the global market and increase exports of state natural resources (Lucic 2005). No efforts have been made to change course from this model, and the government continues to promote private resource extraction on native lands. The current constitution, instituted in 1981, privatized means of production, and strongly protects private property rights for individuals and companies (Constitution of Chile 1981). Pinochet era law number 701 granted heavy subsidies to companies extracting timber from native lands (Chile D.L. 701). Under this same law, forestry companies currently enjoy up to 75% state subsidies.

Native lands in Northern Chile are occupied by various mining companies, urban water supply companies, and geothermal powerplants. These groups have gained access to water rights in the region to the detriment of native populations. In the south, hydroelectric companies, timber companies, and geothermal powerplants are highly invested. These sectors are also granted private property concessions from the state (Postero, Risor, and Montt 2018). Overall, timber makes up roughly 34% of all Chile's exports (Rodriguez and Carruthers 2008), and resource rent dependence as a total percentage of the state's GDP fluctuates anywhere from 5-17%. The high end of these estimates is higher than the peak resource rent dependence of both Bolivia and Brazil during the observation period (WB: GDP).

Figure XXXIII:

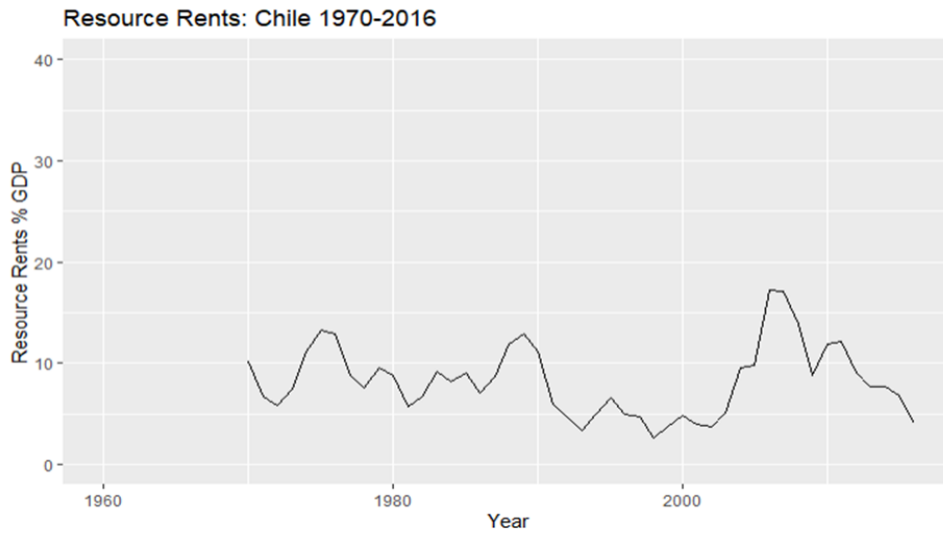


Figure XXXIV:



State and private projects in native lands have been expedited since the 1970's and remain in practice today. The government increased the surveillance and militarization of native regions alongside the arrests of activist native leaders as terrorists as recently as 2017 (Postero, Risor, and Montt 2018). Statistical data scores Chile's state capacity for violence and resource

extraction are comparable to Brazil's, but stronger than Bolivia's, and relatively strong relative to other countries in the region. The situation on the ground suggests that native populations have been subjected to military intervention consistently over the past 5 decades.

Higher resource dependence and state capacity are predicted to be negatively facilitated indigenous rights adoption in national law since state entities want to protect these assets and can do so. The case of Chile offers some evidence that increased government reach into native regions, alongside higher resource dependence works against the creations of native provisions in constitutional texts. Statistical models show that weak states are more likely to adopt all types of native provisions into law, but the results for rent dependence are mixed. The overall trend in the region is that rent dependence makes governments more likely to adopt rights that promote equal citizenship, but negatively predicts the adoption of autonomy rights. Chile conforms to the trend of increased capacity negatively predicting rights adoption. States with higher physical control over its territories and extractive capabilities are less likely to recognize indigenous nations in national law. Chile's case shows that states with interest and reliance on the natural resource sector are not likely to recognize indigenous aspirations of constitutional protection. The state itself has invaded and occupied native lands in recent projects and campaigns of military conquest. This signals that the capacity for the Chilean government to exercise control over these regions exists through recent history and is evidenced with many instances of occupation.

### **Public Perceptions of Indigenous Rights in Chile – The Absence of Incremental Rights Adoption**

In October 2020, 78% of Chilean citizens voted in a national referendum to throw out its authoritarian era constitution and create a brand-new binding document. The constitutional

committee debating the new laws includes seventeen native representatives and is headed by a *Mapuche* woman. The proposed draft of Chile's new constitution was put to a popular vote in September 2022. This version of the constitution would have instated broad rights for all Chilean citizens, including universal health care, welfare, and pension benefits. It also included reforms that granted indigenous nations autonomy on their lands, recognized the state as plurinational, and allowed their communities input in state and private project plans in ancestral regions (Constitution of Chile -Draft 2022). But this version of the national constitution was rejected. National polls suggest that while the people are for native recognition and representation, the laws in the proposed draft went too far.

On September 4<sup>th</sup>, 2022, Chile's population rejected the proposed new constitution. Campaigns that opposed the document argued that the special status it afforded indigenous peoples was too extreme. The current public opinion on the ground shows that while Chileans are ready to adopt a new constitution, they are wary of granting rights that are nationally divisive. Instead, the general public is more concerned about state policies that affect and benefit everyone. Native concerns are less of a priority.

For example, Maria Eugenia Muse, a 57-year-old health insurance worker, was polled after voting in the referendum with her mother. Both women voted to throw out the old constitution and create a new one. But both women voted against the most recent draft of the national document. When asked about her feelings on a plurinational Chile, she responded:

*“Fue un fiasco, una verguena lo que hicieron. La constitucion que hicieron no es la constitucion de Chile, del pueblo de Chile. Es de un grupo.”*

*“It was a fiasco, an embarrassment what they made. The constitution that they created isn’t the constitution of Chile, of the people of Chile. It is for one group.” --Maria Eugenia Muse (Nicas 2022).*

The current left leaning opposition party leader, Jose Antonio Kast, called the vote a *“triumfo del sentido comun,”* a *“triumph of common sense”*. The opposition takes the position that plurinationalism and indigenous autonomy rights are dangerous to national sovereignty (Fors 2022).

Similar IPSOS public opinion polls were held from November 11<sup>th</sup>-14<sup>th</sup>, after the constitution was rejected in September 2022. 44% of respondents think that the constitution needs to be a completely brand-new document, and the government should scrap the dictator era version from the 1980’s. But 42% of citizens think that the old document can be revised into a modern legal contract with less drastic changes. There is also a substantial portion of respondents that prefer to keep the old Pinochet constitution in place (El Pais 2022; IPSOS 2022). These perspectives show that the population is divided between a revolutionary recreation of the constitution, and an incremental adaptation of the old one. Chile is a conservative nation that has recently stabilized into a democracy, and the public is having difficulty backing extreme constitutional change. Moreso, 40% see the change as urgent, and that it needs to take place in the next year. 31% see the issue only as semi-urgent, something that can happen in the next 1 or 2 years (IPSOS 2022). The public is similarly divided over how quickly new laws need to be created. Overall, many Chileans prefer incremental, more conservative change over rapid revolution of the document.

Although the public largely believes that indigenous peoples should be present on the constitutional committee (74%), most feel that it should be headed by legal professionals (59%).

The current committee is headed by indigenous leaders, and many voters prefer that this was not the case. Only 26% of poll respondents have a positive view of the current committee, and 66% have a negative view of the committee and the negotiation process (IPSOS 2022). Public opinion leans toward a distrust of the current group debating the new state constitution, made up of several indigenous representatives alongside other Chilean representatives. They also question its indigenous leadership and prefer that those with previous expertise oversaw creating the new text. From this perspective, many view that native populations are overrepresented on the current committee and question the legitimacy of the deliberation process.

Finally, there is the issue of indigenous laws that are seen as compatible with Chile's current democracy and political institutions. 46% of respondents think that the state should include *recognition* of native citizens (IPSOS 2022). But this response applies to recognition broadly – the recognition of native culture, and language, for example. Voters believe, at least, that indigenous peoples should be recognized as citizens under law.

Other native constitutional aspirations presented in the draft are more controversial. Additional polls find that the top two reasons that voters rejected the draft of the constitution were, “*no todos van a ser iguales ante la ley*” (39% of respondents “not everyone be equal before the law”), and “*la plurinacionalidad de Chile corre riesgo de dividirse*” (31% of respondents “plurinationalism in Chile runs the risk of dividing us”) (El Pais 2022).

While Chileans support indigenous representation and presence on the constitutional committee itself, survey data shows that most feel that native populations are overrepresented in the process. Recognition of native populations is popular among voters, but the data also show what kind of rights worry the general population. Rights that elevate indigenous status, or give them special recognition under the law, for example led many voters to reject the most recent

draft. In the same vein, plurinationalism, or the recognition of multiple nations in Chile worries many constituents. Concerns that the draft was not representative of the people in Chile motivated its rejection, and again signals a populace that is wary of adopting well defined protections for a currently unrepresented minority population.

In the absence of an incremental process that first recognizes previously excluded indigenous populations and expands to eventually include the rights proposed in the most recent draft, indigenous rights were too much for many voters. This outcome lends evidence to the theories tested in chapter 4, that more expansive indigenous rights that are divisive to a unified national identity are more likely realized through a step-by-step process of constitutional change.

## **Discussion**

First, the Chilean case is a clear argument for an incremental approach to indigenous rights adoption in national constitutions. Chile's indigenous populations remain absent from constitutional law and representation. Recent attempts to rewrite the constitution have failed in public referendum, with many attitudes citing that some proposed rights for indigenous populations went too far. Overall, the jump from indigenous non-citizenship to extensive constitutional protections including the right to self-government may have been too much too fast for many Chileans.

Against expectations, democratization in Chile in recent decades failed to lead to the adoption of indigenous provisions in the constitution that promote equal terms of political citizenship for these populations. Survival models in chapter three show that countries with low democracy scores are highly likely to adopt initial indigenous recognition in the constitution- but



this is also not the case in Chile, where both authoritarian and democratic regimes have failed to adopt and indigenous provisions into law.

Chile has a very low indigenous population proportion and informs that the mobilization capacity of indigenous groups is relatively weak. But Chile's indigenous populations are made up of three main groups. Low fractionalization of ethnic populations is posited to facilitate political coordination and positively impact rights outcomes. But here this is not the case. Chile has no recorded social movement headquarters that serve specifically indigenous political interests, according to the Harvard Database for Social Mobilization. The weak capacity for indigenous mobilization in Chile is expected to negatively impact the likelihood that these groups can negotiate various constitutional representation. With no current indigenous protection in constitutional law, the expectation aligns with the outcome.

No required or recent indigenous political representation at the national level in the state of Chile plays a partial role in the non-expansion of constitutional citizenship to these populations. Representative councils that were created by the state are considered highly centralized with state loyalists as representatives, thus explaining their failure to expand constitutional citizenship to indigenous populations, as promised. In quantitative models, non-representation was associated with the adoption of minimal indigenous recognition rights in the constitution. But the indigenous populations in Chile do not yet even have this right. Indigenous representation in national government does predict the adoption of autonomy rights, and the case in Chile lends some evidence to this outcome. In the absence of indigenous political representation at the national level, constitutional rights that include regional autonomy have failed to be adopted as recently as 2022.

Finally, evidence shows both a high investment in resource rents as a vital part of the state economic system, and a high capacity for violence in ancestral territories. State policies over the past five decades consistently included the securitization of indigenous communities and the extraction of resources. Measures for resource rent dependence and state capacity concur with these findings and suggest a high reliance on resource wealth and heavy state involvement in indigenous territories. Per this work's theoretical expectations, strong states with a heavy reliance on resources as a portion of the GDP resist the adoption of rights that go beyond terms of equal democratic citizenship and legitimize indigenous claims to regional sovereignties and representation. But in Chile, these two factors contribute to a political environment where indigenous populations are yet to be recognized in constitutional laws. These results confirm statistical findings that show weak state capacity is associated with the adoption of indigenous recognition, representation, and resource rights. Evidence for resource rents is more mixed and is at first positively associated with indigenous recognition and representation in constitutional law. Here, this is not the observation. Instead, rent dependence is negatively associated with adoption of all rights types.

Future work should examine the continued constitutional debates that continue in Chile in 2023. It is likely that indigenous rights will have to be dialed back from the far-reaching autonomies proposed in the most recent iteration proposed by the council. Since many indigenous rights were a point of contention according to public opinion polls, first including indigenous recognition and representation rights that equalize terms of citizenship would make a constitutional referendum in Chile more likely to succeed. Today, much of the population is interested in advancing the welfare of all citizens equally, and less so focused on establishing rights of indigenous difference.

## Chapter VIII: Conclusion

*“Autonomy is not a gift, it is our victory,” Ronald  
Andrés, indigenous leader of Charagua Norte,  
Bolivia (IWGIA 2017)*

### Discussion of Argument and Findings

This dissertation examined the determinants of indigenous rights adoption in Latin America. I show that from uniform political exclusion, constitutional law in the region evolves to include indigenous citizens in numerous forms. I contribute meaningful insights into the patterns of indigenous constitutional rights in Latin America, a topic that remains understudied in recent scholarship. Through firsthand constitutional text analysis, I create an original dataset of indigenous rights and find a high degree of variance in the political rights and status of indigenous citizens in the region. Some states have yet to include indigenous provisions in their national constitutions. Others have adopted several laws that not only recognize indigenous peoples as equal political citizens with equal access to political resources, but also create terms of indigenous national sovereignty, and the recognition of multiple national identities.

. The patterns of indigenous rights adoption into national constitutions showed that not all rights are created equal. Terms and agreements vary, depending on the substantive content of the provisions to be adopted. This is a novel approach, which accounts for the fact that some

indigenous aspirations run counter to those that stress united national identity and equal democratic rights. The dataset constructed for this dissertation uses the content and political implications of indigenous political rights to code and categorize indigenous rights adoption.<sup>7</sup> Future iterations of this data set should expand to include new revisions to indigenous constitutional protections. It can also be used to aggregate patterns of minority rights adoption in other regions of the world.

Due to the variance in the content of adopted indigenous provisions, I argue that the content of indigenous constitutional rights impacts the likelihood of their adoption. Constitutional provisions renegotiate terms of citizenship in numerous ways and have political implications for both indigenous and non-indigenous citizens. Previous work on the expansion of minority rights notes the difference between social and economic rights. But this work does not consider that populations may have separate national identities and kinship ties (Benhabib 2005; Marshall 1950; Shaman 2003). This work corrects these gaps and categorizes indigenous rights in constitutional law in Latin America in four distinct categories: Recognition, Representation, Resources, and Autonomy. Recognition rights simply legitimize indigenous populations as political citizens. Representation provisions equalize rights to indigenous culture, education, health, and more. Resource rights correct historical imbalances and inequalities that coincide with indigenous heritage. Finally, indigenous autonomy rights define terms of self-government, and create new political institutions that represent these communities. Governments in Latin America have adopted these types of rights to various degrees over the past half century. The adoption of recognition and representation for previously excluded indigenous populations represents a natural extension of equal democratic citizenship. Both resource and autonomy

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<sup>7</sup> Refer to appendix for coding schema.

rights are considered to serve only indigenous populations and divide uniform political national identities in constitutional law.

Next, the approach used in this dissertation is mixed methods in nature. I first use a regional bird's eye view approach to discern regional patterns of indigenous rights adoption in national constitutions. Then, I use a nested case analysis by identifying three cases of interest for a more in-depth view of causal mechanisms. This approach strengthens statistical findings and helps identify key mechanisms for rights adoption at the state level (Lieberman 2005; Evertsson 2017). It is also used to assess whether results are similar or different across modelling choices. Here, while large-n output shows one causal pathway toward rights adoption, case study evidence shows that there may be multiple paths toward the creation of indigenous protections.

Second, I identify key domestic factors that impact the adoption of indigenous rights into constitutional law from the literature. I argue that the impact of domestic on adoption is important, but that the contribution of impact varies based on the content of the provisions to be adopted. Democracy has been long associated with the expansion of citizenship to minority populations (Jung 2003; Marshall 1950). But regional patterns reveal no positive statistical relationship between democracy the expansion of equal constitutional rights to indigenous populations, against theoretical expectations. In fact, democracy scores are lower when indigenous recognition rights are adopted into the constitution.

However, though survival and logit models show no positive relationship between democracy and the expansion of equal citizenship rights, some case study evidence identifies ways in which democratization and early adoption of indigenous recognition and representation rights coincide. A nested case approach shows that regional patterns tell one story, while case studies show evidence of multiple causal pathways to rights adoption. Specifically, in Bolivia

and Brazil, democratization is associated with the creation of some indigenous provisions but is not in Chile.

Importantly, indigenous political mobilization is related to the adoption of representation, resource, and autonomy rights across statistical models. This supports conventional knowledge that mobilized groups on the ground can convince an unresponsive government to adopt minority rights (Jung 2003; Seider 2002; Yashar 1998; Yashar 2007). But the results presented in this dissertation uniquely show that indigenous mobilization is particularly important for all rights adoption *particularly for autonomy provisions* (according to regional statistical analysis). When it comes to country case level analysis, evidence from Bolivia shows that strong movements were present in the country *before* the adoption of any provisions, and *positively impacted the adoption of all categories of constitutional provisions*. Similarly, weak networks in Chile until recent years has inhibited rights adoption. These cases show that strong indigenous mobilization is key to the acquisition of protectional provisions in domestic law.

Indigenous political representation is found to be associated with all indigenous rights adoption in the Latin American region. Strong representation in the case of Bolivia clearly helped facilitate the adoption of both resource and autonomy rights after recognition and representation were established. In Chile, on the other hand, where indigenous representation at the national level only occurred in recent years, communities do not yet have any protection in the constitution.

Next, weak state capacity and reliance on resource rents are expected to reduce the likelihood of the adoption of resource and autonomy rights because of the government's increased extraction capability and its interest in resources on indigenous lands. Statistical results, however, show no relationship between state capacity for control and extraction and the

adoption of indigenous constitutional provisions. Resource rents, on the other hand, are found to predict the adoption of autonomy rights in statistical models. Case study evidence lends evidence to the theory that strong state capacity and interest in resource rents negatively impacts the adoption of resource and autonomy rights that protect original territories from encroachment. But in Bolivia, where extensive resource and autonomy rights were implemented in 2009, strong state involvement and rent dependence continues in lowland regions, that are less represented by current indigenous protections in the constitution vis-à-vis large highlander populations.

Finally, *I present evidence that indigenous constitutional citizenship evolves in steps.* From constitutional exclusion, indigenous peoples are recognized as political citizens as a minimum threshold. Representation rights follow as a natural extension of equal democratic citizenship. Previous literature has associated democratization with the expansion of minority rights (Benhabib 2005; Marshall 1950). But none have considered how these processes expand to the adoption of nationally divisive rights, such as those that serve indigenous populations and create terms of regional self-government. Additionally, this work contributes the incremental nature of indigenous inclusion in national law- it opens first in terms of unspecified citizenship, and then evolves to extend equal political access. After equal citizenship is established, constitutional rights evolve to correct economic, societal, and political inequalities due to indigenous heritage. Finally, autonomy rights are the last rights adopted in this process, and they outline indigenous territorial self-government and create indigenous political institutions. These rights incrementally expand access to political representation and state goods and become more divisive to unified national identities as they expand. Statistical results show that from initial indigenous recognition in constitutional law, recognition rights predict the future adoption of

indigenous resource rights. Resource rights are also positively associated with future adoption of indigenous autonomy rights in constitutional law.

Case study evidence further supports the theory of incremental constitutional rights-expansion. In Chile, recent referendums failed partly due to the far-reaching indigenous rights and autonomies defined in the rejected draft in 2022. Chilean proponents of reform attempted to take their country's framework from 'zero' indigenous rights inclusion, to one of the most expansive in the region. In Brazil, only one constitutional revolution resulted in indigenous representation, which include the adoption of indigenous recognition and representation, which establish equal rights. But rights do not yet include resource or autonomy rights in Brazil. Finally, in Bolivia, there is a clear case for incremental rights expansion. Indigenous populations were first recognized as political citizens and afforded some constitutional representation rights in 1994. In 2005 these rights further expanded to include more representation rights that protected indigenous education, culture, health, and language. Last, in 2009 multiple indigenous resource and autonomy rights were adopted into the Bolivian constitution. Indigenous rights and access to political resources in Bolivia increased in steps from 1994 to 2009.

Overall, much of the evidence from case country analyses supports quantitative results. But the nested case analysis also drew unique insights that should be examined under future research. Specifically, some case evidence shows conflicting impacts for the timing and impact of democratization, rent dependence, and state capacity are found in these approaches. This implies multiple pathways toward adoption, dependent on domestic conditions. Indigenous mobilization is consistently important in the adoption of resource and autonomy rights in the constitution, and for all indigenous rights creation in Bolivia. Similarly, strong indigenous representation in government is positively related to the creation of all indigenous constitutional



rights in quantitative models and is supported by all three country case results. Results for negative theoretical impacts on rights adoption are mixed across analytical approaches and warrant further investigation. Last, both statistical and case level analysis support the theoretical proposition that constitutional rights expand to include indigenous populations in steps. From broad, general recognition, incremental access to political resources is created for previously marginalized original populations. After recognition, states are likely to adopt representation rights that define terms of equal citizenship in the constitution. Then, adoptions take form as resource rights that correct societal and economic inequalities suffered by indigenous communities. Finally, autonomy rights are adopted as the last step in the process according to case results. Evidence of incremental rights adoption as a useful strategy for implementation is demonstrated across all country cases.

## **Contributions**

This dissertation contributes to current scholarly work in important ways. First, it includes a unique categorization of indigenous constitutional rights that take the provisional context into account. This adds knowledge to the recent shifts in indigenous political representation in the Latin American region.

I argue that the content of indigenous rights in the constitution that politically include previously marginalized communities needs to be examined when discussing the likelihood of their adoption. Previous work discusses the expansion of democratic rights (Marshall 1950; Benhabib 2005). But it has not considered that negotiations for rights often include provisions that benefit indigenous populations specifically and can create multiple national identities within the state.

Next, this research considers multiple key variables that impact the rights adoption process while accounting for the timing and content of rights adoption. In broad strokes, domestic features interact with the adoption process differently, depending on the current stage of the adoption process. This means that the timing of rights adoption matters, and domestic inputs have varied impacts, dependent upon the current phase in the rights adoption process.

Contrary to existing theories on the expansion of democratic citizenship (Marshall 1950; Benhabib 2005), democracy is not significantly related to the adoption of indigenous recognition or representation rights in national constitutions. These rights are posited to extend equal terms of political citizenship to excluded political minorities. This work shows that democracy is not significantly related to the adoption of these rights, but case study evidence shows that in some instances, democratization coincides with the initial adoption of indigenous provisions in the constitution.

Importantly, strong indigenous mobilization is related to the adoption of indigenous autonomy rights throughout the Latin American region, and the relationship between mobilization strength and all rights adoption is evident in case study analyses. Mobilization strength is underestimated by current data, which explains the discrepancies in results between regional patterns and case study results. Overall, indigenous mobilization is related to the creation of most, if not all, indigenous provisions in modern Latin American constitutions. Results across both quantitative and country case level analysis support previous work that argues grass roots mobilization forces the government's hand into adopting more representative rights (Jung 2003; Seider 2002; Yashar 2007).

Indigenous representation is also found to be positively related to the creation of indigenous rights. Particularly, more representation at the national level predicts a higher

likelihood of the adoption of all constitutional rights for original communities. These rights outline regional sovereignties and create new political institutions that run parallel to existing state structures. Future work should continue to examine the relationship between minority representation and the creation of new rights for marginalized populations.

Last, I show that indigenous constitutional citizenship expands over time in steps. This work shows that this is a viable strategy to adopt indigenous provisions into national law over time. The step-by-step method of indigenous political inclusion are seen in both statistical and case study models. Other work has noted that rights eventually go on to provide economic benefits to some populations (Marshall 1950; Benhabib 2005). But previous studies do not consider the presence of populations with different national heritage. This research considers that rights not only evolve to create terms of equal democratic citizenship, but also go on to take the form of provisions that create new political institutions and autonomies.

Finally, the framework used in this dissertation can be expanded to include future indigenous rights adoptions in national constitutions in the Latin American region. Similarly, it can be used to examine the constitutional citizenship and inclusion of excluded minority populations throughout other parts of the globe. This includes ethnic minorities, women, Afro-descendants, and other politically excluded minorities.

This work considers constitutional law to be a conflict resolution mechanism that can be used to resolve the grievances of marginalized populations. Therefore, it is likely that other states have used constitutional arrangements and access to citizenship as strategies to include previously politically excluded groups.

### **Limitations and Implications for Future Research**

The research conducted in this dissertation outlines the evolution of indigenous constitutional representation in Latin America. Against conventional wisdom, democratization was not statistically related to the adoption of indigenous provisions that create terms of equal democratic citizenship. More attention should be given to the non-impact of democracy on indigenous constitutional rights.

Efforts must also be undertaken to provide a better measurement and analysis of indigenous mobilization in a more direct form. Here, statistical measures for indigenous mobilization are imperfect and indigenous political activity is likely stronger than what the data represents in chapters 3 and 4. Future work will address these shortcomings. For example, future field research should include interviews with indigenous political leadership in order to better discern their specific political goals and aspirations as well. The political motivations of mobilized groups can also be further measured through member interviews and field research.

The findings in the Bolivian case also call for additional research. The Bolivian constitution, which created the most far-reaching indigenous provisions in the region, including regional autonomy and plurinational courts, disproportionality benefits larger groups that are originally from highland regions. Particularly, there is a need to examine the impacts of constitutional rights that benefit the original populations, because their benefits are far from uniform. Extensions of this work need to examine which indigenous groups can successfully be able to leverage constitutional protections versus those who cannot and remain unrepresented.

The case in Chile, which is also well represented by the models presented here, should continue to be monitored for indigenous rights outcomes. Failed reforms in 2022 included far-reaching indigenous rights that skipped an incremental adoption process. It is likely that

provisions that protect indigenous populations will be scaled back in future iterations of constitutional drafts.

Next, this work provides important implications for constitutional law as conflict resolution devices. The incremental inclusion of politically marginalized groups over time is a viable strategy to address historical misgivings and modern grievances in society. This perspective can be used to inform other legal strategies embraced by governments to include excluded groups into the state apparatus. Frameworks of incremental inclusion of marginalized populations are especially helpful to avoid conflict.

Many new questions are raised by this research. As indigenous mobilization is key in the creation of indigenous constitutional provisions, future work should consider the coordination of multiple groups in mobilization efforts. For example, indigenous interests intersect with those of the poor working class, afro-descendant citizens, and environmentalists. Future iterations of this work will more accurately capture the presence of coordinated mobilization efforts.

It should also be considered how this framework can be expanded to examine the political rights of other marginalized groups. Many groups, including women, have been excluded or continue to be excluded from political representation. Frameworks of incremental political inclusion may similarly apply to other marginalized groups that were historically restricted from political rights. However, the theory of incremental rights expansion as used in this dissertation is especially useful in examining the creation of protections for groups that have different national identities and aspire toward partial autonomy.

Finally, future work should expand case study analysis to continue the examination of causal pathways and mechanisms that result in indigenous rights adoption. More case work will further help illuminate the findings of statistical results presented in this study.

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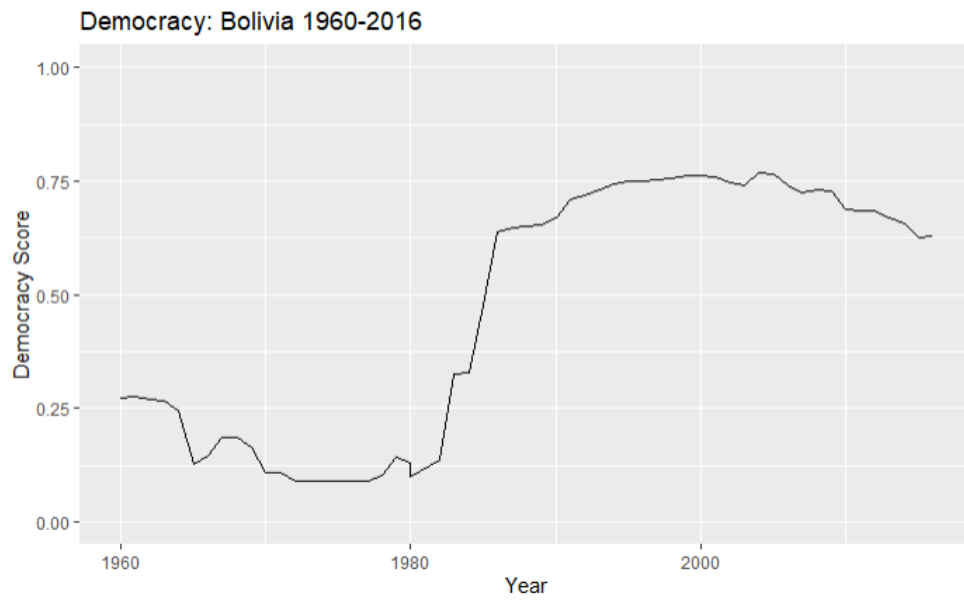
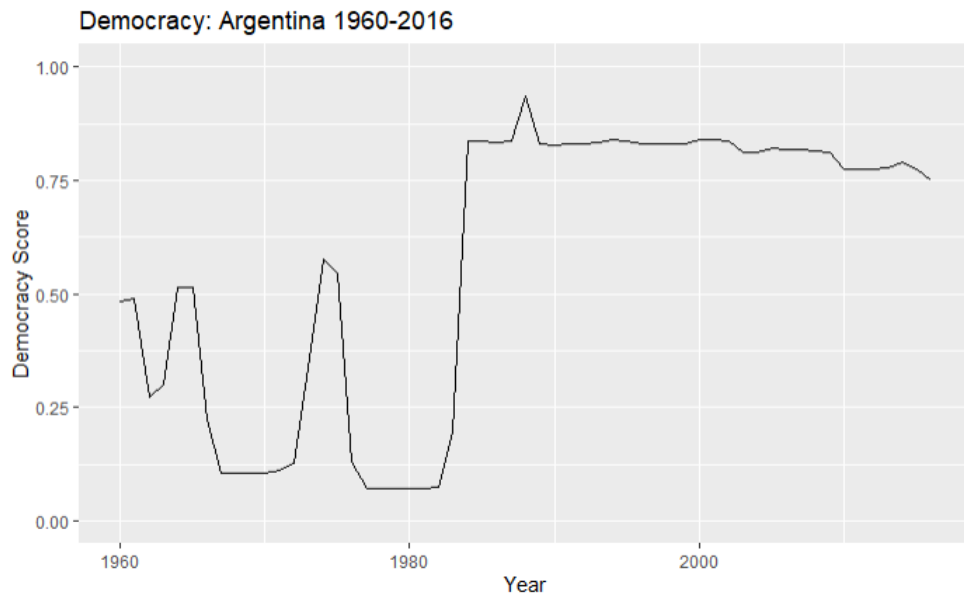
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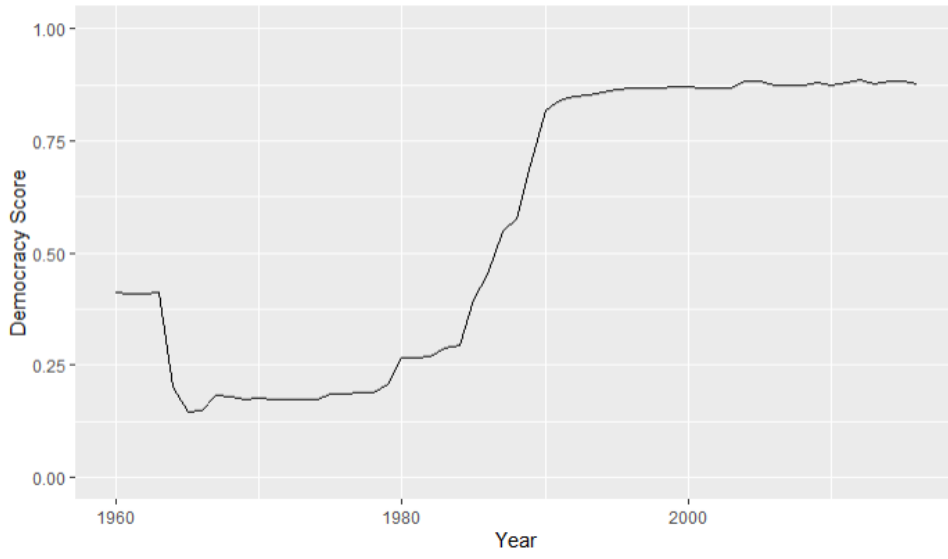
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## Appendix A: Democracy Plots by Country

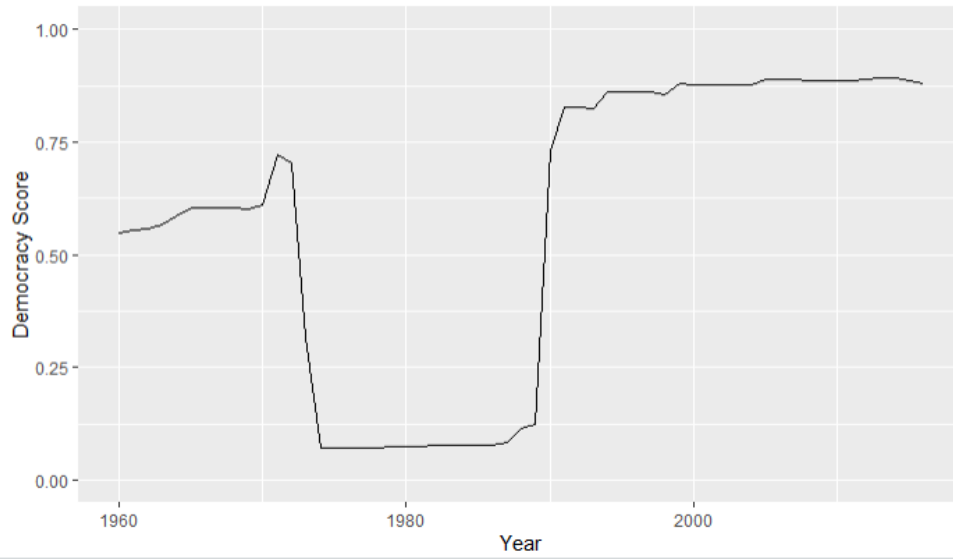




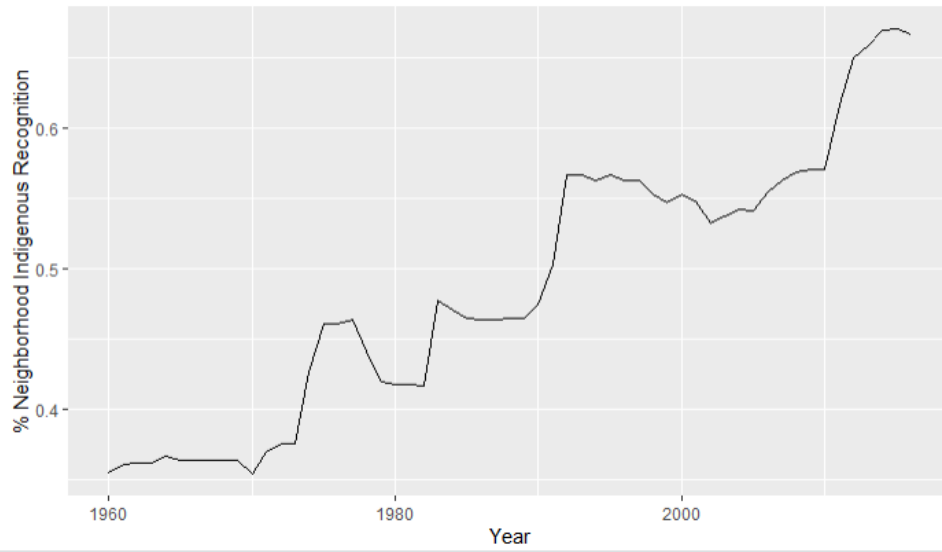
Democracy: Brazil 1960-2016



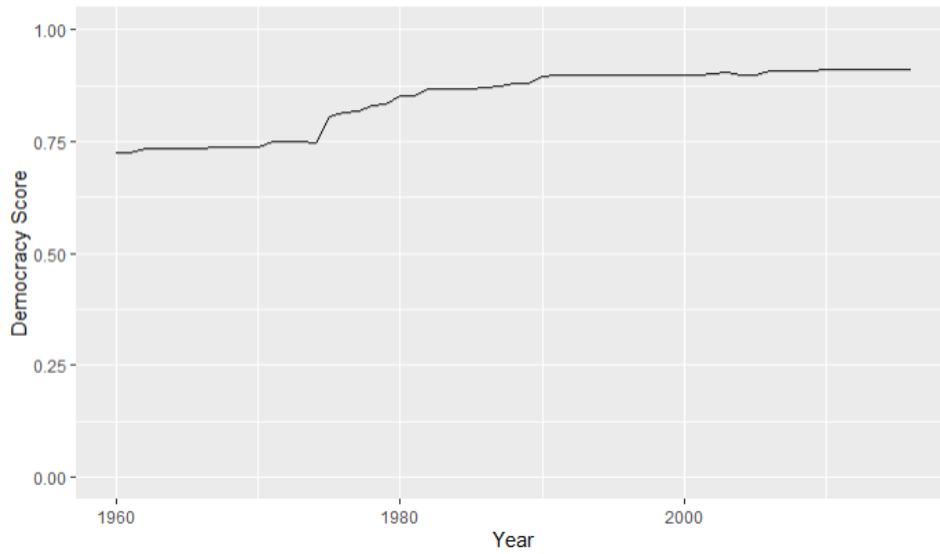
Democracy: Chile 1960-2016



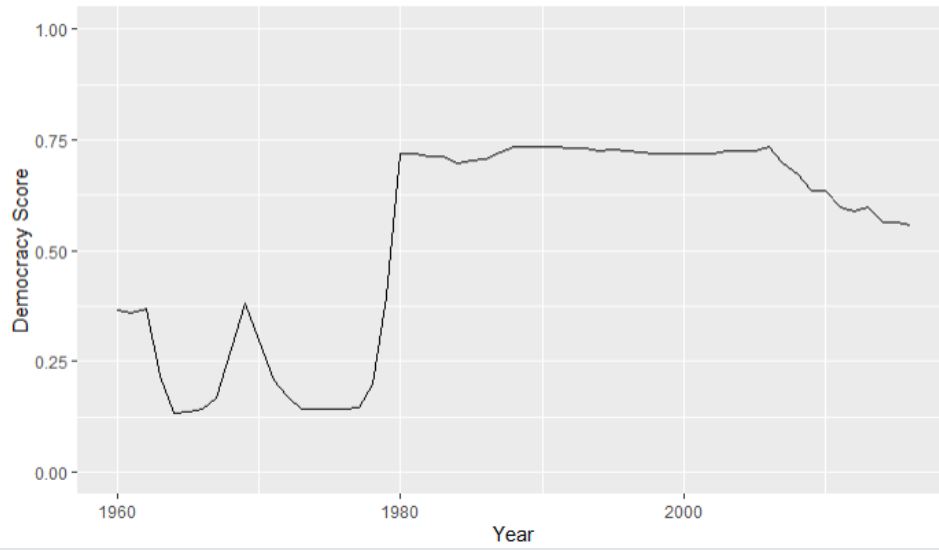
Democracy Score:Colombia 1960-2016



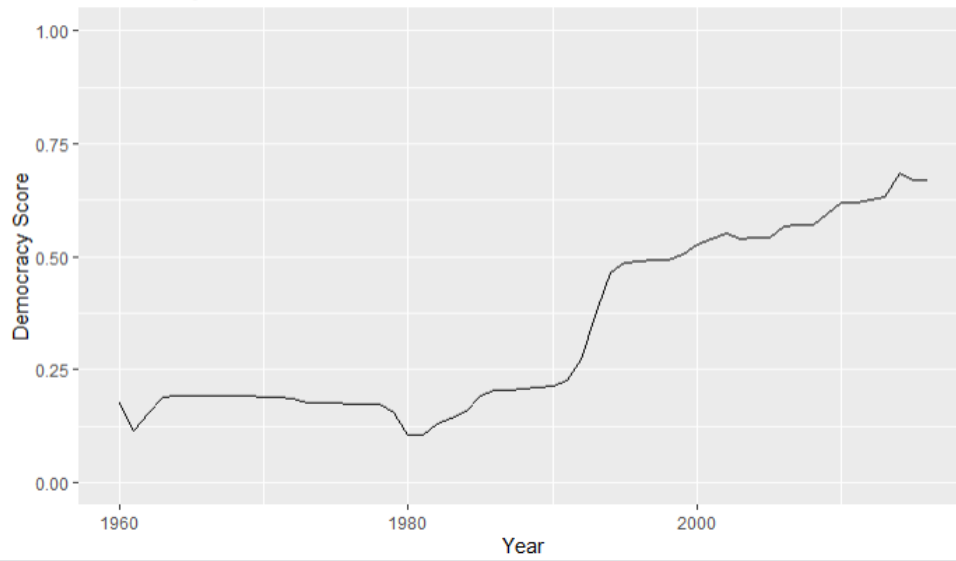
Democracy: Costa Rica 1960-2016



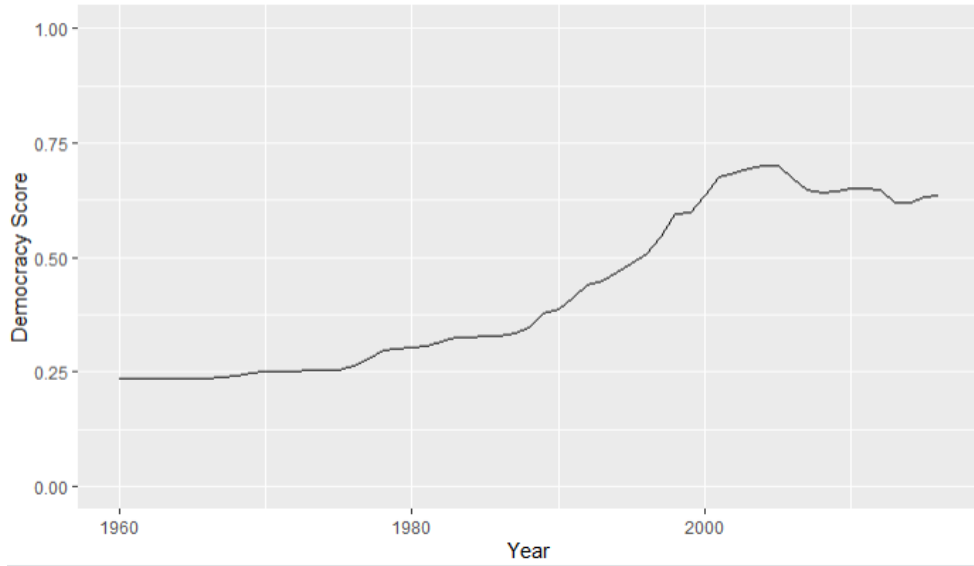
Democracy: Ecuador 1960-2016



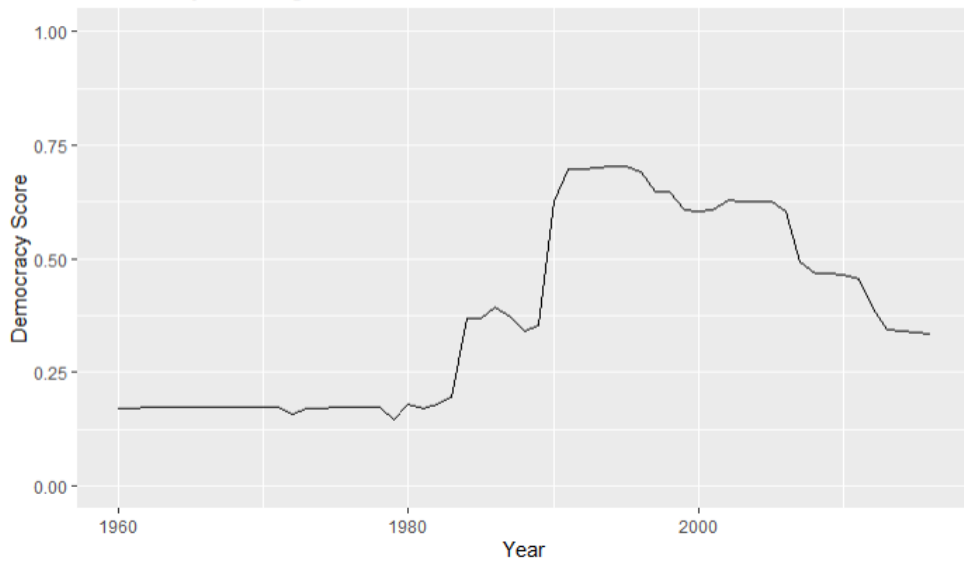
Democracy: El Salvador 1960-2016



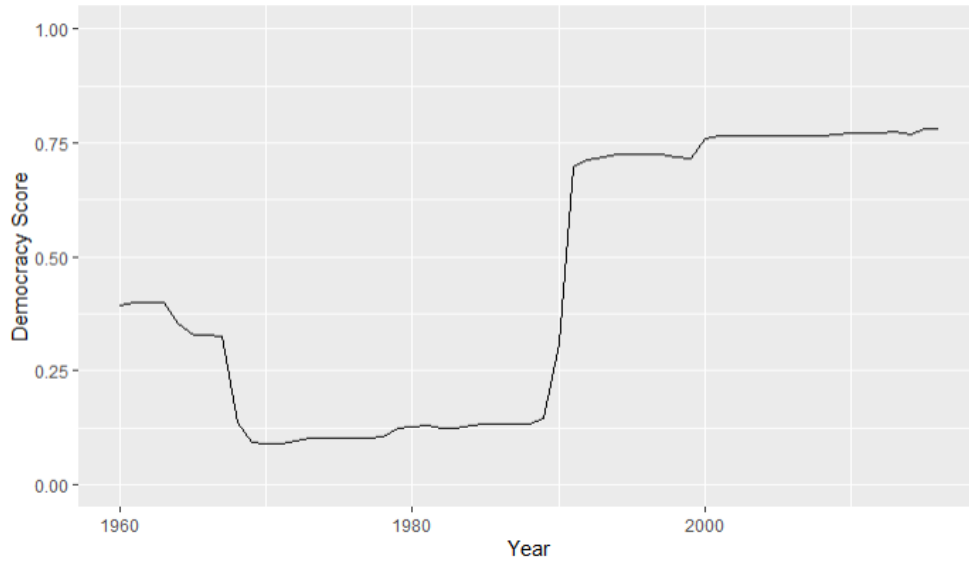
Democracy: Mexico 1960-2016



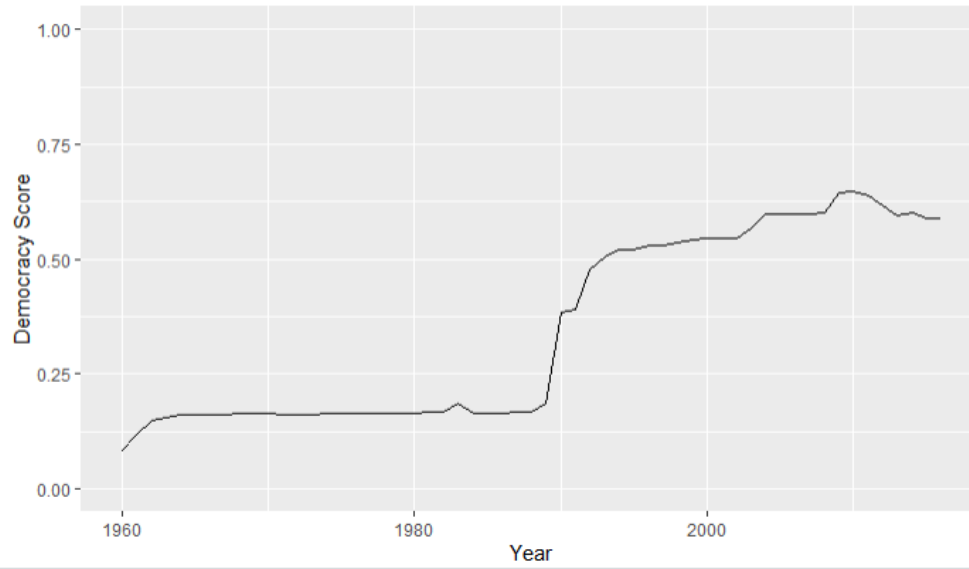
Democracy: Nicaragua 1960-2016



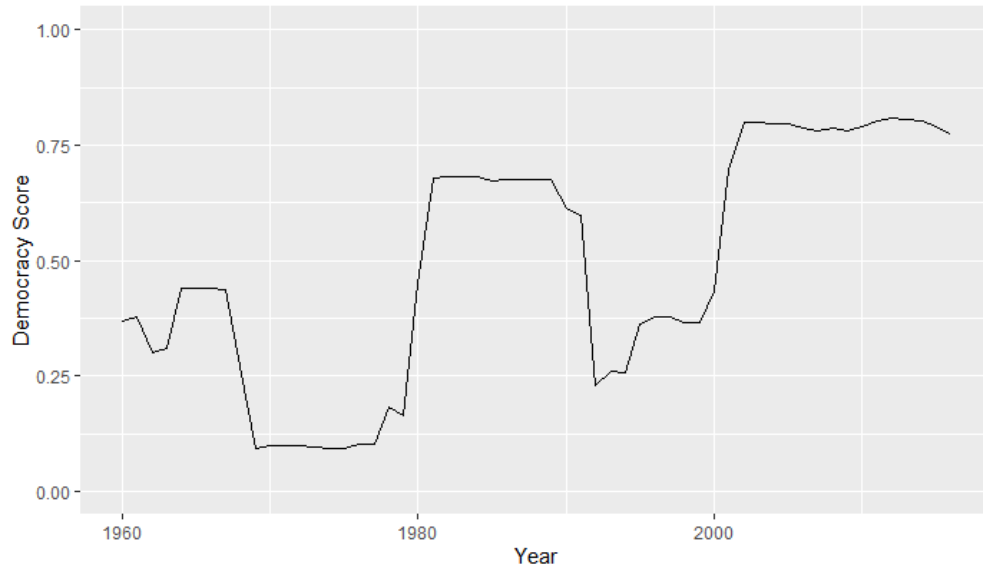
Democracy: Panama 1960-2016



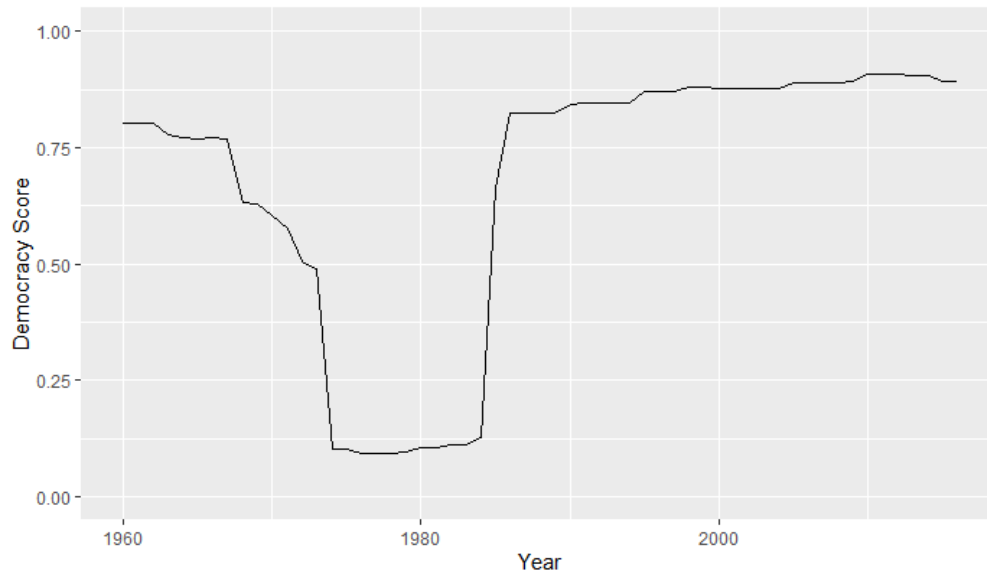
Democracy: Paraguay 1960-2016



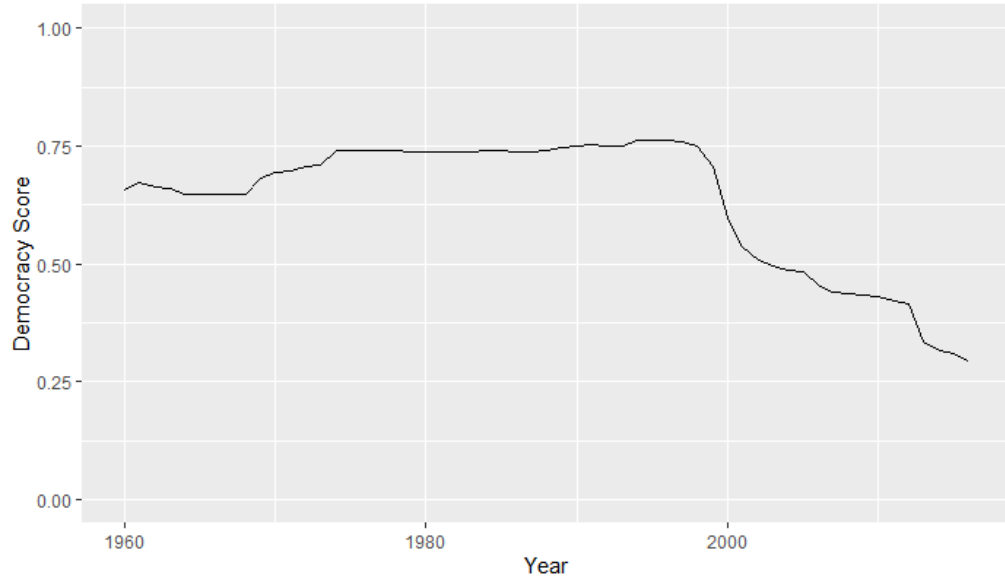
Democracy Score:Peru 1960-2016



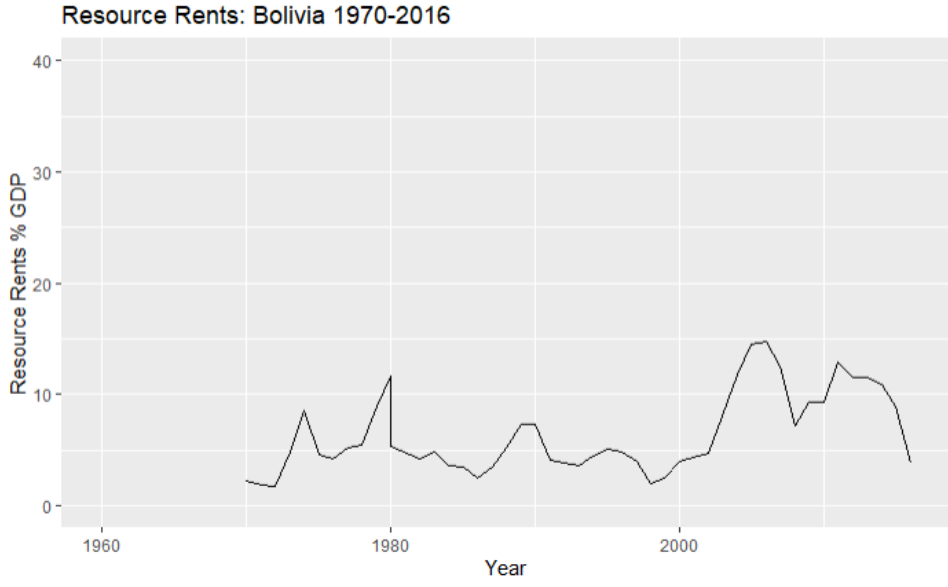
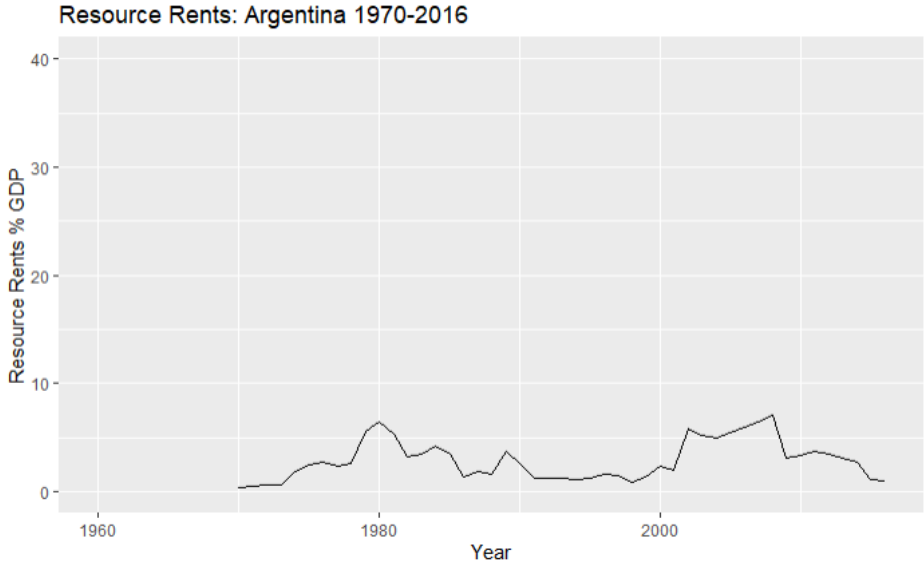
Democracy Score:Uruguay 1960-2016



Democracy Score:Venezuela 1960-2016

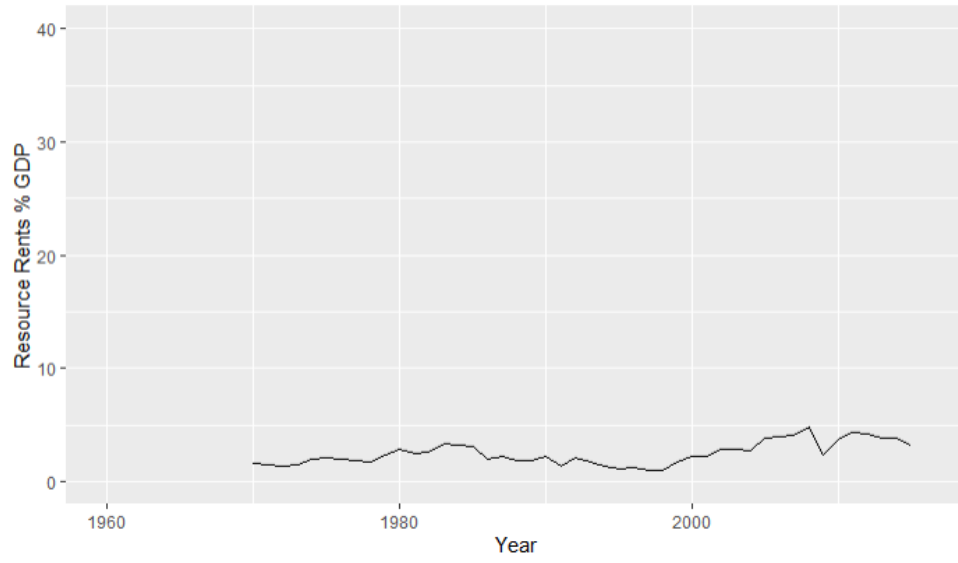


**Appendix B: Resource Rent Dependence by Country**

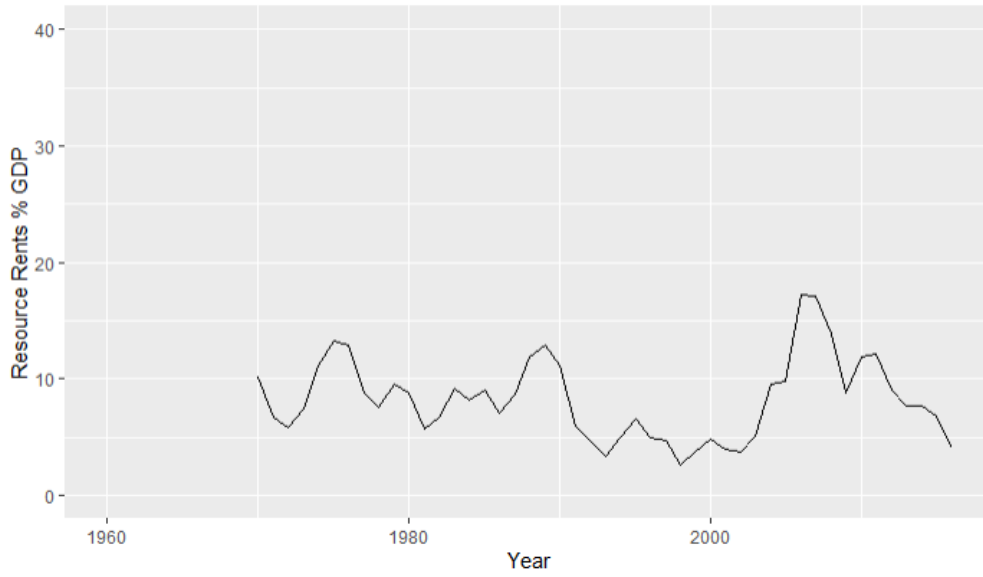




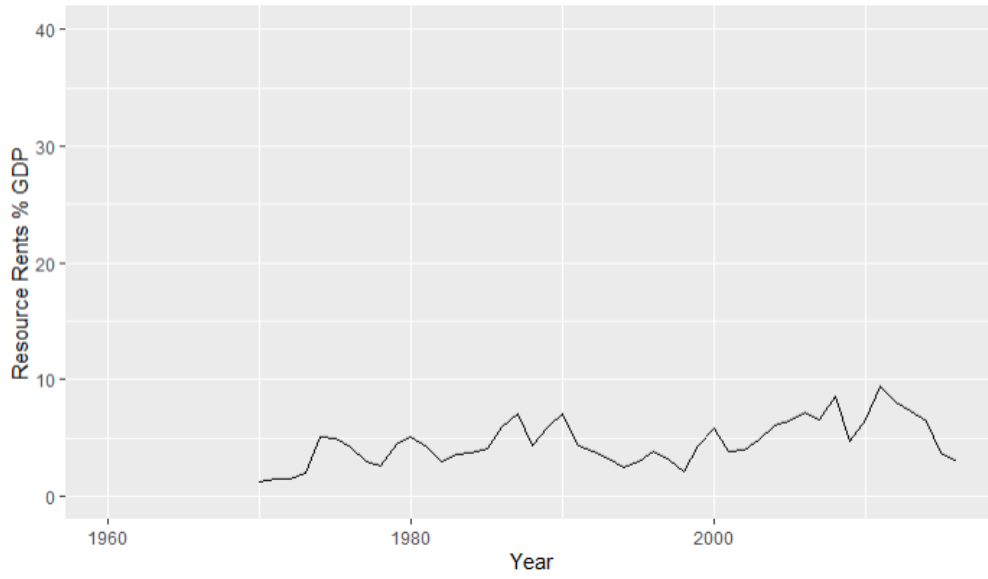
Resource Rents: Brazil 1970-2016



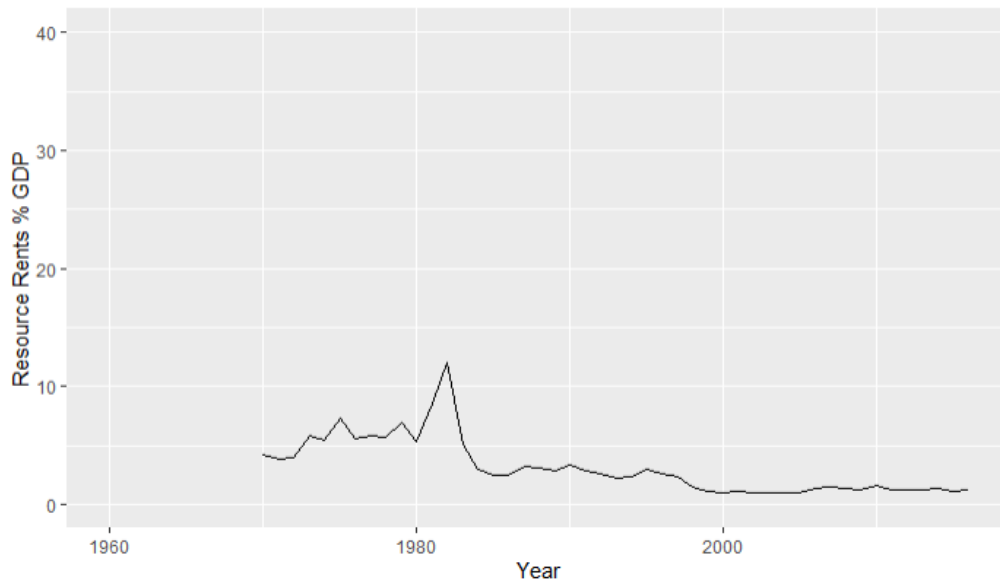
Resource Rents: Chile 1970-2016



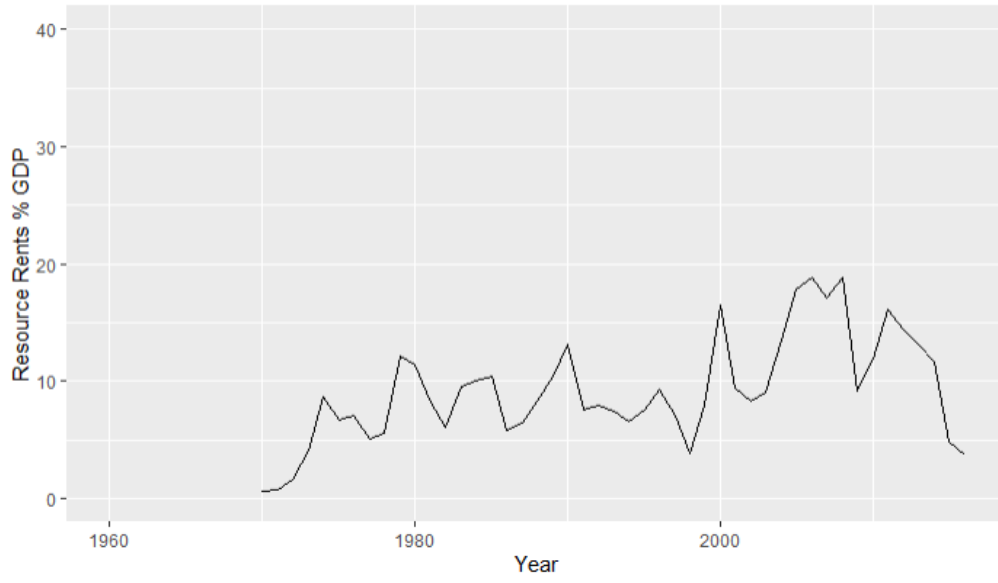
Resource Rents: Colombia 1970-2016



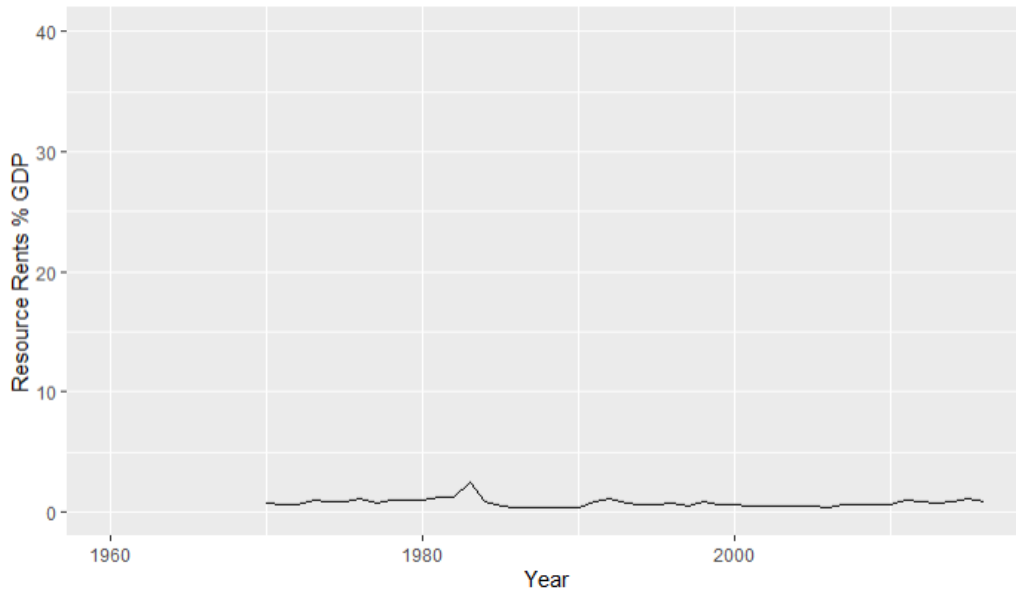
Resource Rents: Costa Rica 1970-2016



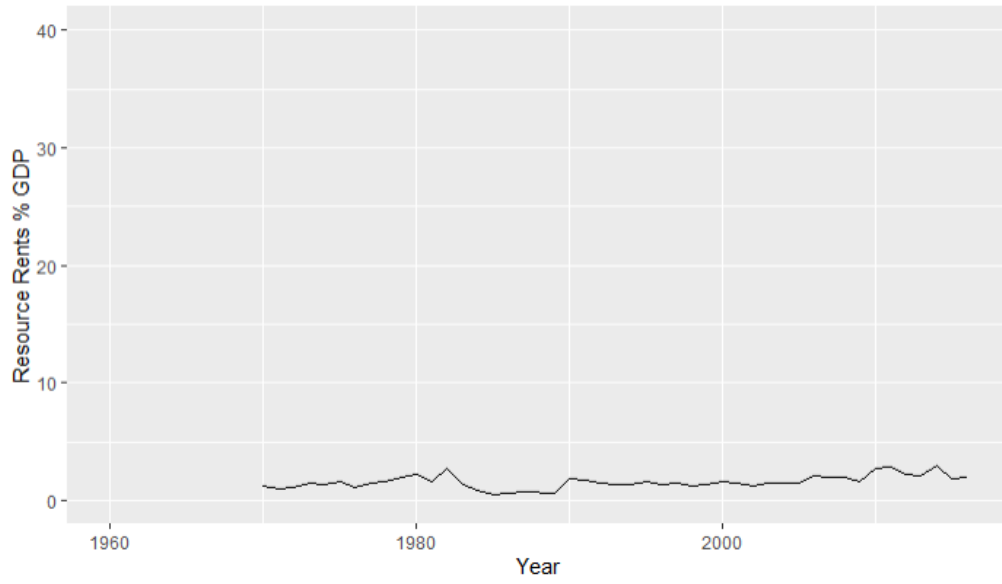
Resource Rents: Ecuador 1970-2016



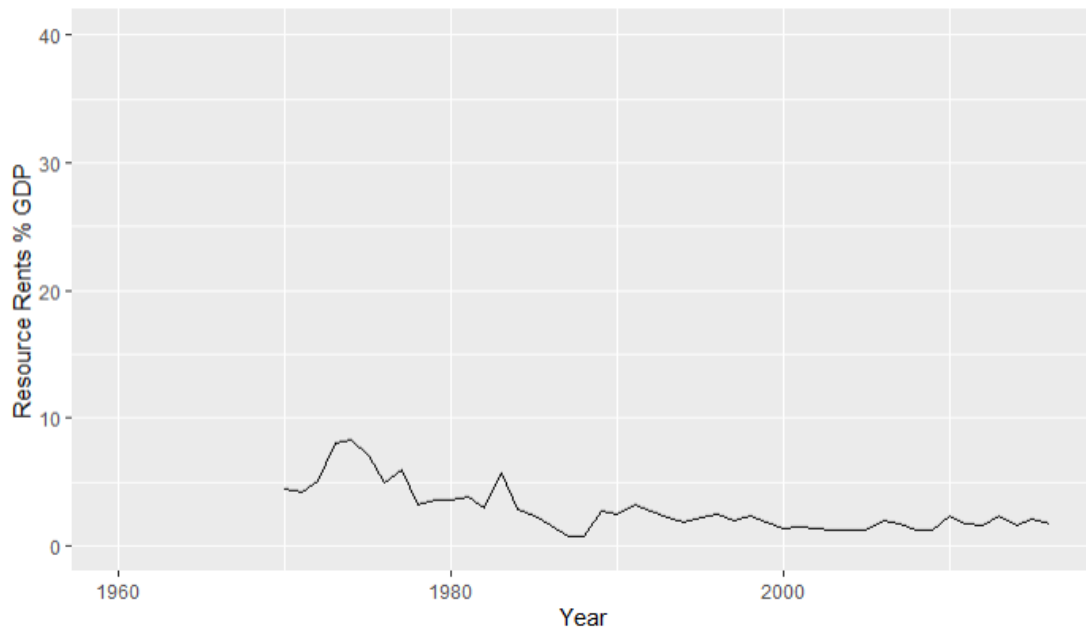
Resource Rents: El Salvador 1970-2016



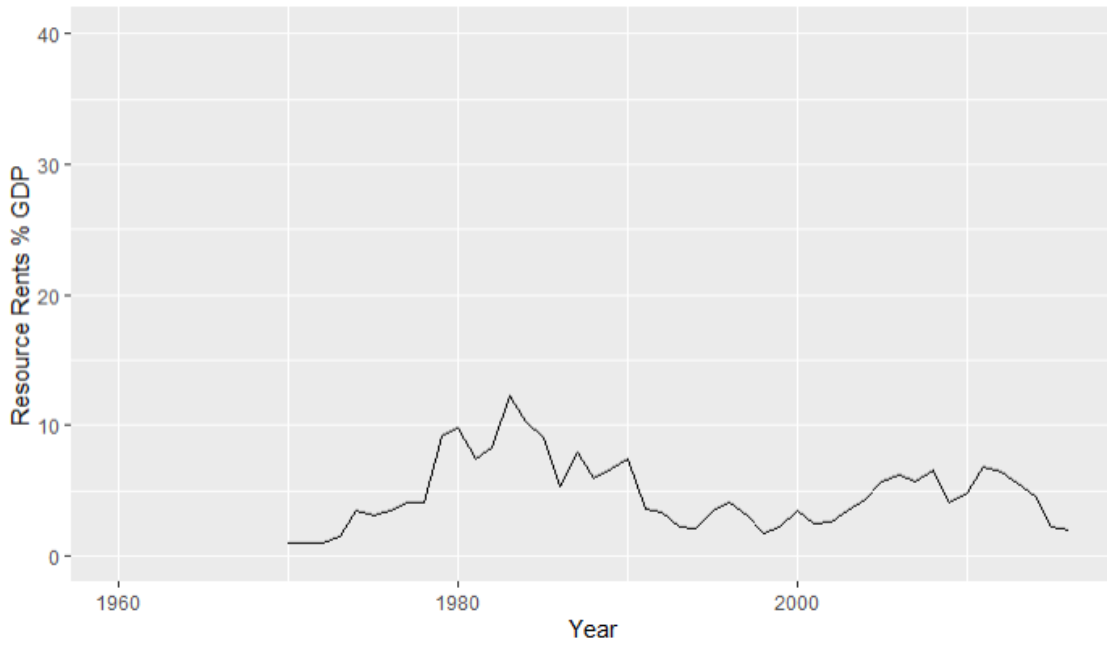
Resource Rents: Guatemala 1970-2016



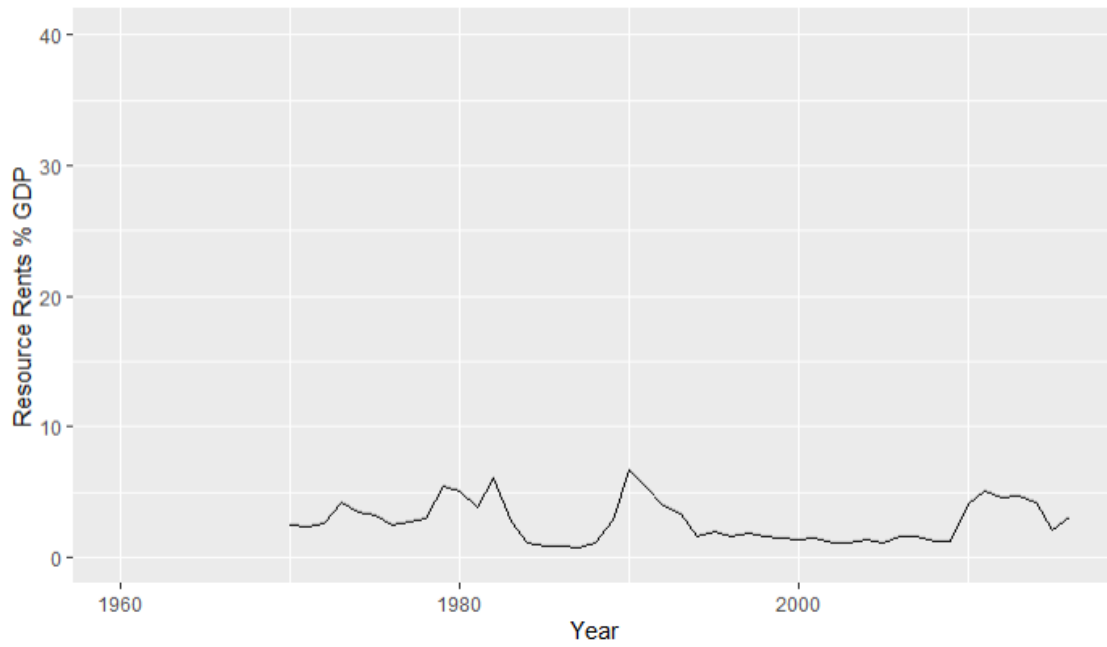
Resource Rents: Honduras 1970-2016



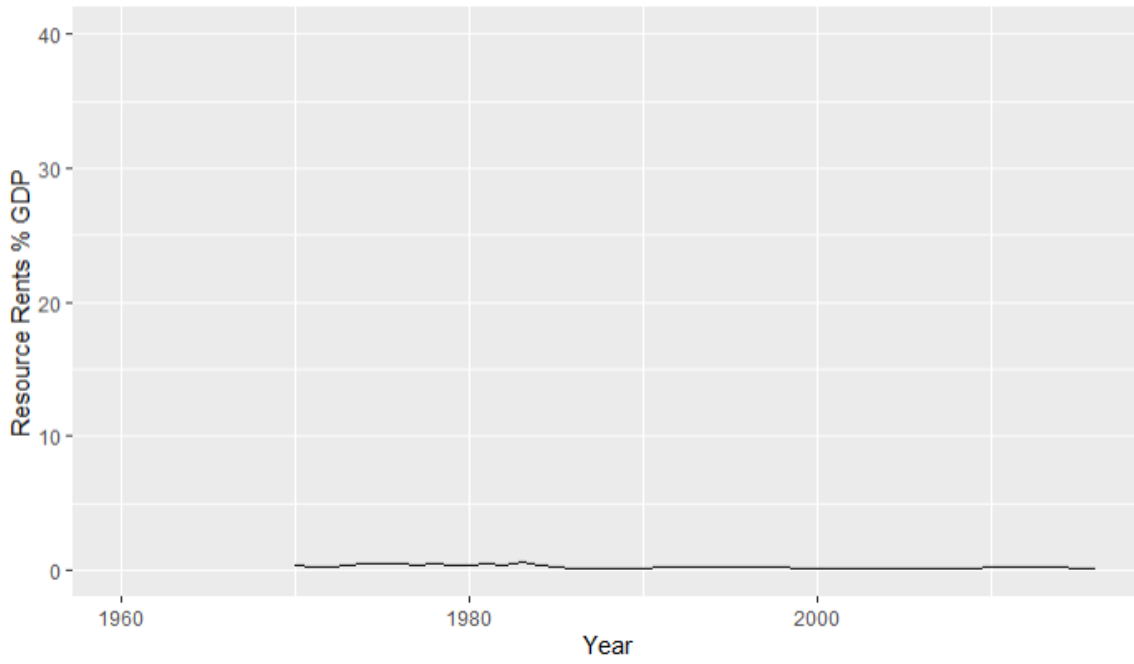
Resource Rents: Mexico 1970-2016



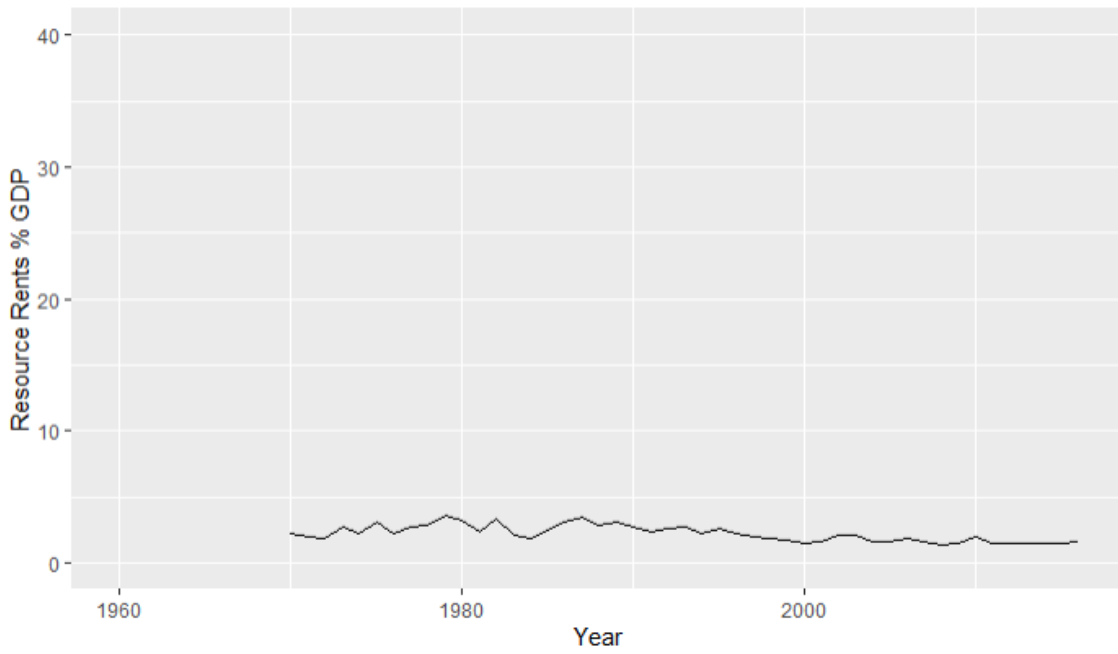
Resource Rents: Nicaragua 1970-2016



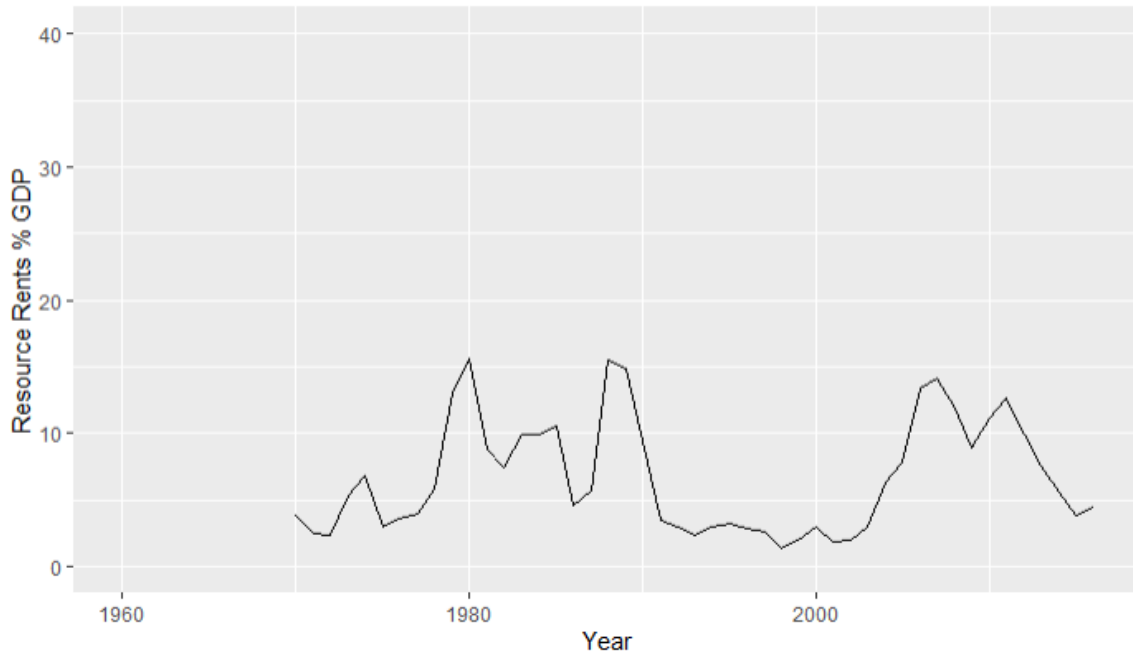
Resource Rents: Panama 1970-2016



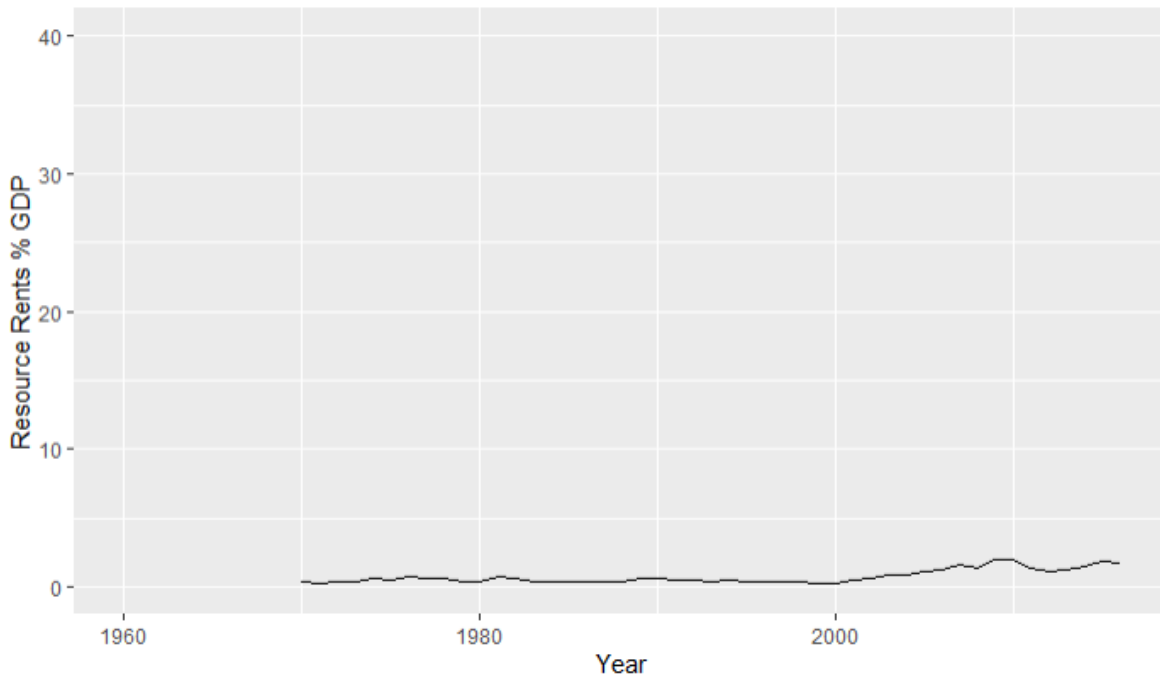
Resource Rents: Paraguay 1970-2016



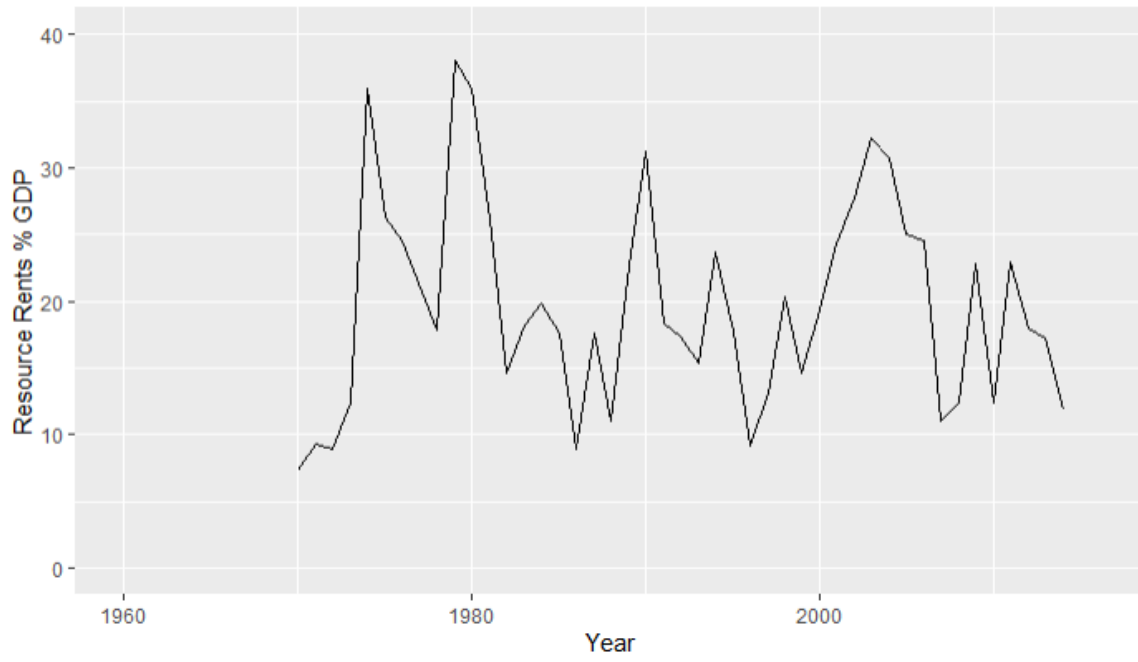
Resource Rents: Peru 1970-2016



Resource Rents: Uruguay 1970-2016

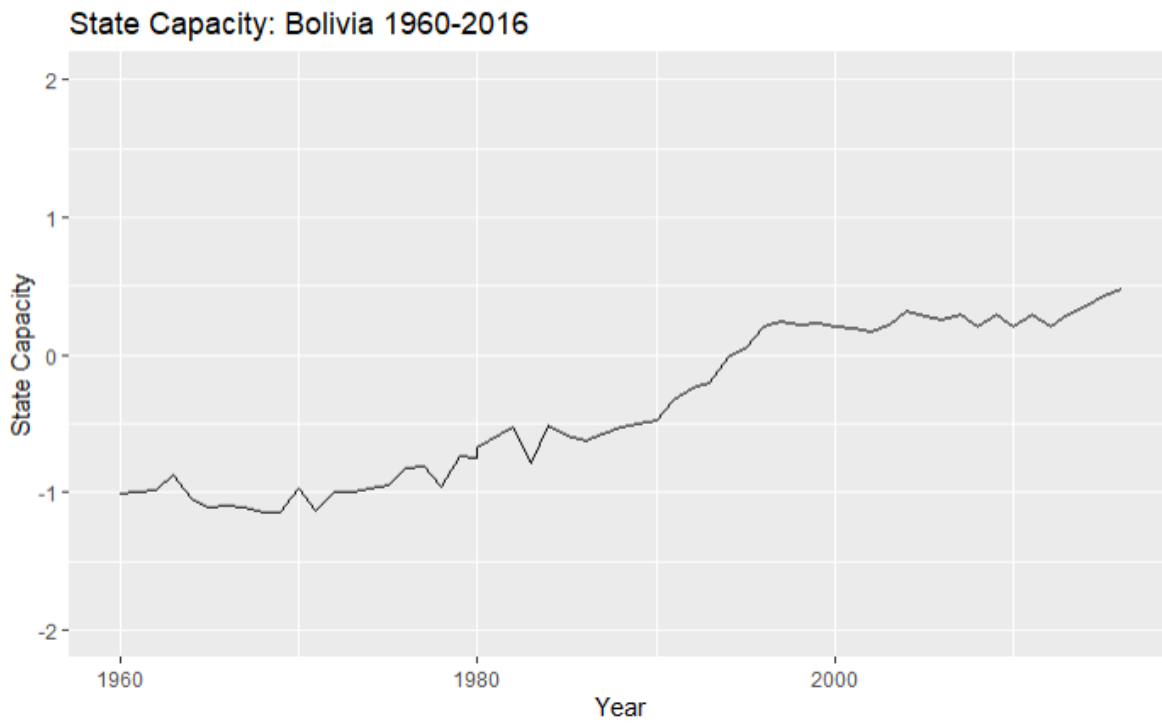
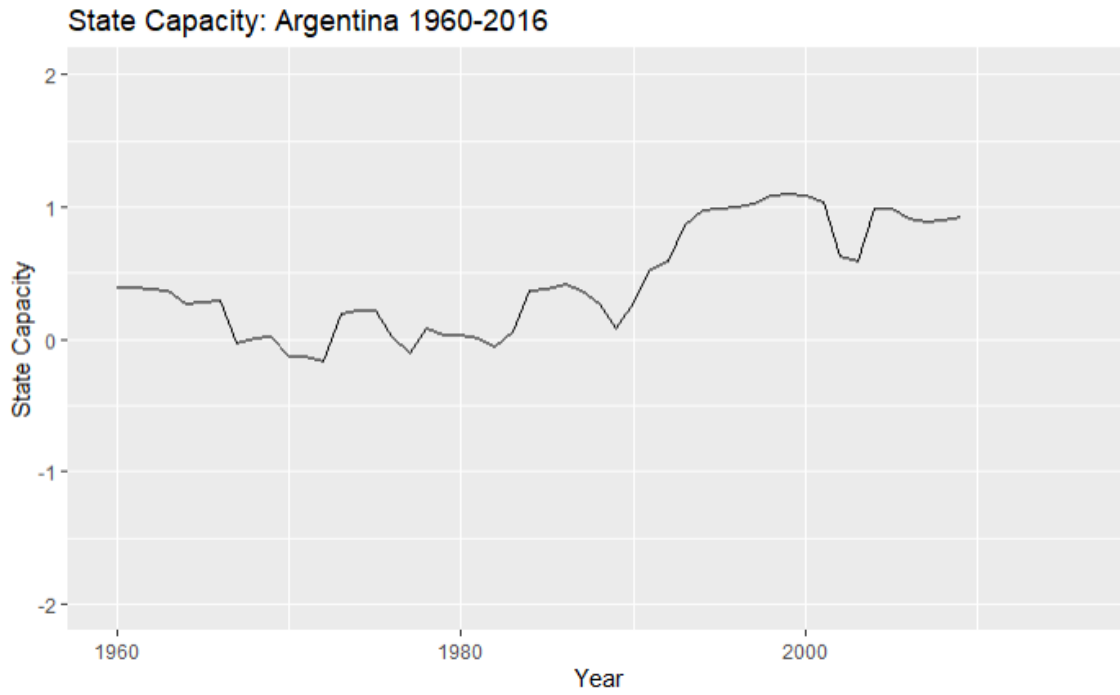


Resource Rents: Venezuela 1970-2016

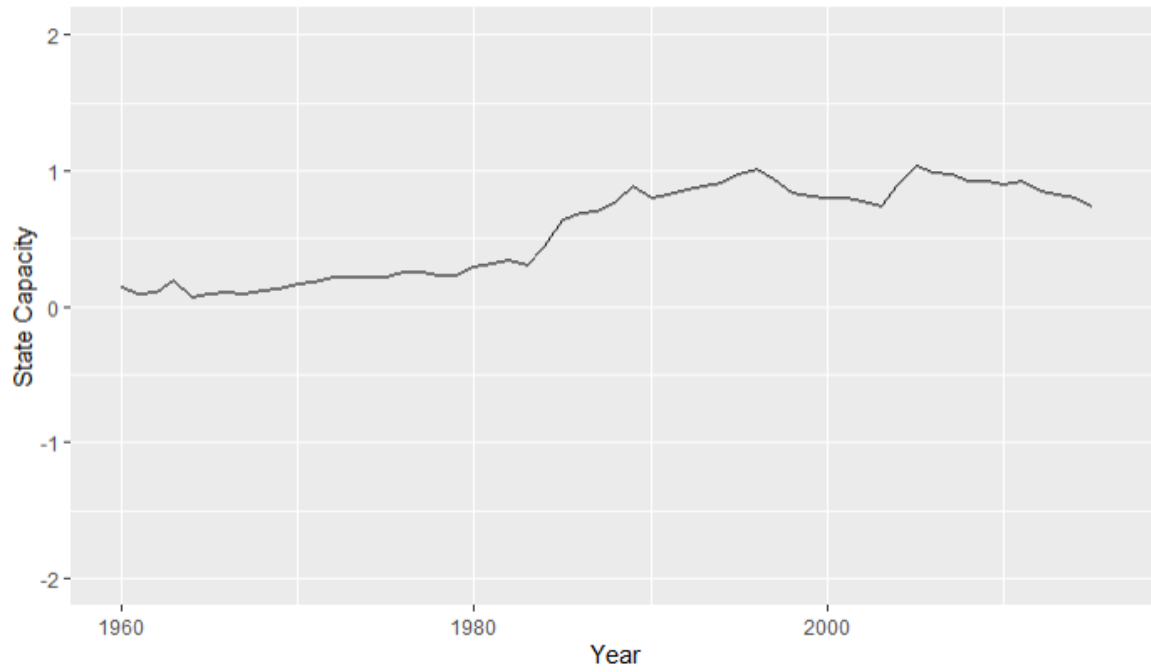




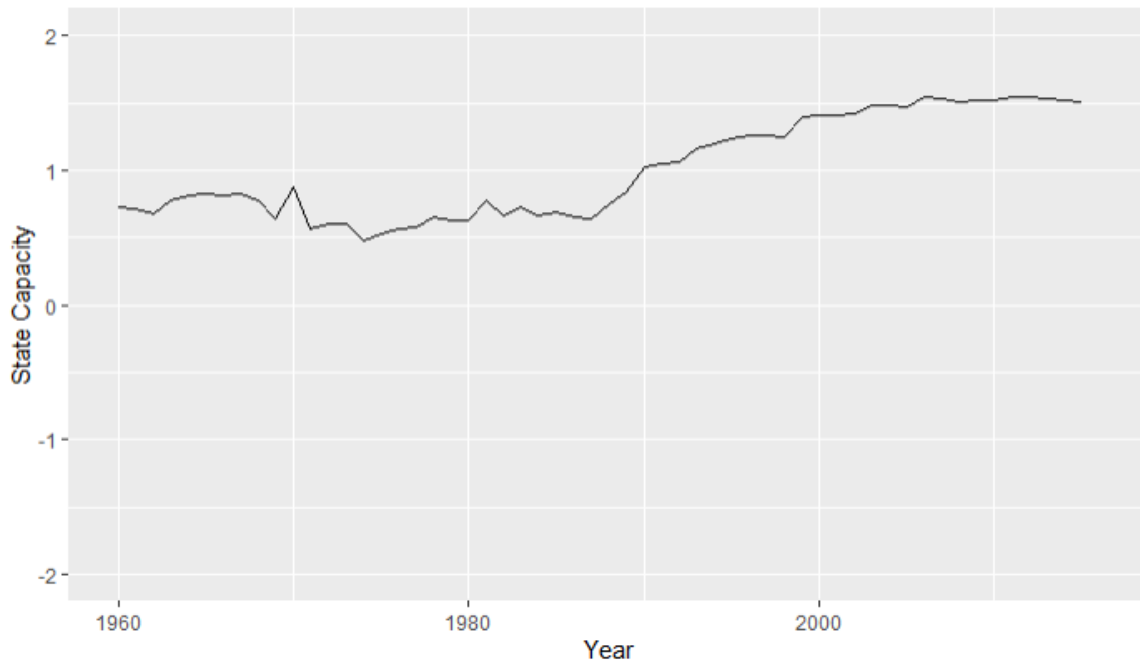
## Appendix C: State Capacity by Country



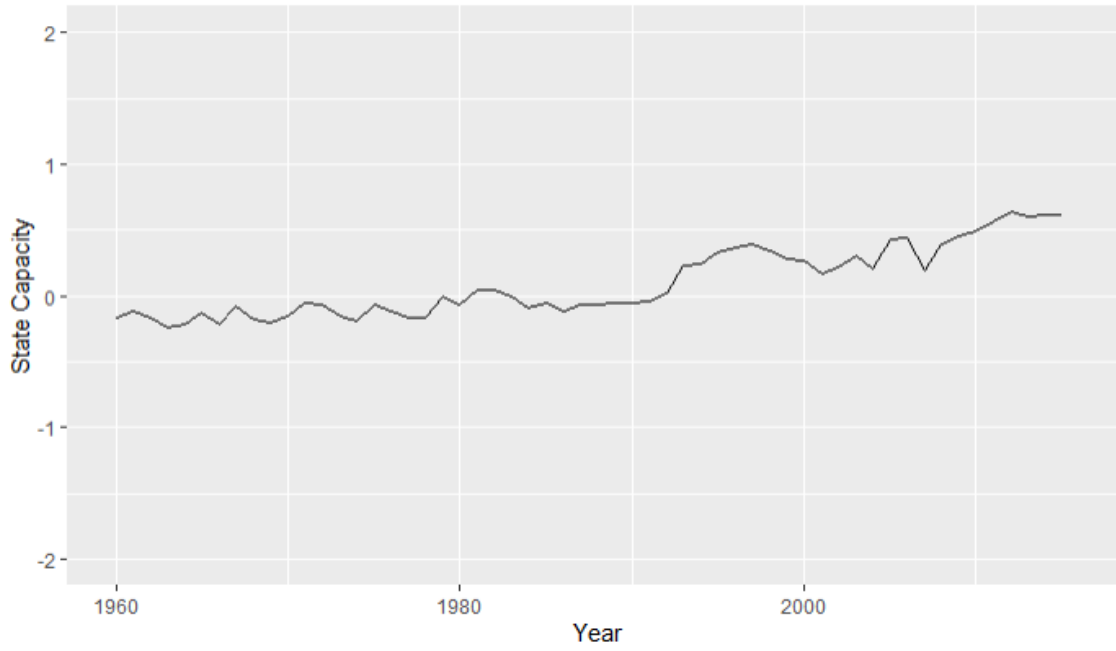
State Capacity: Brazil 1960-2016



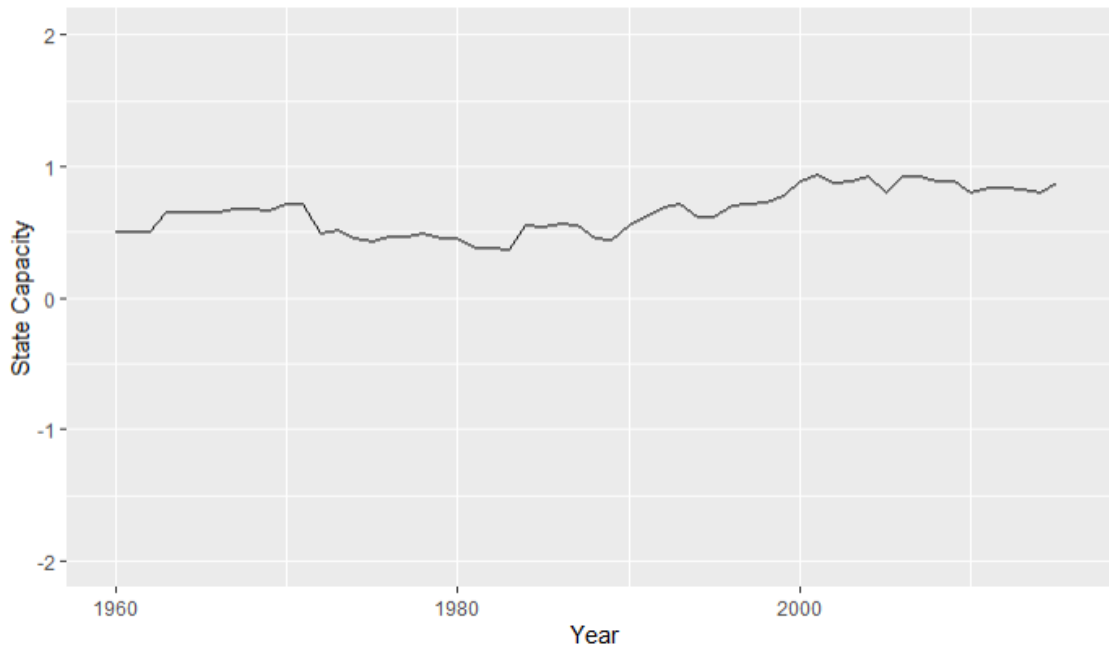
State Capacity: Chile 1960-2016



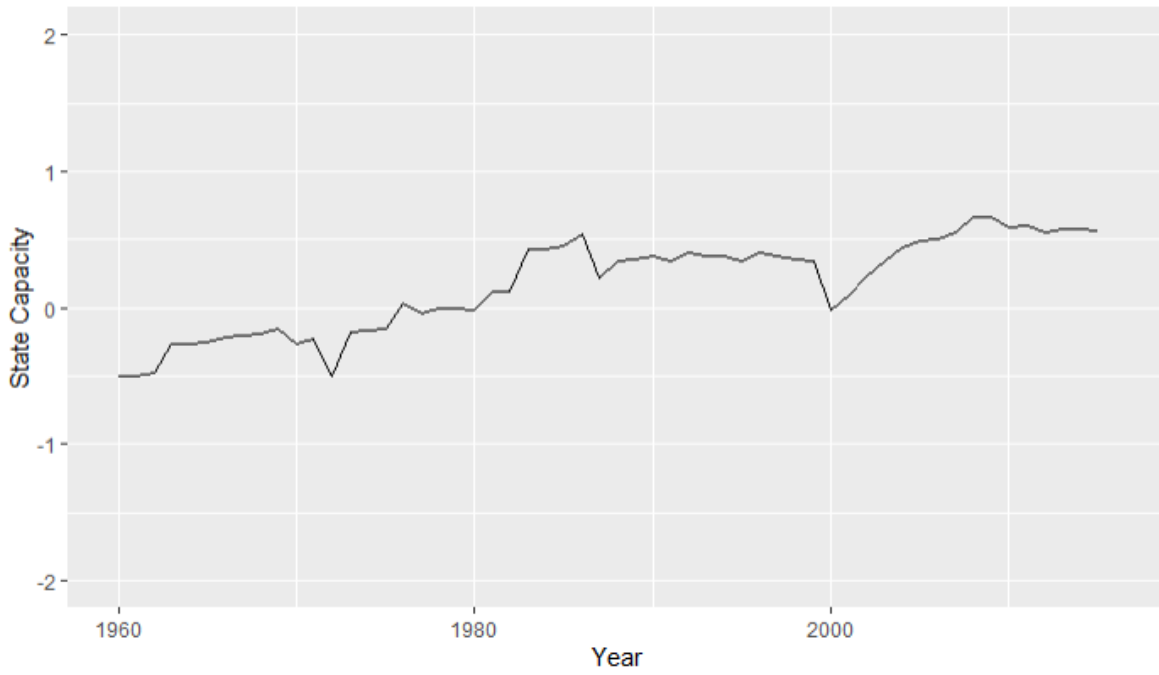
State Capacity: Colombia 1960-2016



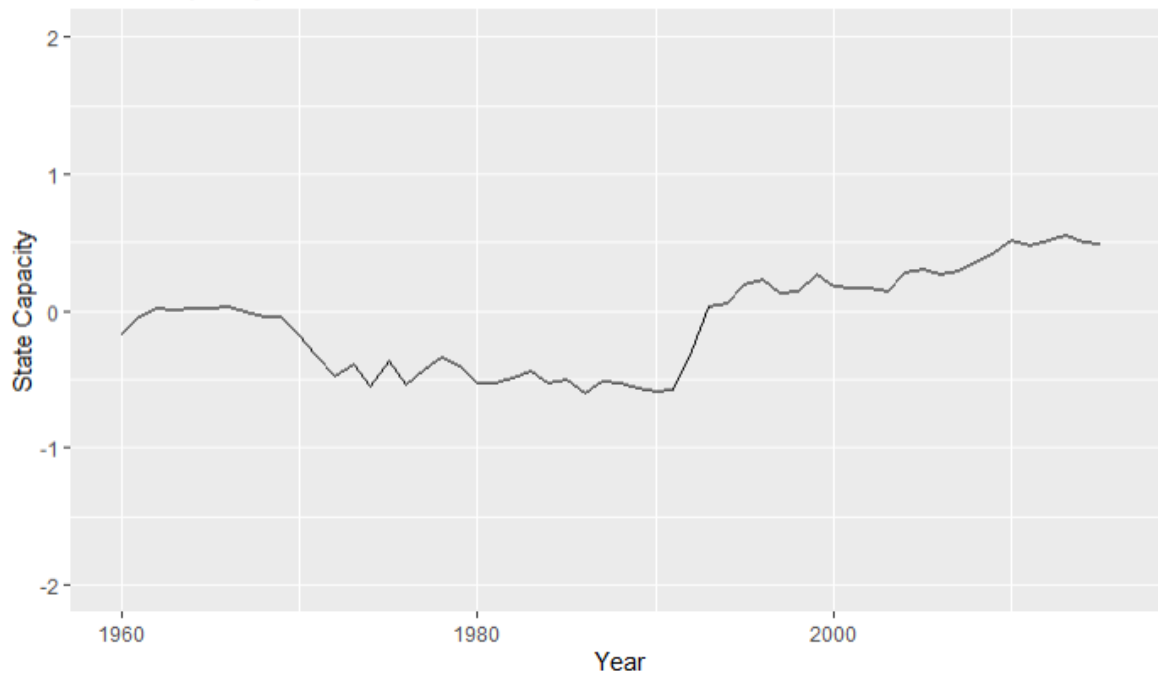
State Capacity: Costa Rica 1960-2016



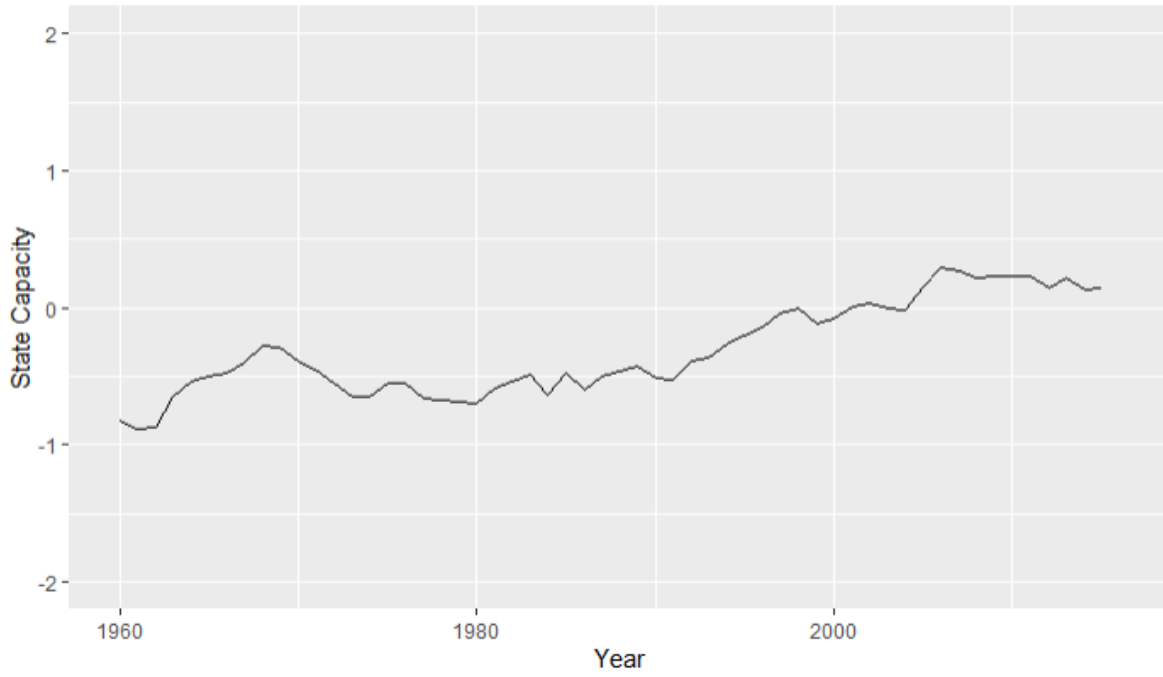
State Capacity: Ecuador 1960-2016



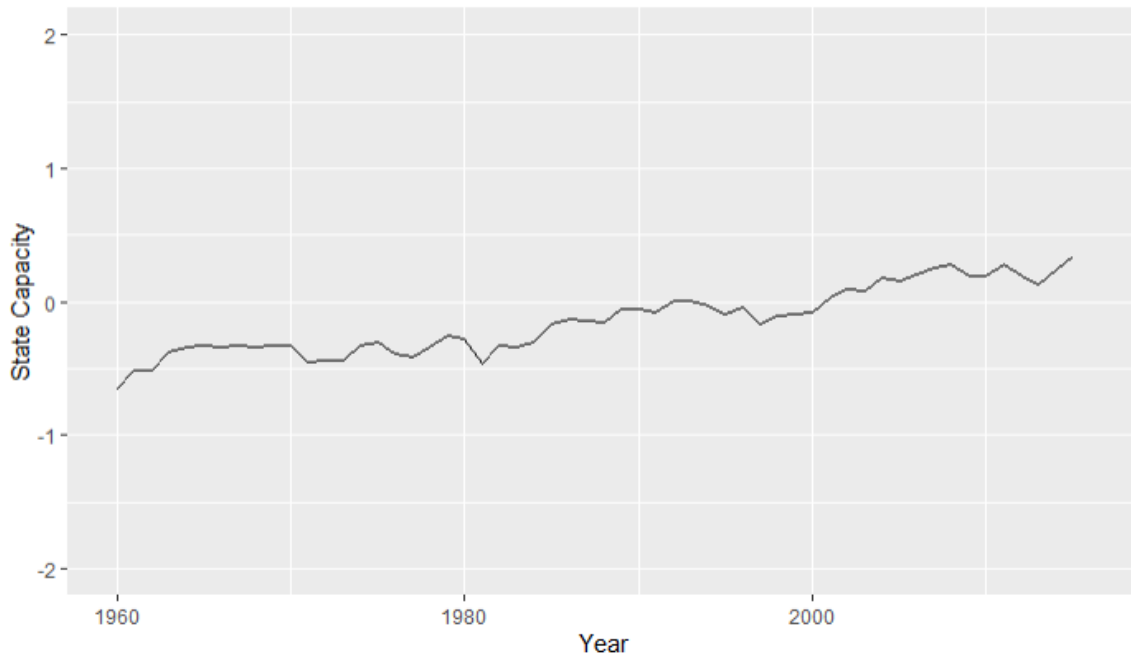
State Capacity: El Salvador 1960-2016



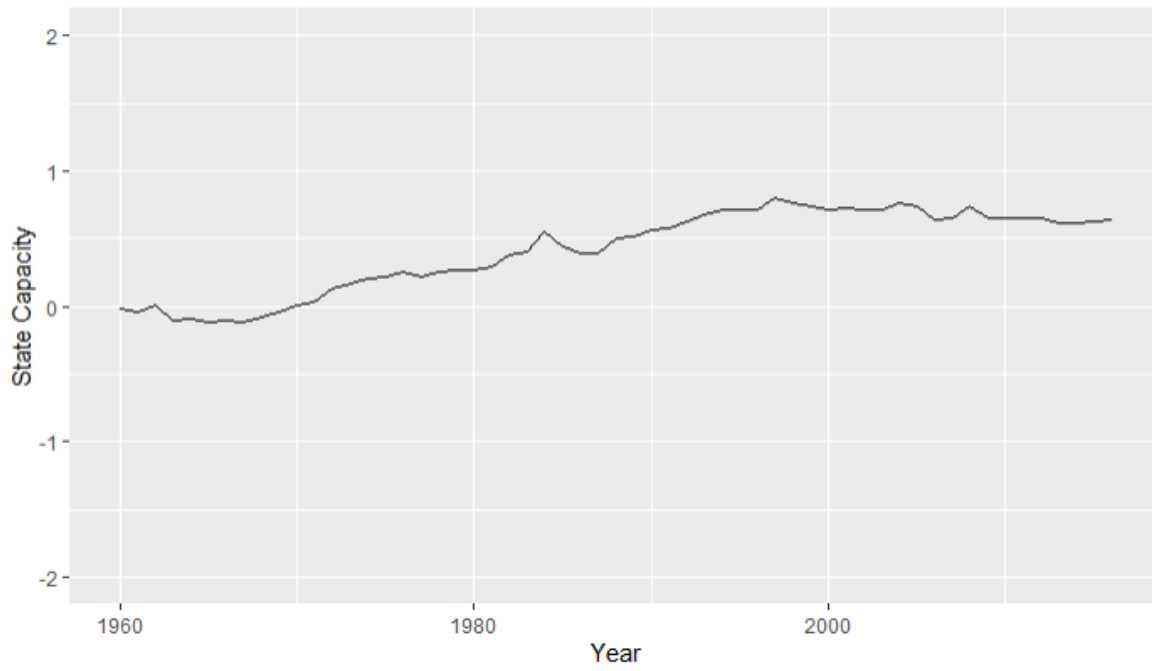
State Capacity: Guatemala 1960-2016



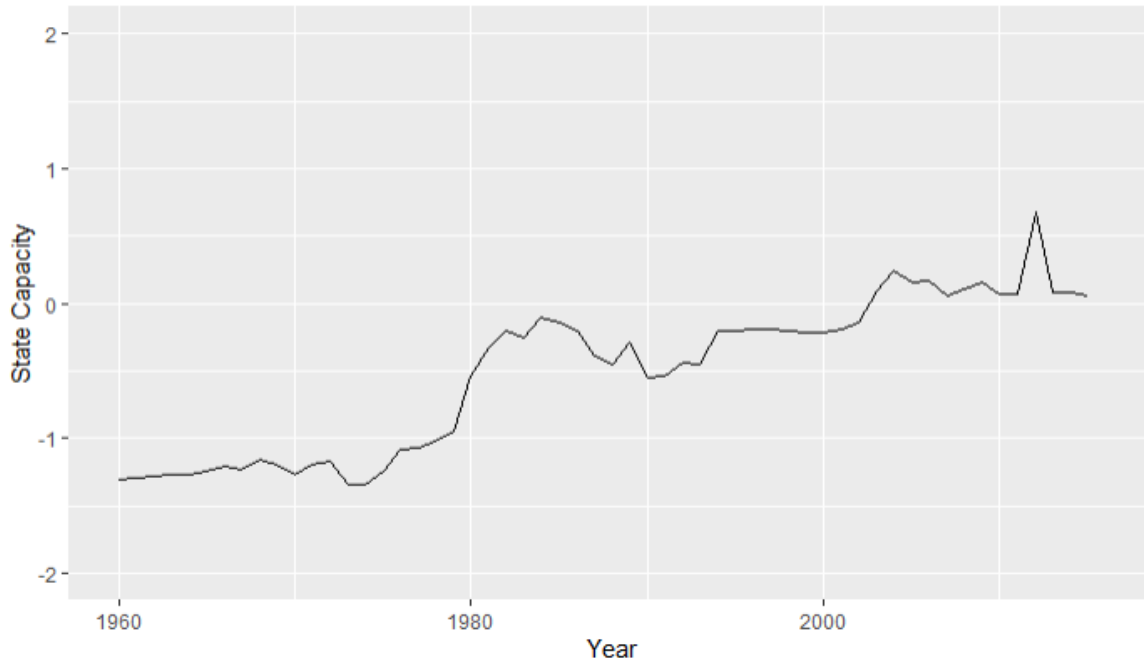
State Capacity: Honduras 1960-2016



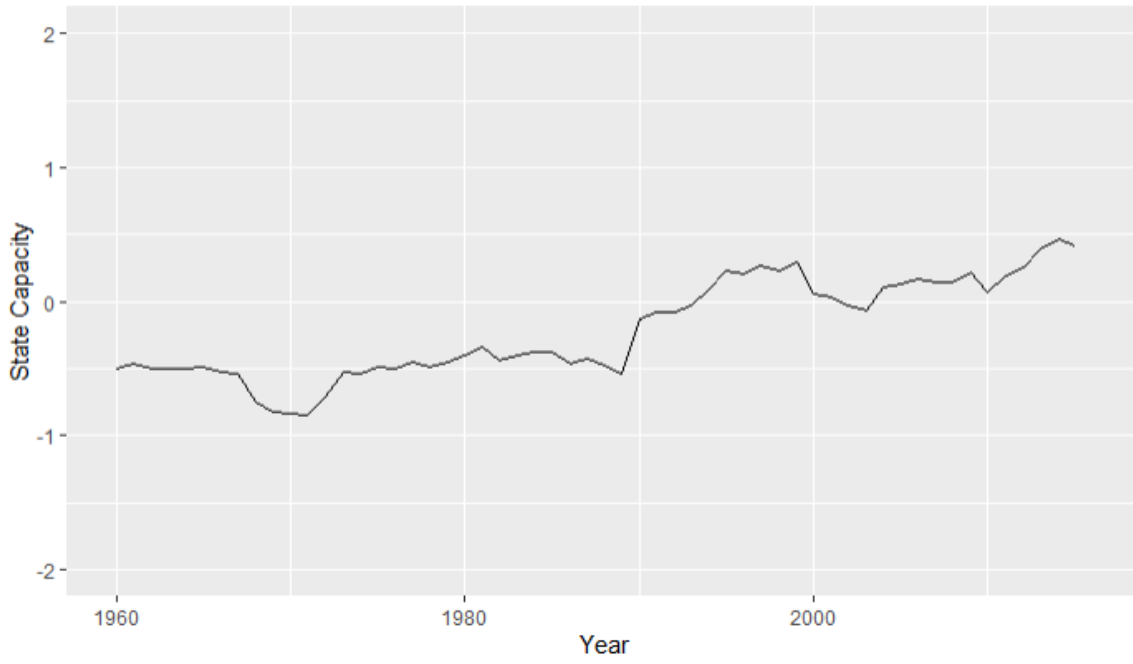
State Capacity: Mexico 1960-2016



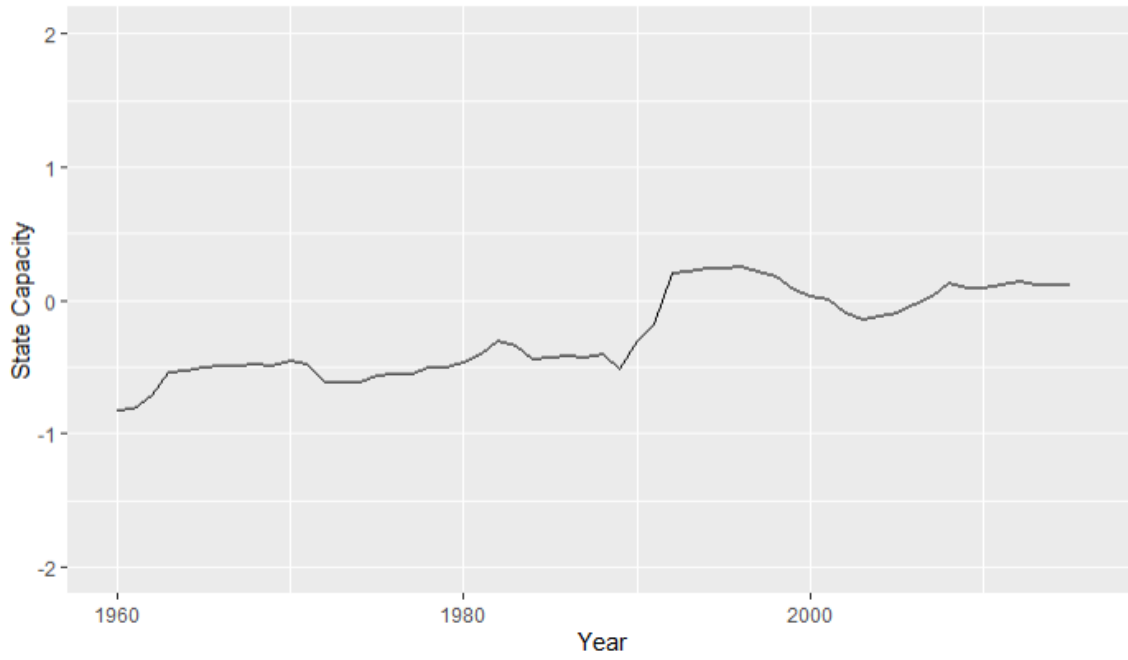
State Capacity: Nicaragua 1960-2016



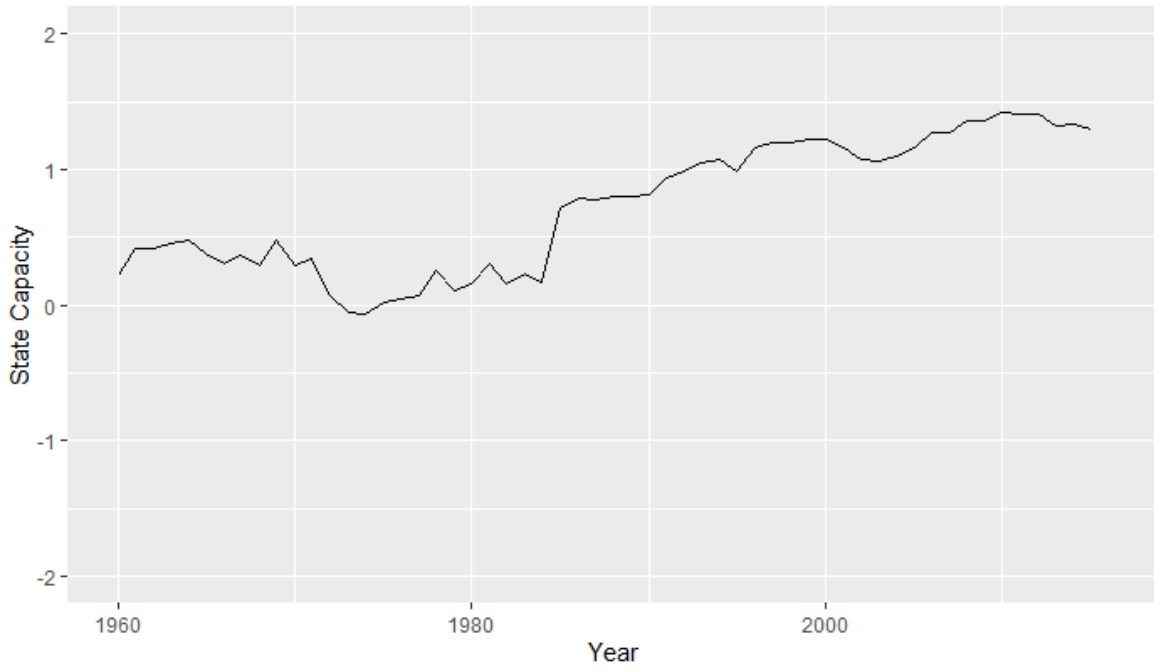
State Capacity: Panama 1960-2016



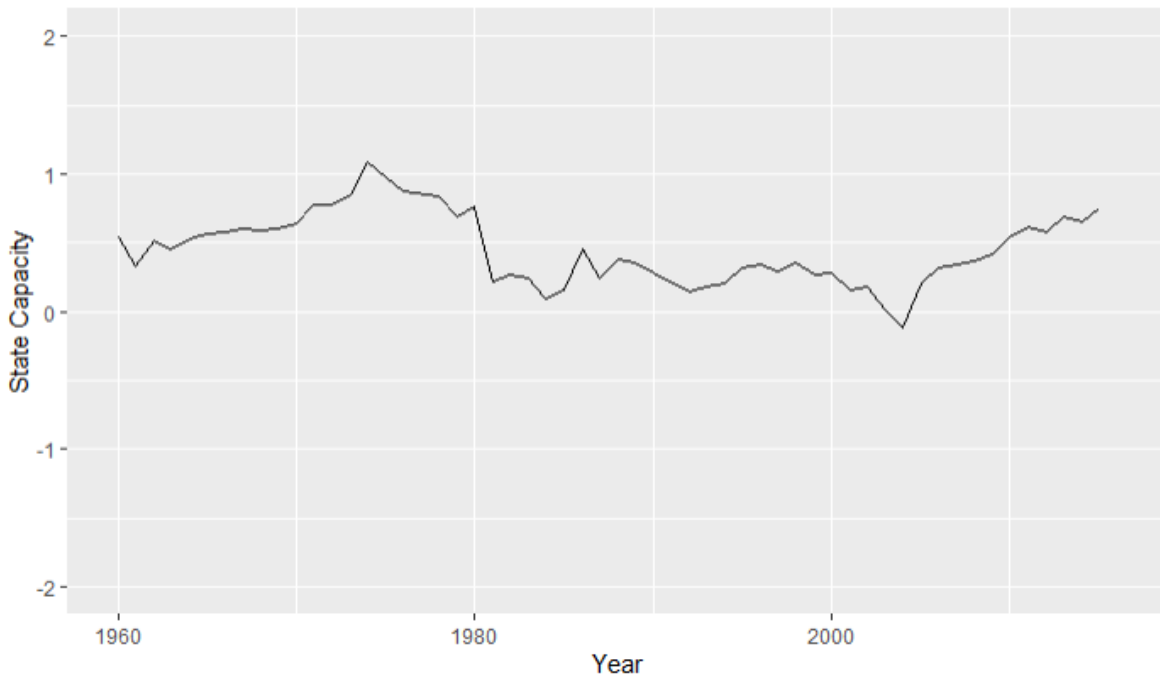
State Capacity: Paraguay 1960-2016



State Capacity:Uruguay 1960-2016

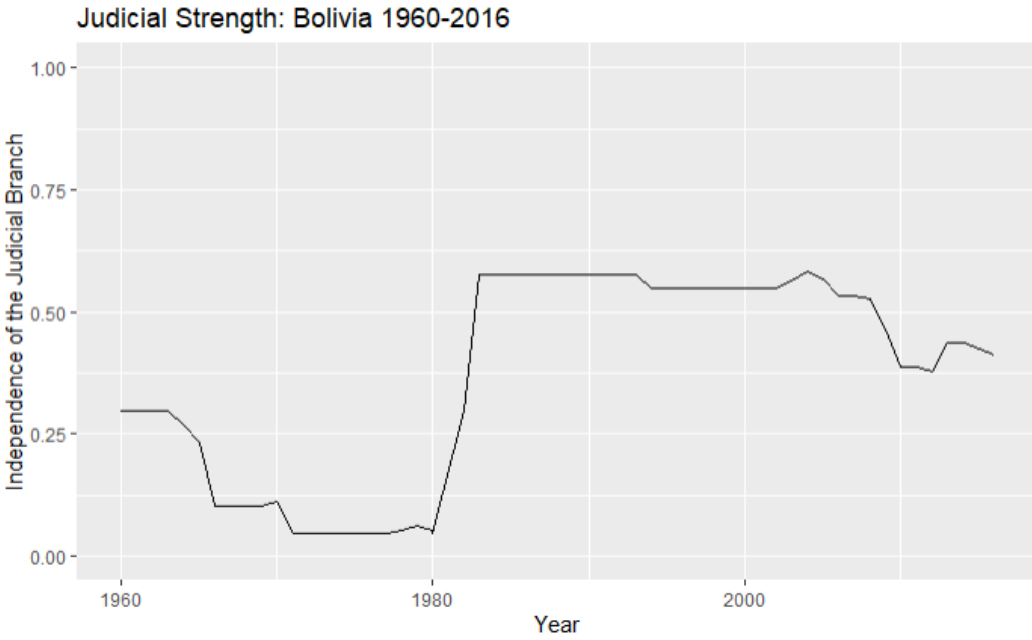
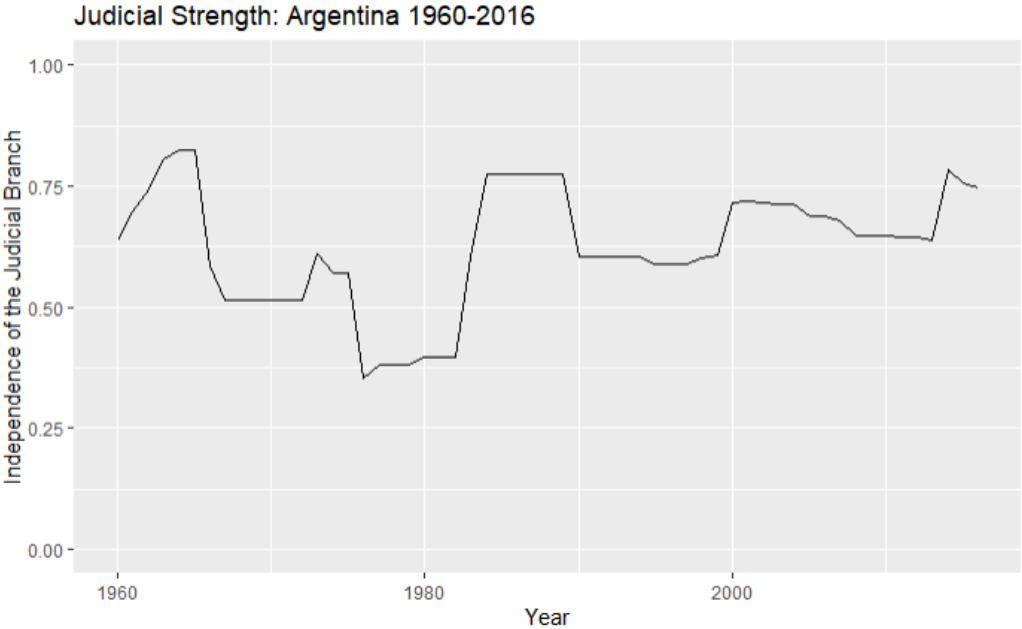


State Capacity: Venezuela 1960-2016

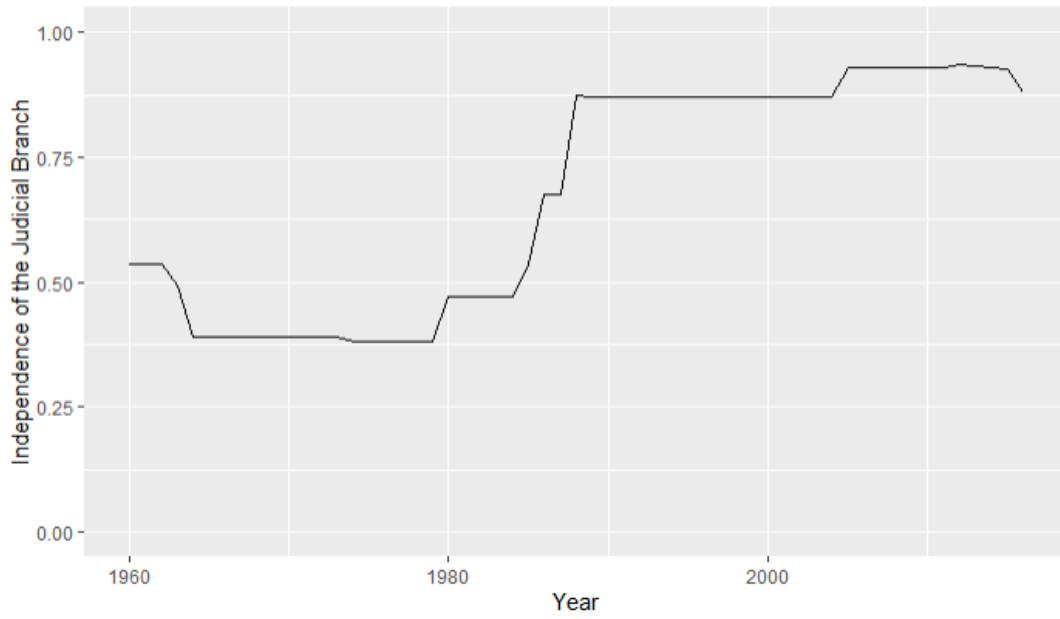




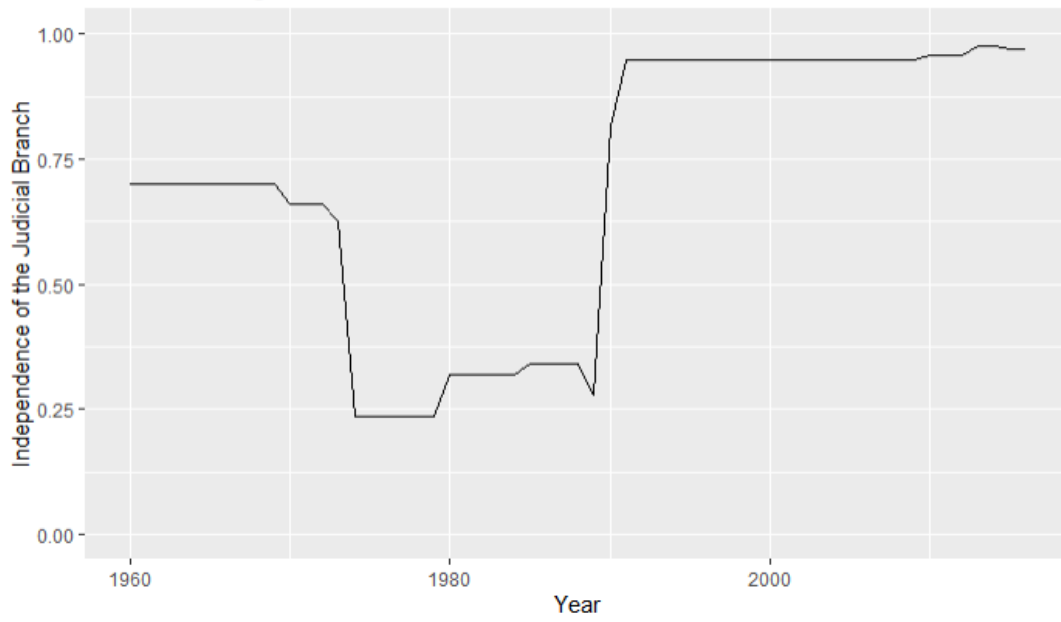
**Appendix D: Judicial Strength by Country**



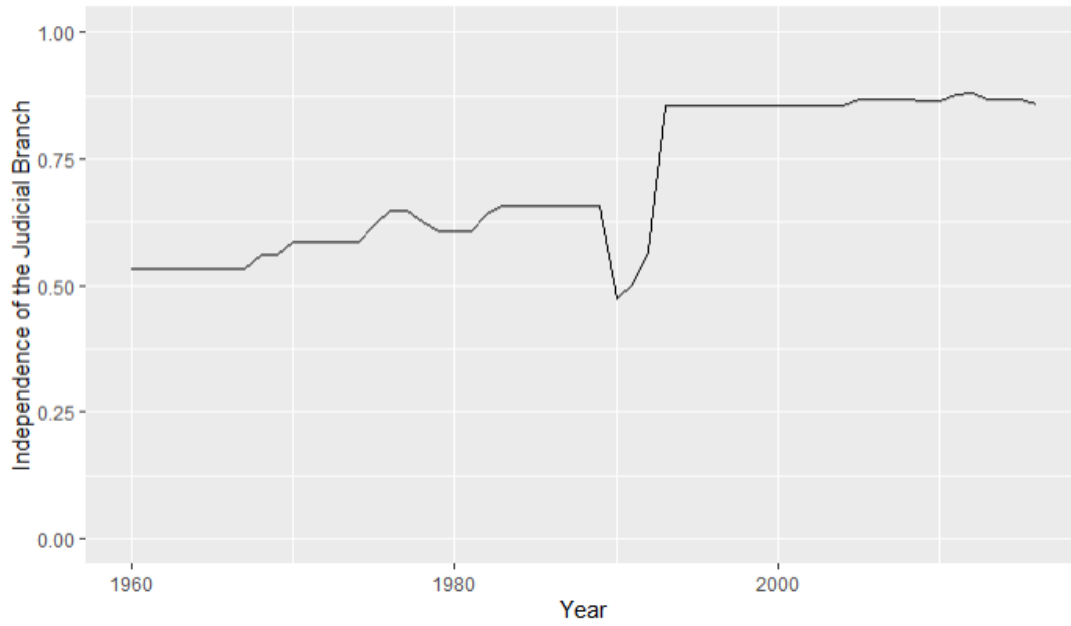
Judicial Strength: Brazil 1960-2016



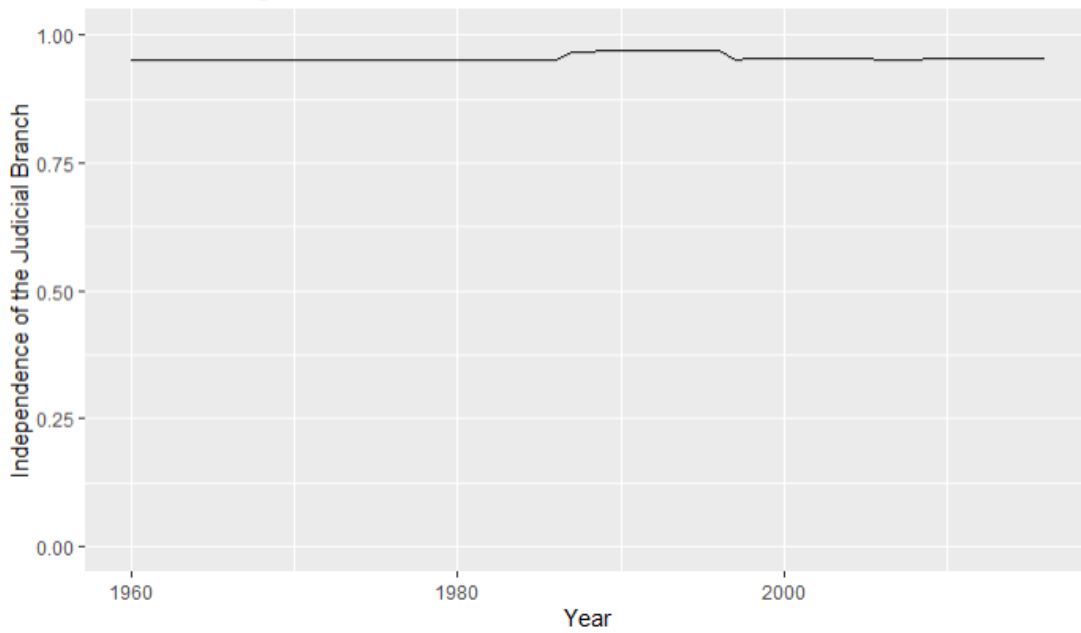
Judicial Strength: Chile 1960-2016



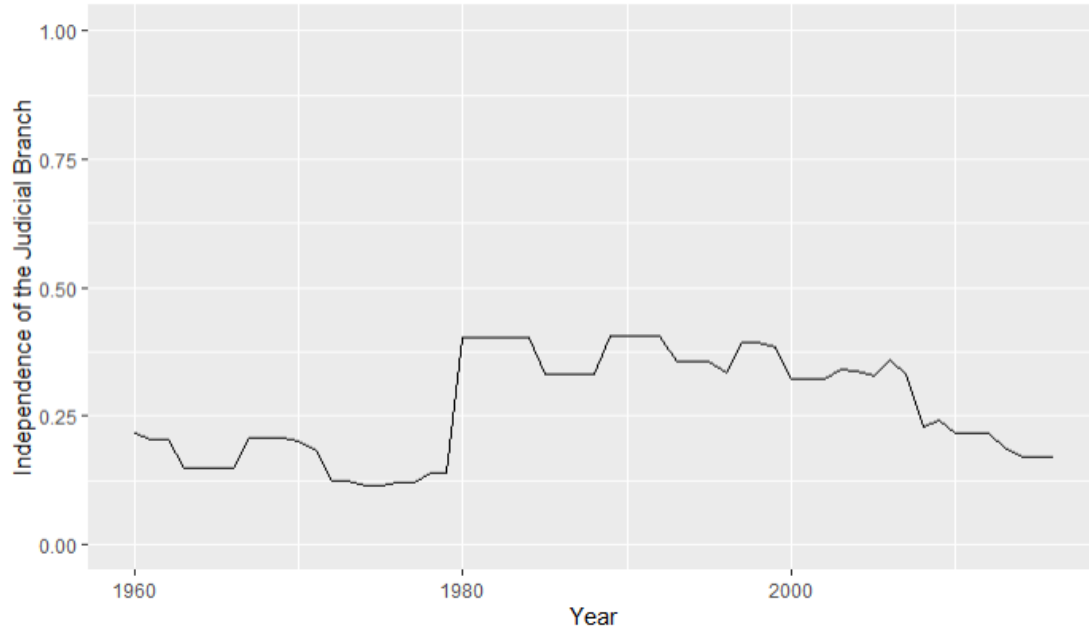
Judicial Strength: Colombia 1960-2016



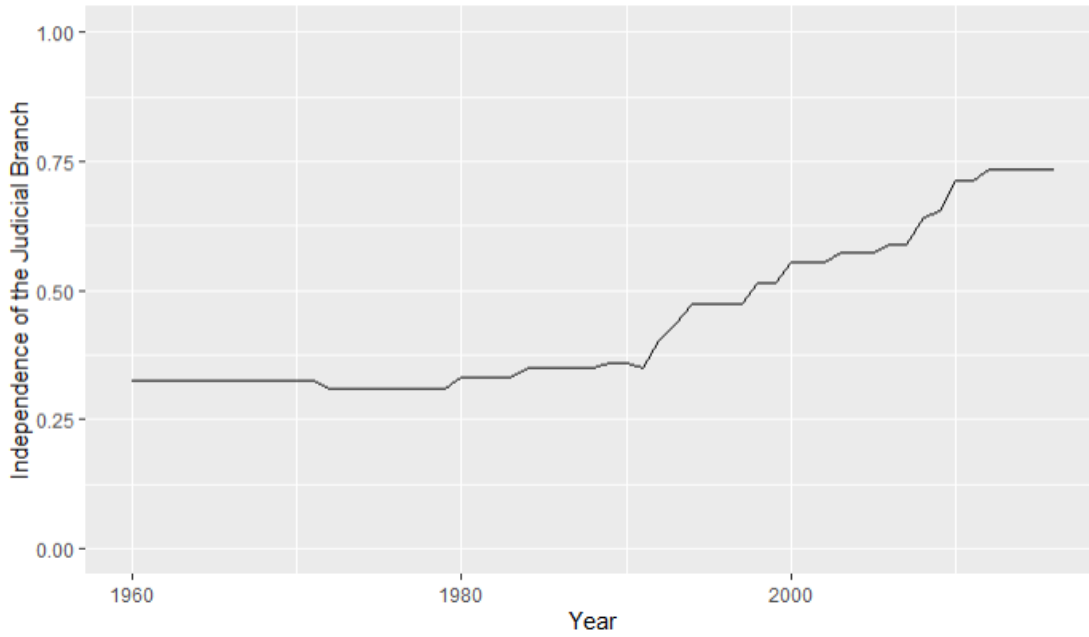
Judicial Strength: Costa Rica 1960-2016



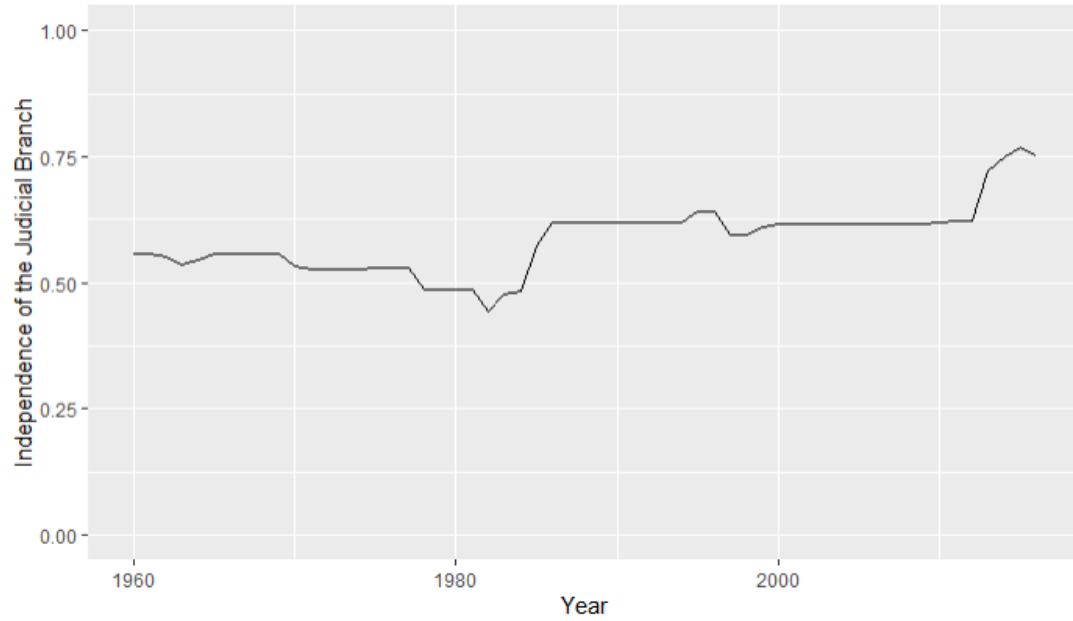
Judicial Strength: Ecuador 1960-2016



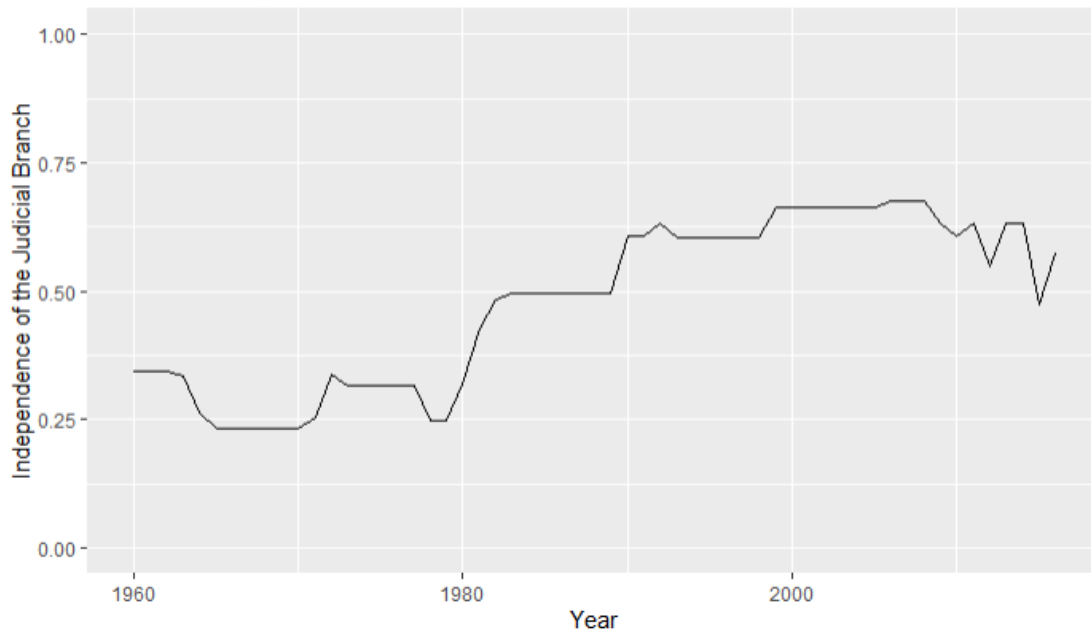
Judicial Strength: El Salvador 1960-2016



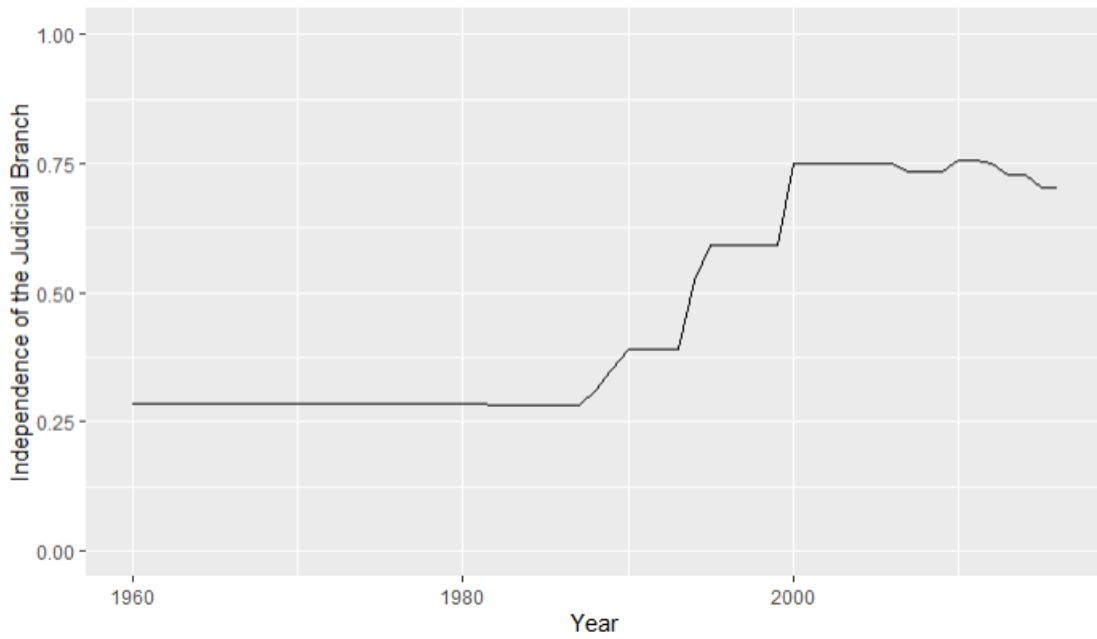
Judicial Strength: Guatemala 1960-2016



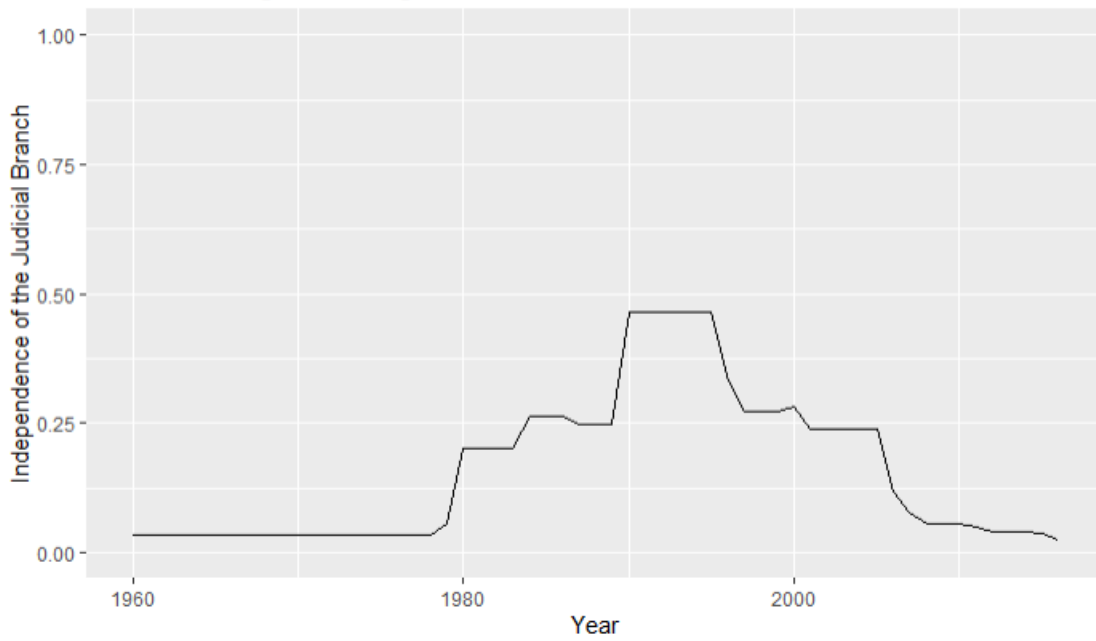
Judicial Strength: Honduras 1960-2016



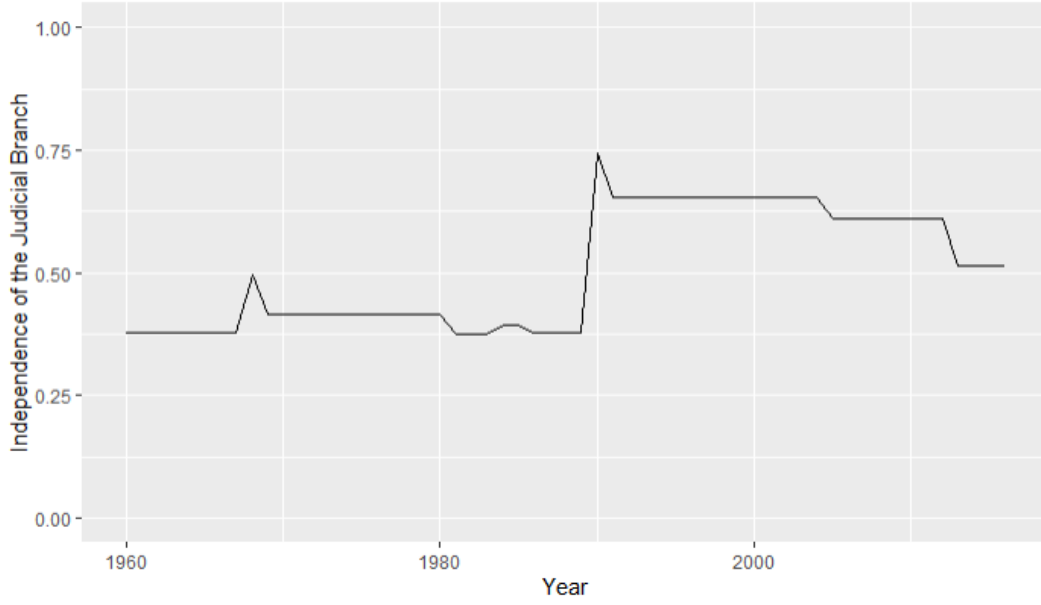
Judicial Strength: Mexico 1960-2016



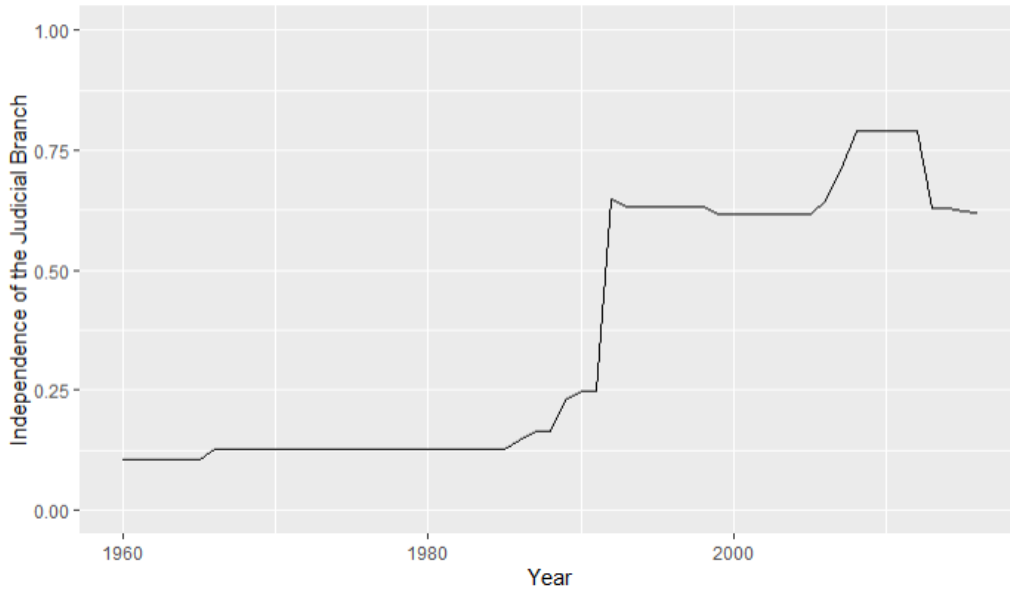
Judicial Strength: Nicaragua 1960-2016



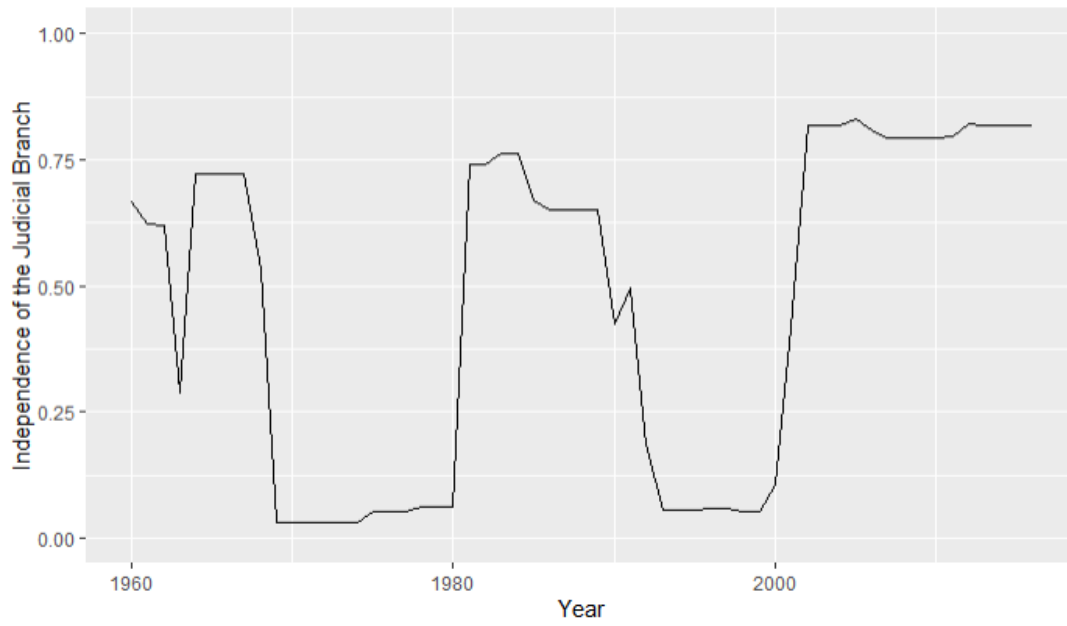
Judicial Strength: Panama 1960-2016



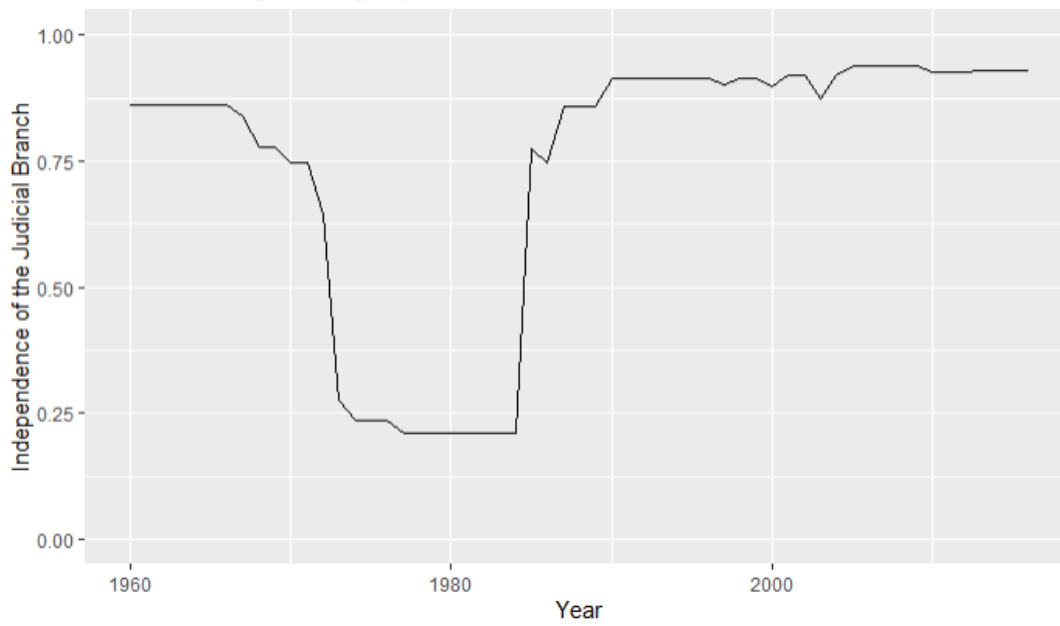
Judicial Strength: Paraguay 1960-2016



Judicial Strength: Peru 1960-2016

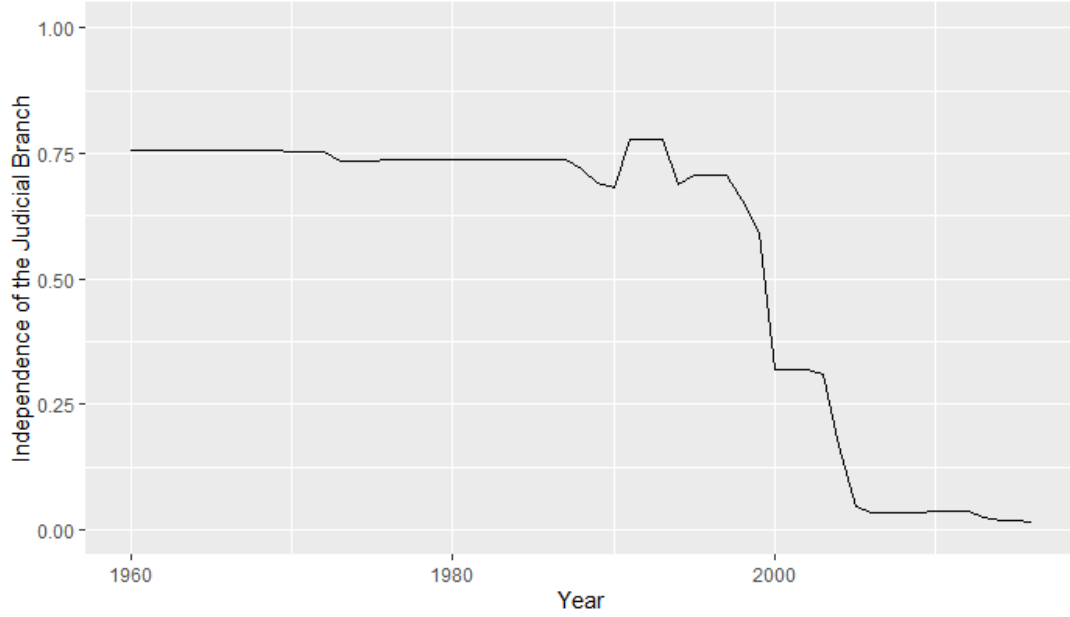


Judicial Strength: Uruguay 1960-2016

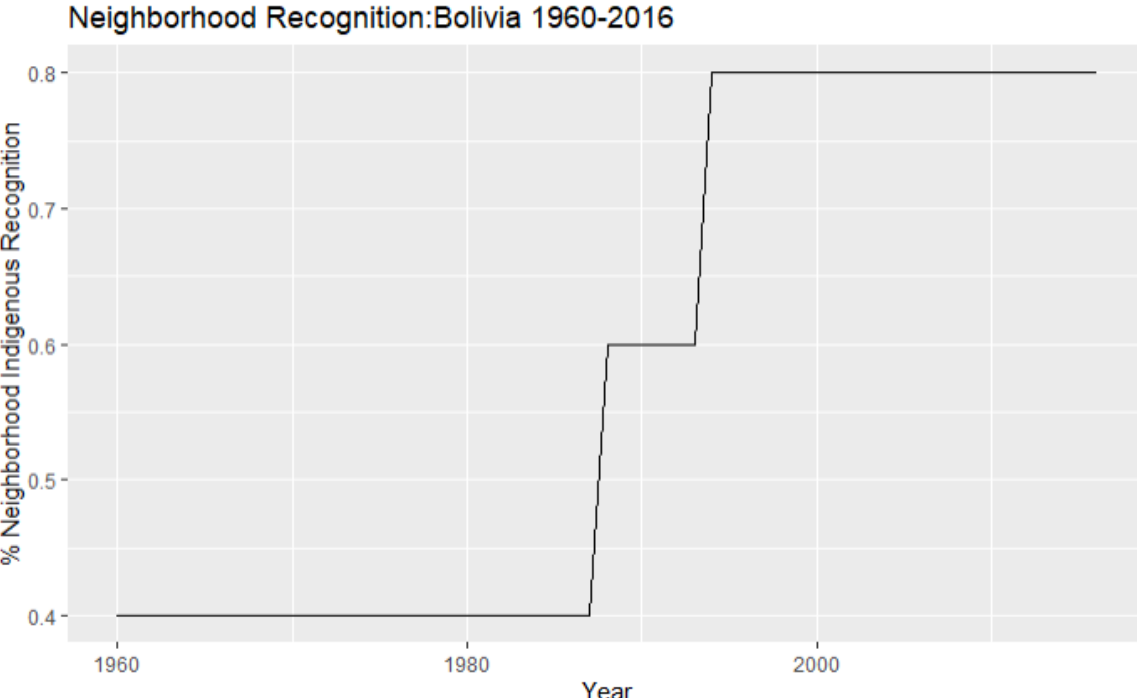
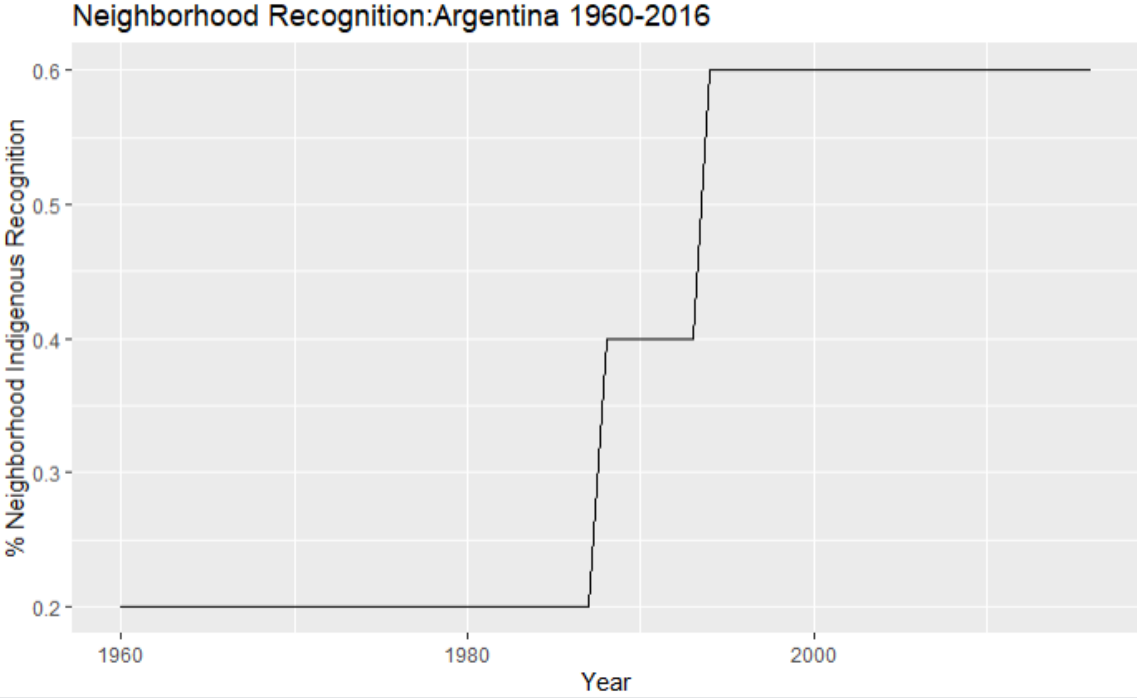




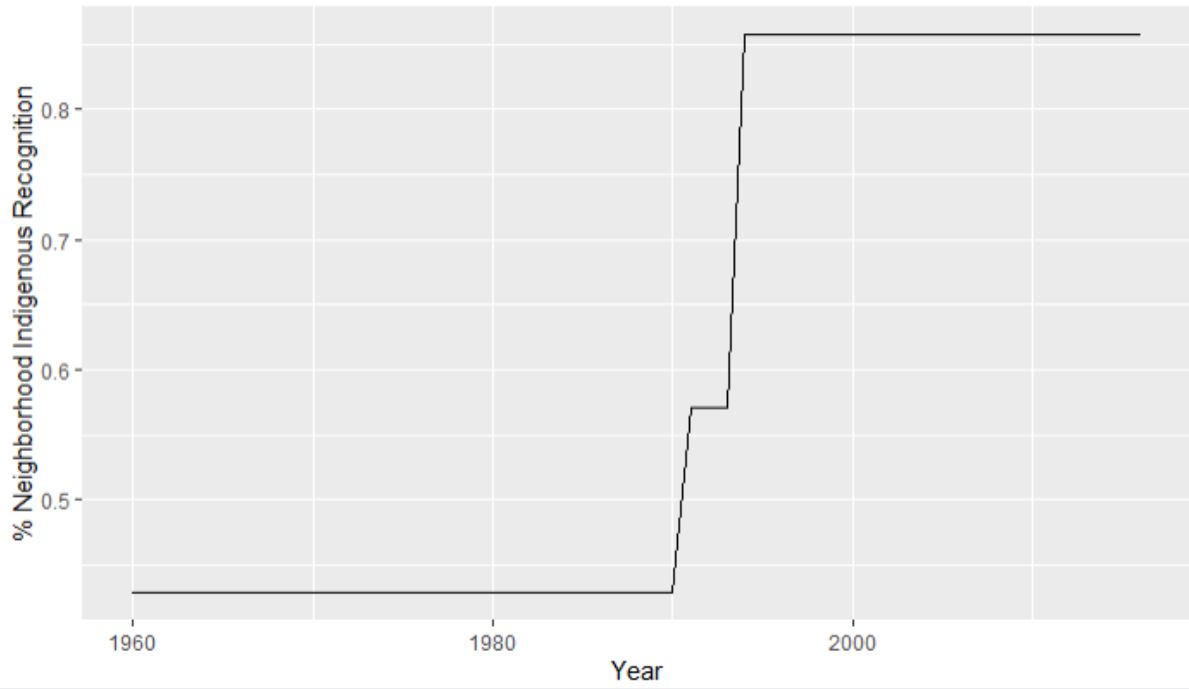
Judicial Strength:Venezuela 1960-2016



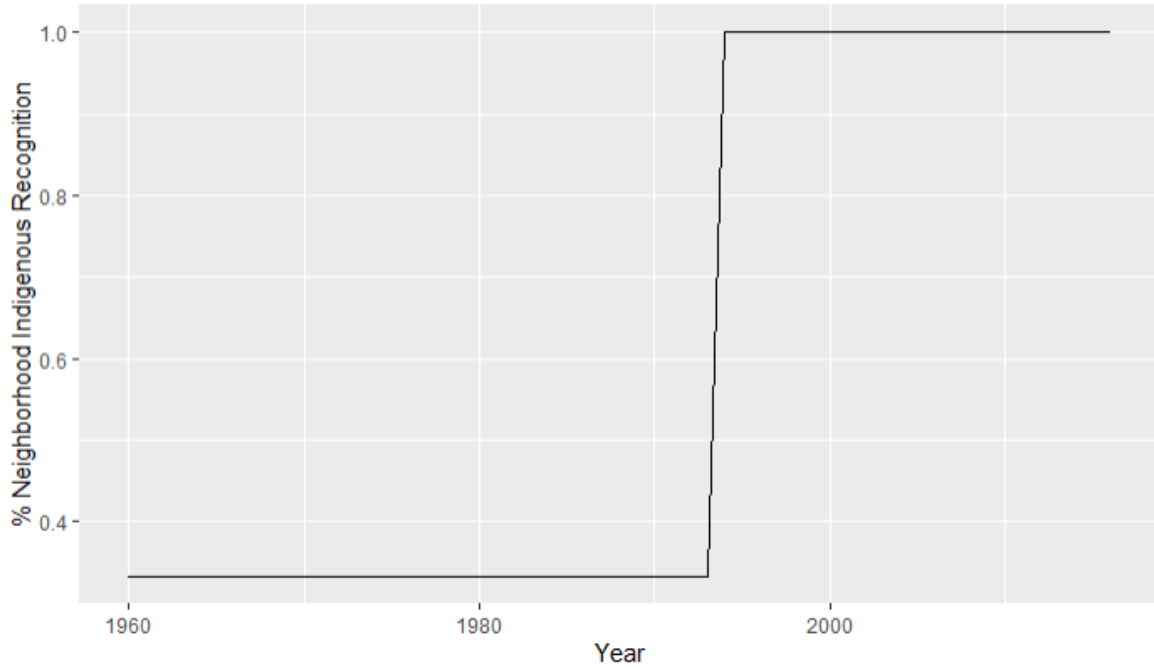
**Appendix E: Neighborhood Effects of Recognition Rights by Country**



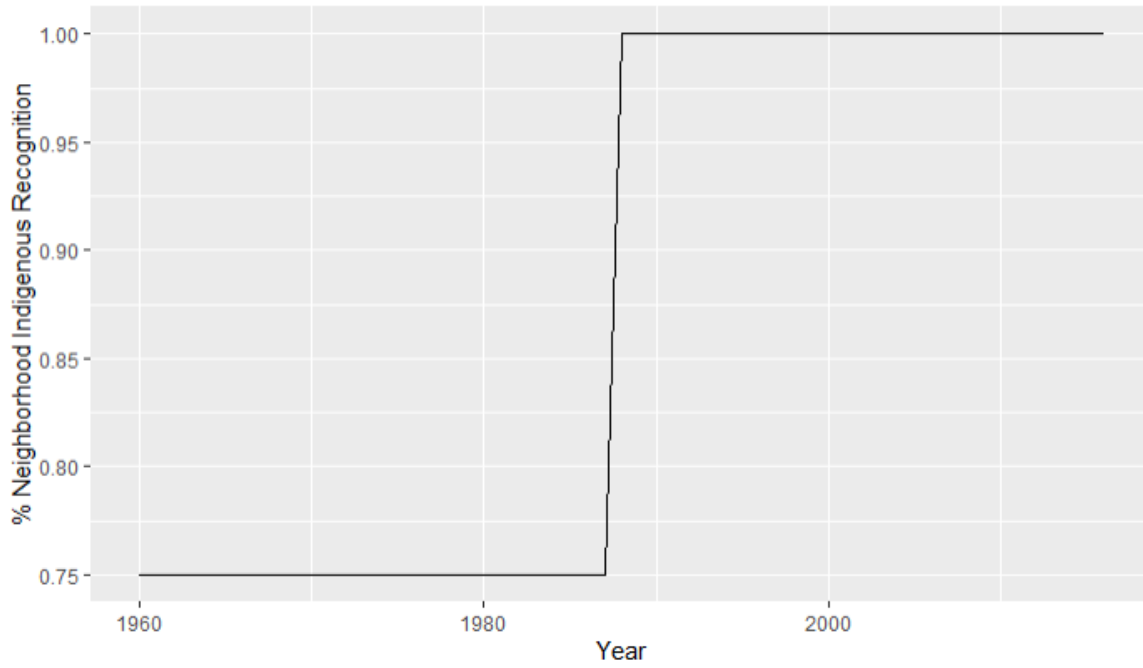
Neighborhood Recognition: Brazil 1960-2016



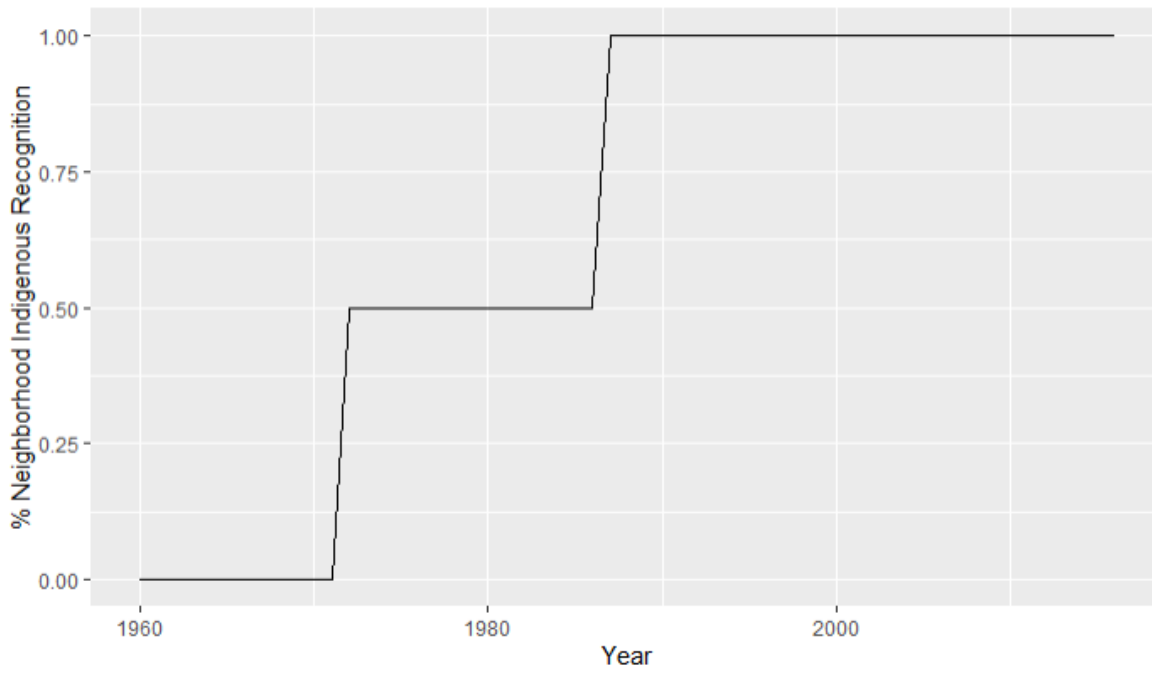
Neighborhood Recognition: Chile 1960-2016



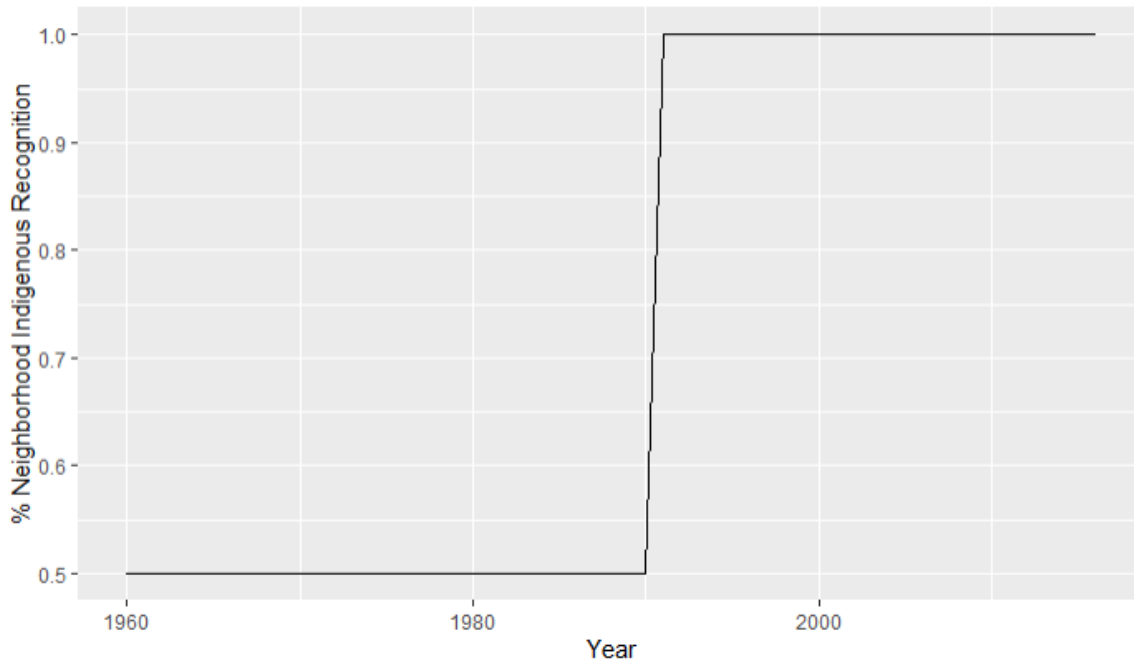
Neighborhood Recognition:Colombia 1960-2016



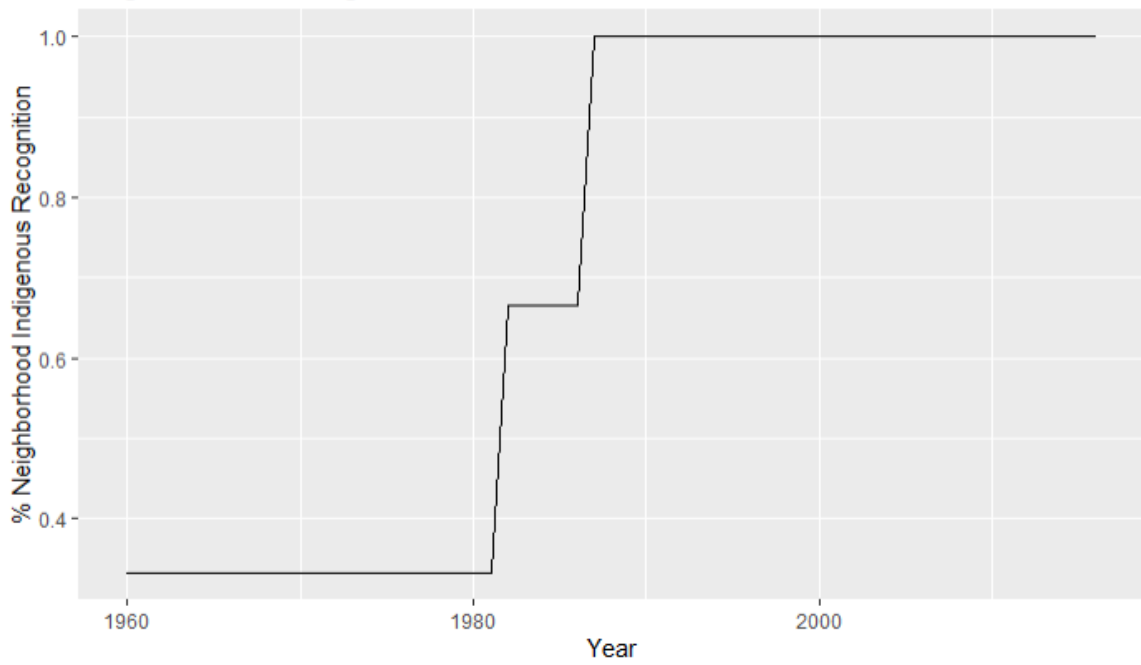
Neighborhood Recognition:Costa Rica 1960-2016



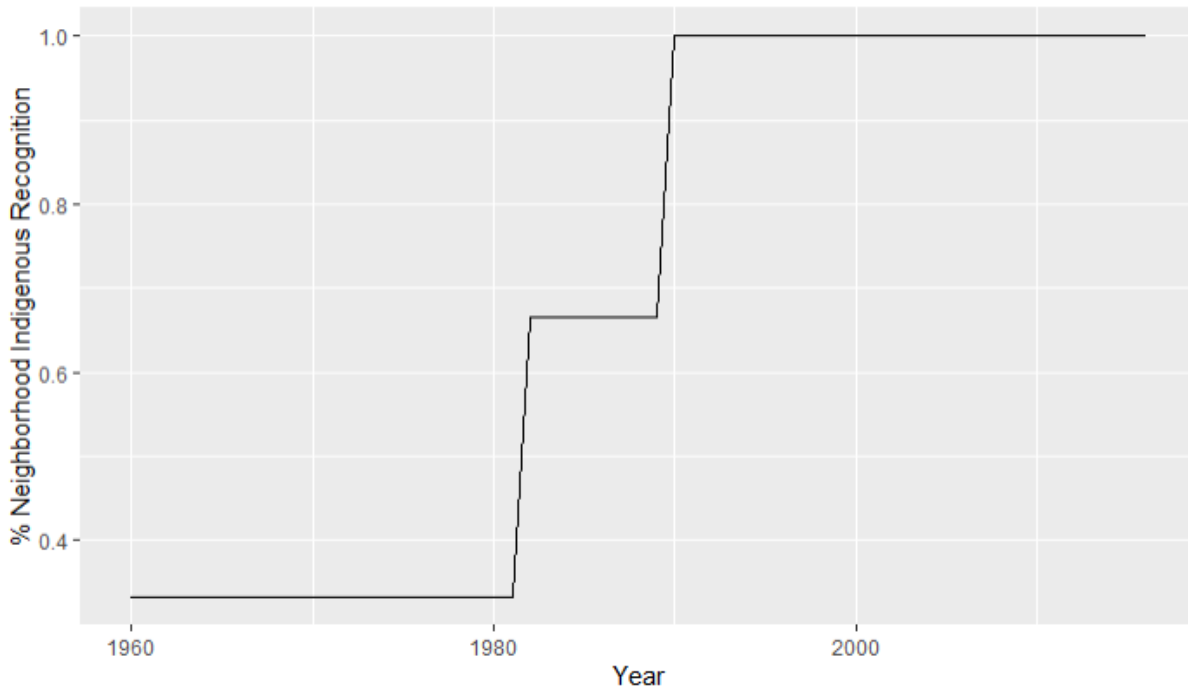
Neighborhood Recognition: Ecuador 1960-2016



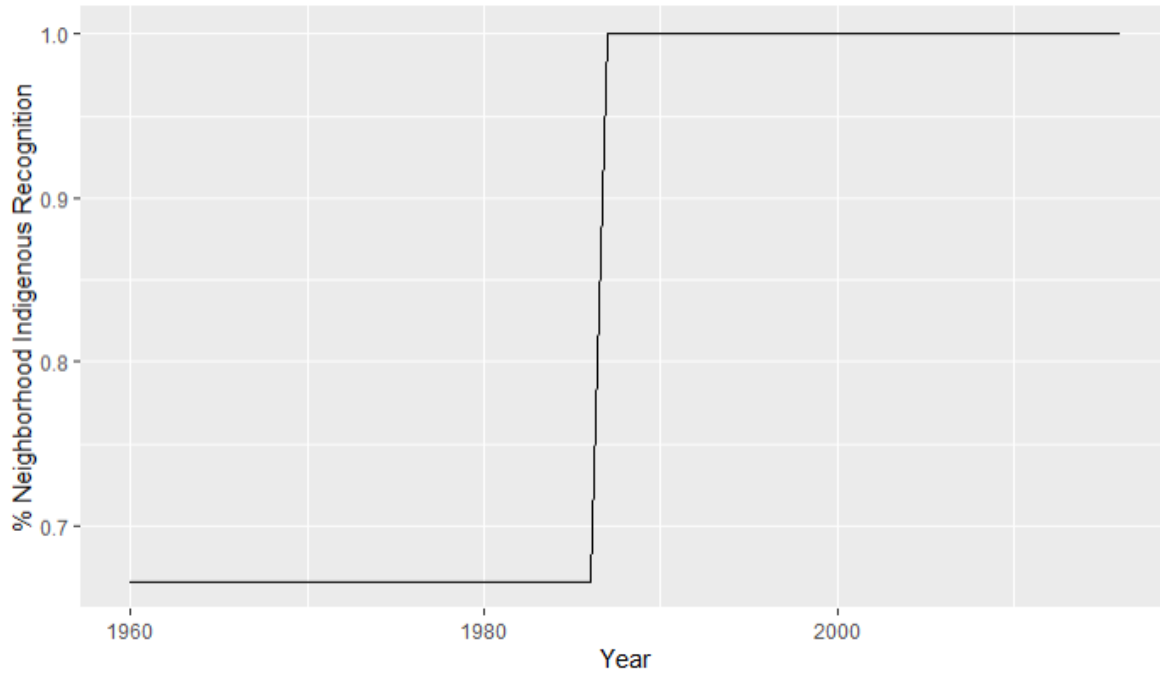
Neighborhood Recognition: El Salvador 1960-2016



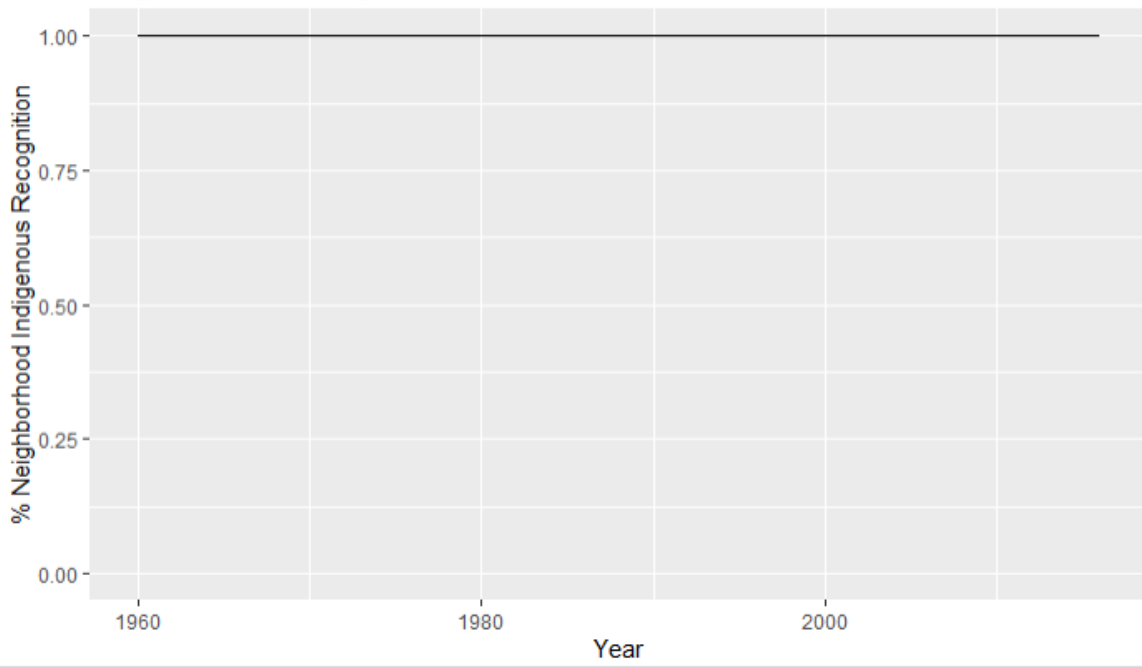
Neighborhood Recognition:Guatemala 1960-2016



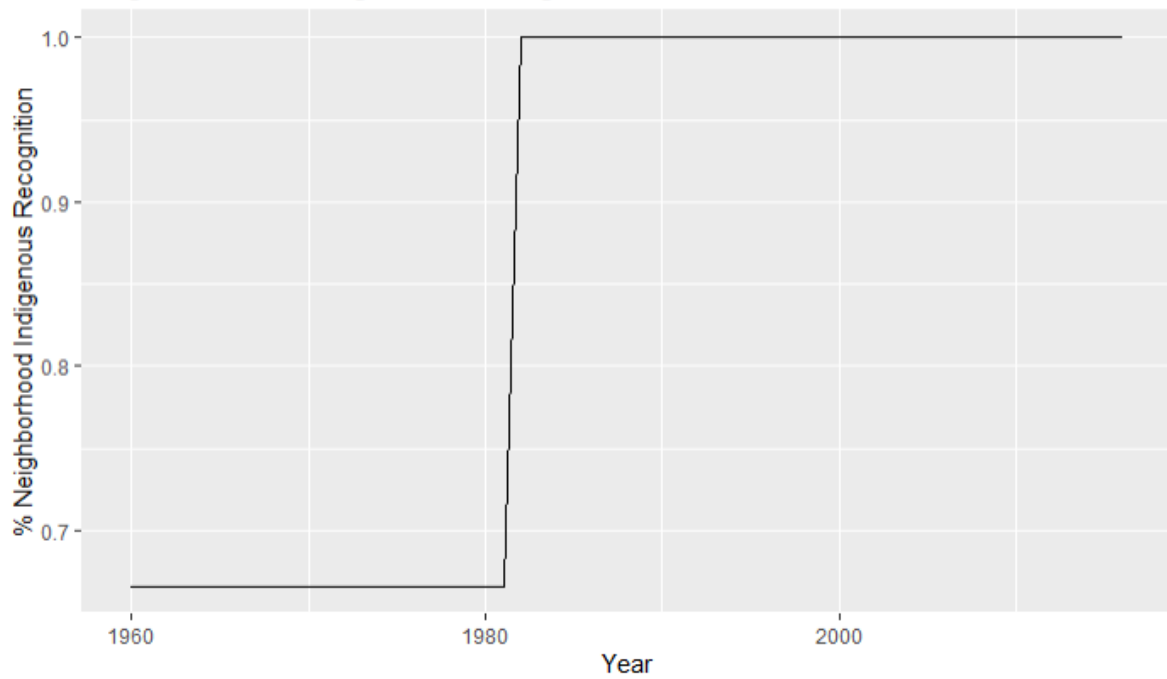
Neighborhood Recognition:Honduras 1960-2016



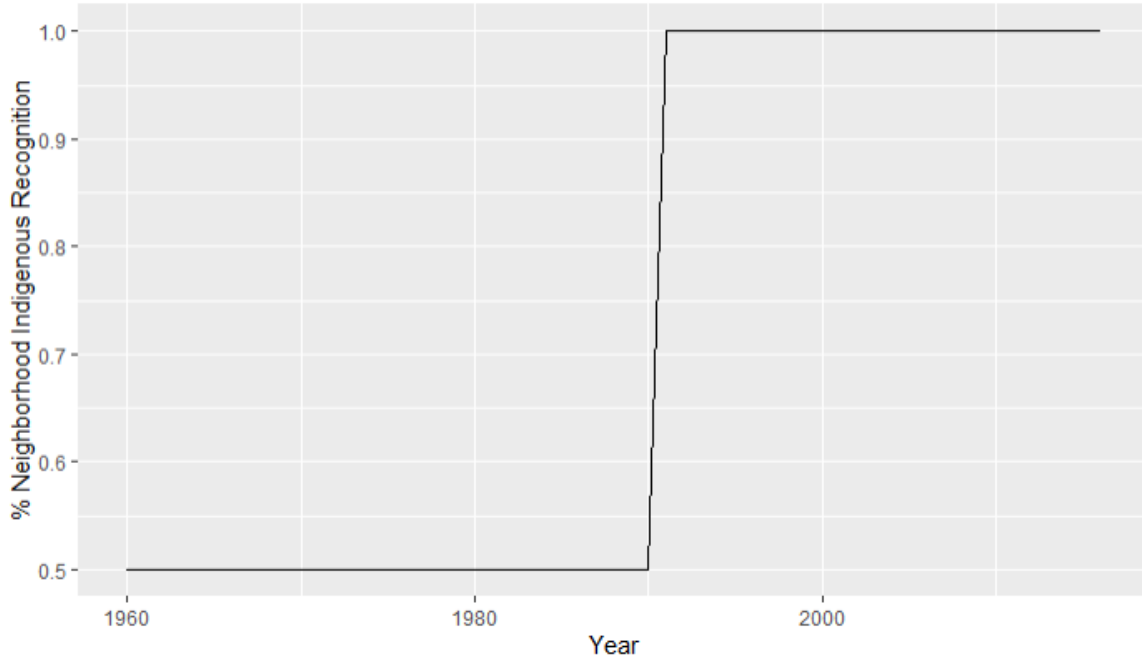
Neighborhood Recognition:Mexico 1960-2016



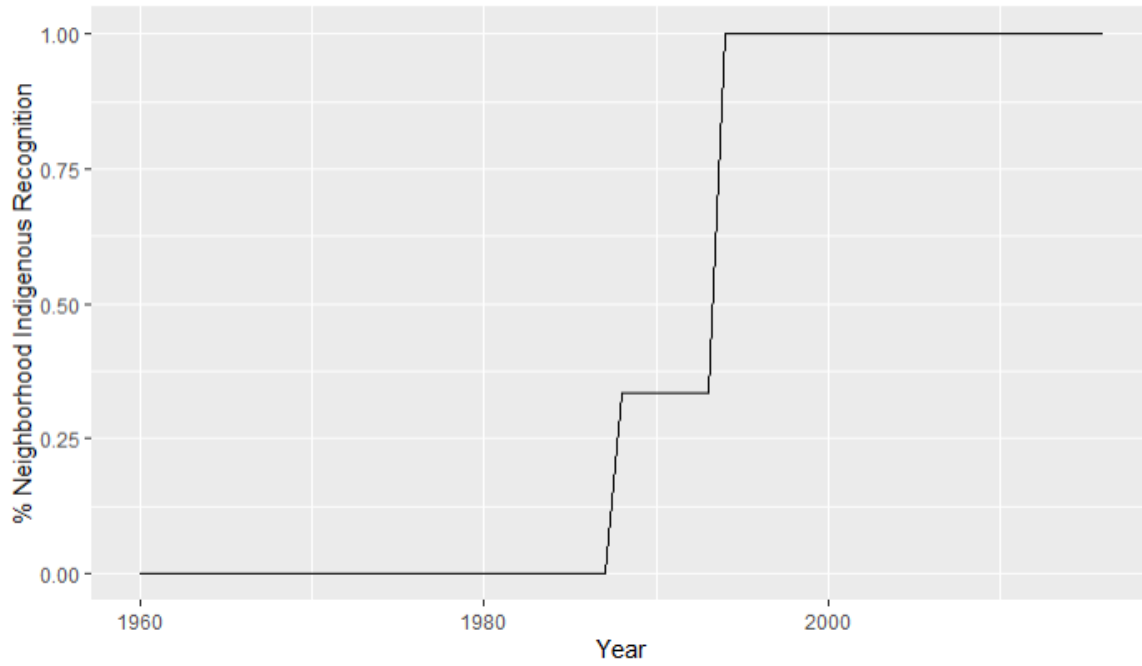
Neighborhood Recognition:Nicaragua 1960-2016



Neighborhood Recognition: Panama 1960-2016

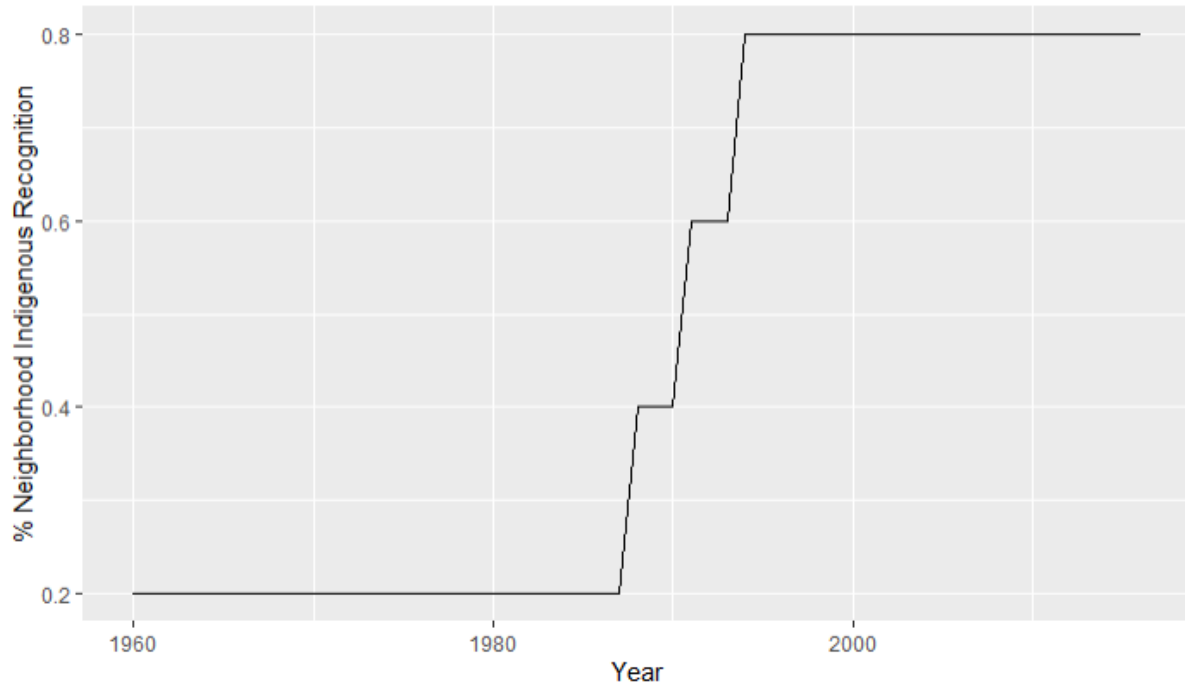


Neighborhood Recognition: Paraguay 1960-2016

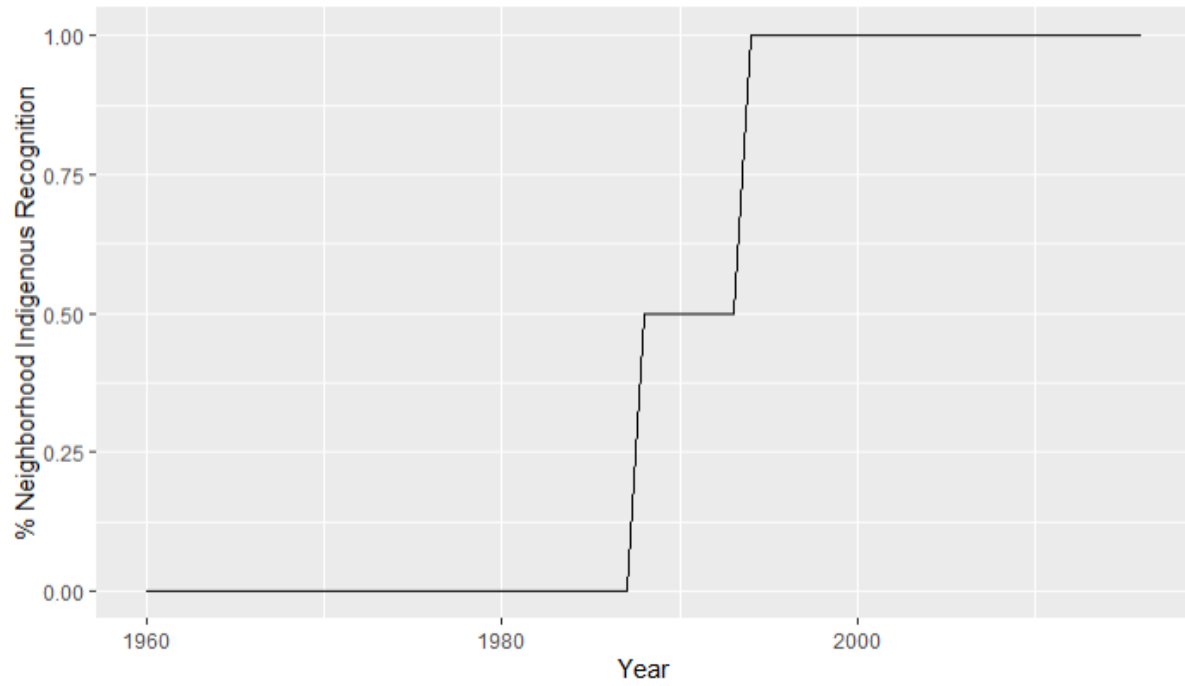




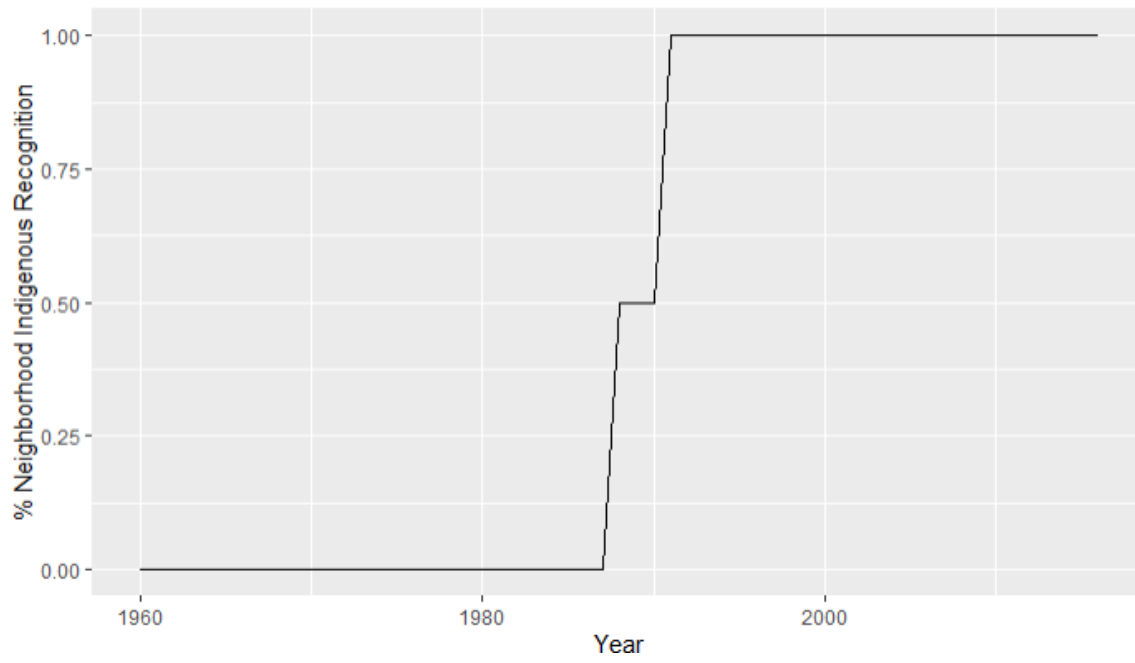
Neighborhood Recognition:Peru 1960-2016



Neighborhood Recognition:Uruguay 1960-2016



Neighborhood Recognition:Venezuela 1960-2016



## **Appendix F: Summary of Coding Rules for Indigenous Constitutional Rights**

This dissertation argues that indigenous rights can be categorized into four distinct types, all of which have different political implications. Here, I summarize the coding schema for indigenous rights implemented into Latin American constitutions during the observation period.

### *Indigenous Recognition*

This category represents the minimum threshold of indigenous protection in national constitutions. Simply, indigenous recognition legitimized original populations as state citizens. These provisions are vague and have implications of indigenous rights to political representation, but these remain underspecified.

Adoptions are coded as indigenous recognition if they:

- Acknowledge indigenous populations as part of the state
- State that indigenous populations have the right to existence in state territory
- Name indigenous nations as citizenry of the state
- Do not delineate specific rights to health, education, culture, political representation, etc.

### *Indigenous Representation*

This next category of rights goes a step beyond general political recognition of indigenous populations. These rights take steps to equalize the protection of indigenous language, culture, education, health, and political representation in relation to non-indigenous citizens in society. However, they do not serve to correct economic or societal inequalities. This means they do not include rights that divert political resources to elevate only indigenous communities.

Adoptions are coded as indigenous representation if they:

- Mention the protection of indigenous languages, cultures, education, health, and representation.
- Confirm the right to indigenous political representation but does not include rights to proportional representation.
- Confirm equal indigenous rights, such as property rights, or the right to sue in response to government and/or private encroachment.
- Does not include rights that correct indigenous social, economic, and political inequalities by guaranteeing state resources, proportional representation, collective property rights, etc.

### *Indigenous Resources*

Resource rights that are adopted into the constitution are the first to differentiate indigenous status from non-indigenous citizens. This means that state resources are specified particularly to benefit indigenous communities and correct historical imbalances. These rights recognize societal and political imbalances suffered by indigenous communities. However, they remain compatible with existing state institutions. That is, they create indigenous political rights within existing state bodies, and do not create new ones.

Adoptions are coded as indigenous resources if they:

- Promise state funding for indigenous, health, and representation.
- Create laws of indigenous proportional representation in state government (i.e., legislature, judiciary).
- Create indigenous representative bodies within pre-existing institutions, such as an executive council, or in the state judiciary.

- Allow for indigenous consultation on resource projects in original territories. This is different from prior informed consent, however, which requires the consent of indigenous representatives and not just consultation.
- Recognize the existence of indigenous lands but does not include rights to autonomy or self-government of these regions.

### *Indigenous Autonomy Rights*

These rights recognize indigenous nations, demarcate their lands, and create new institutions specifically for the purpose of indigenous representation. They represent the most extreme reorientation of the political status quo and legalize indigenous autonomy based on separate national heritage.

Adoptions are coded as indigenous autonomy if they:

- Demarcate indigenous lands AND allow for their self-government.
- Create new political institutions, such as a plurinational judiciary that serves multiple nations within one state territory.
- Outline collective land and property rights for indigenous populations.

## Appendix G: Additional Tests for Statistical Models

### *Recognition Rights Adoption Model 1*

```
. stcox Dem MvmntNGO IndGovtRep StateCapacity LanguageSpoken
```

```
Failure _d: RecRights==1
Analysis time _t: Year
```

```
Iteration 0: log likelihood = -75.245776
Iteration 1: log likelihood = -72.087673
Iteration 2: log likelihood = -66.5781
Iteration 3: log likelihood = -65.916186
Iteration 4: log likelihood = -65.895916
Iteration 5: log likelihood = -65.895862
Refining estimates:
Iteration 0: log likelihood = -65.895862
```

Cox regression with Breslow method for ties

```
No. of subjects = 368           Number of obs = 368
No. of failures = 15
Time at risk = 727,901
LR chi2(5) = 18.70
Log likelihood = -65.895862     Prob > chi2 = 0.0022
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	.0816203	.1468506	-1.39	0.164	.0024006	2.775063
MvmntNGO	.903199	.2835584	-0.32	0.746	.4881459	1.671157
IndGovtRep	1.571958	.6391623	1.11	0.266	.7085004	3.487721
StateCapacity	.2962331	.1777984	-2.03	0.043	.0913575	.9605563
LanguageSpoken	1.005818	.0255703	0.23	0.819	.9569294	1.057205

.

## Recognition Rights Adoption Model 2

. stcox MvmntNGO IndGovtRep StateCapacity JudStr NeighborRecog

Failure \_d: RecRights==1  
 Analysis time \_t: Year

Iteration 0: log likelihood = -75.245776  
 Iteration 1: log likelihood = -70.525395  
 Iteration 2: log likelihood = -63.10709  
 Iteration 3: log likelihood = -62.536367  
 Iteration 4: log likelihood = -62.528509  
 Iteration 5: log likelihood = -62.528503  
 Refining estimates:  
 Iteration 0: log likelihood = -62.528503

Cox regression with Breslow method for ties

No. of subjects = 368  
 No. of failures = 15  
 Time at risk = 727,901  
 Number of obs = 368  
 LR chi2(5) = 25.43  
 Prob > chi2 = 0.0001  
 Log likelihood = -62.528503

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
MvmntNGO	.7677481	.2635504	-0.77	0.441	.3917606	1.504585
IndGovtRep	2.732149	1.200286	2.29	0.022	1.154928	6.463293
StateCapacity	.136237	.0950015	-2.86	0.004	.0347321	.5343911
JudStr	2.409414	4.185085	0.51	0.613	.0800568	72.51448
NeighborRecog	.0260555	.035186	-2.70	0.007	.0018468	.3676061

.

*Recognition Rights Adoption Model 3*

```
. stcox Dem MvmntNGO IndGovtRep ResourceRents StateCapacity
```

```
Failure _d: RecRights==1
Analysis time _t: Year
```

```
Iteration 0: log likelihood = -39.797279
Iteration 1: log likelihood = -33.927958
Iteration 2: log likelihood = -22.023863
Iteration 3: log likelihood = -19.811316
Iteration 4: log likelihood = -19.591847
Iteration 5: log likelihood = -19.58284
Iteration 6: log likelihood = -19.582819
Refining estimates:
Iteration 0: log likelihood = -19.582819
```

Cox regression with Breslow method for ties

```
No. of subjects =    252                Number of obs =    252
No. of failures =      9
Time at risk     = 500,046
Log likelihood   = -19.582819           LR chi2(5)     =  40.43
                                           Prob > chi2    = 0.0000
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	7.07e-07	3.40e-06	-2.95	0.003	5.75e-11	.0086993
MvmntNGO	1.017213	.3934	0.04	0.965	.4766679	2.170742
IndGovtRep	.8336475	.4324849	-0.35	0.726	.3015719	2.304486
ResourceRents	.5637055	.1475825	-2.19	0.029	.3374435	.9416801
StateCapacity	.0888812	.0797052	-2.70	0.007	.015328	.5153883



## Recognition Rights Adoption Model 4

Failure \_d: RecRights==1  
 Analysis time \_t: Year

Iteration 0: log likelihood = -39.797279  
 Iteration 1: log likelihood = -32.960616  
 Iteration 2: log likelihood = -22.516756  
 Iteration 3: log likelihood = -18.088226  
 Iteration 4: log likelihood = -17.202758  
 Iteration 5: log likelihood = -17.001309  
 Iteration 6: log likelihood = -16.985292  
 Iteration 7: log likelihood = -16.985174  
 Refining estimates:  
 Iteration 0: log likelihood = -16.985174

Cox regression with Breslow method for ties

No. of subjects = 252  
 No. of failures = 9  
 Time at risk = 500,046

Number of obs = 252

LR chi2(7) = 45.62  
 Prob > chi2 = 0.0000

Log likelihood = -16.985174

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	4.01e-07	2.35e-06	-2.51	0.012	4.09e-12	.0394263
MvmntNGO	4.011065	3.746004	1.49	0.137	.6431429	25.01565
IndGovtRep	.5345062	.3490407	-0.96	0.337	.1486296	1.922207
ResourceRents	.604655	.2029419	-1.50	0.134	.3131963	1.167343
StateCapacity	.0212213	.0358149	-2.28	0.022	.0007766	.5798701
NeighborResource	.0037068	.0104259	-1.99	0.047	.000015	.9185806
LanguageSpoken	.850039	.095912	-1.44	0.150	.6813898	1.06043



## Representation Rights Adoption Model 2

```
. stcox MvmntNGO IndGovtRep StateCapacity JudStr NeighborRepresent
```

```
      Failure _d: RepresentBi==1
      Analysis time _t: Year
```

```
Iteration 0:  log likelihood = -57.857249
Iteration 1:  log likelihood = -50.765123
Iteration 2:  log likelihood = -42.907915
Iteration 3:  log likelihood = -41.431457
Iteration 4:  log likelihood = -41.371295
Iteration 5:  log likelihood = -41.371155
Refining estimates:
Iteration 0:  log likelihood = -41.371155
```

Cox regression with Breslow method for ties

```
No. of subjects =      669          Number of obs =      669
No. of failures =       11
Time at risk   = 1,325,911

LR chi2(5)      = 32.97
Prob > chi2    = 0.0000

Log likelihood = -41.371155
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
MvmntNGO	1.471556	.356639	1.59	0.111	.9151324	2.3663
IndGovtRep	5.691891	2.469107	4.01	0.000	2.432264	13.31995
StateCapacity	1.994771	2.163872	0.64	0.524	.2379762	16.72064
JudStr	.000922	.0025281	-2.55	0.011	4.27e-06	.1989737
NeighborRepresent	.0023149	.0049489	-2.84	0.005	.0000351	.1528517

*Representation Rights Adoption Model 3*

```
. stcox Dem MvmntNGO IndGovtRep ResourceRents StateCapacity
```

```
      Failure _d: RepresentBi==1
      Analysis time _t: Year
```

```
Iteration 0:  log likelihood = -51.54733
Iteration 1:  log likelihood = -45.460132
Iteration 2:  log likelihood = -41.616815
Iteration 3:  log likelihood = -41.284555
Iteration 4:  log likelihood = -41.276662
Iteration 5:  log likelihood = -41.276657
Refining estimates:
Iteration 0:  log likelihood = -41.276657
```

Cox regression with Breslow method for ties

```
No. of subjects =      501             Number of obs =      501
No. of failures =       10
Time at risk    = 995,883

LR chi2(5)      = 20.54
Prob > chi2    = 0.0010

Log likelihood = -41.276657
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	.0077318	.0175075	-2.15	0.032	.0000914	.6541673
MvmntNGO	1.214198	.2781218	0.85	0.397	.7750236	1.902235
IndGovtRep	2.762479	1.007735	2.79	0.005	1.351406	5.646924
ResourceRents	1.062395	.081852	0.79	0.432	.913493	1.235568
StateCapacity	.4036642	.4358911	-0.84	0.401	.0486253	3.35103

## Representation Rights Adoption Model 4

```

Failure _d: RepresentBi==1
Analysis time _t: Year

Iteration 0: log likelihood = -51.54733
Iteration 1: log likelihood = -49.487537
Iteration 2: log likelihood = -44.779638
Iteration 3: log likelihood = -38.708802
Iteration 4: log likelihood = -35.052911
Iteration 5: log likelihood = -34.734655
Iteration 6: log likelihood = -34.733446
Iteration 7: log likelihood = -34.733446
Refining estimates:
Iteration 0: log likelihood = -34.733446

```

Cox regression with Breslow method for ties

```

No. of subjects = 501                Number of obs = 501
No. of failures = 10
Time at risk   = 995,883

LR chi2(7)    = 33.63
Prob > chi2   = 0.0000

Log likelihood = -34.733446

```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	.0104208	.0244613	-1.94	0.052	.0001047	1.037466
MvmntNGO	1.253517	.303355	0.93	0.350	.7800758	2.014298
IndGovtRep	5.748161	3.03463	3.31	0.001	2.04246	16.17723
ResourceRents	1.092157	.0930048	1.04	0.301	.9242713	1.290538
StateCapacity	1.810561	2.302224	0.47	0.641	.1497841	21.88571
NeighborRepresent	.0031428	.0069834	-2.59	0.010	.0000404	.2447531
LanguageSpoken	1.04024	.0232296	1.77	0.077	.9956933	1.086781

## *Resource Rights Adoption Model 1*

Failure **\_d**: ResourceBi==1

Analysis time **\_t**: Year

```
Iteration 0: log likelihood = -60.907351
Iteration 1: log likelihood = -54.14481
Iteration 2: log likelihood = -49.701468
Iteration 3: log likelihood = -49.537551
Iteration 4: log likelihood = -49.53682
Iteration 5: log likelihood = -49.536819
Refining estimates:
Iteration 0: log likelihood = -49.536819
```

Cox regression with no ties

```
No. of subjects =      665           Number of obs =      665
No. of failures =       12
Time at risk    = 1,317,724

Log likelihood = -49.536819           LR chi2(5)    = 22.74
                                       Prob > chi2   = 0.0004
```

<b>_t</b>	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]
Dem	.0016166	.0035378	-2.94	0.003	.0000222 .1178751
MvmntNGO	1.055679	.2472565	0.23	0.817	.6670631 1.670692
IndGovtRep	1.524497	.2561371	2.51	0.012	1.096762 2.119046
StateCapacity	1.032066	.8777316	0.04	0.970	.1948918 5.465389
LanguageSpoken	1.006127	.0232352	0.26	0.791	.9616023 1.052714

## Resource Rights Adoption Model 2

```
. stcox MvmntNGO IndGovtRep StateCapacity JudStr NeighborResource
```

```
    Failure _d: ResourceBi==1
  Analysis time _t: Year
```

```
Iteration 0: log likelihood = -60.907351
Iteration 1: log likelihood = -52.324625
Iteration 2: log likelihood = -43.553658
Iteration 3: log likelihood = -42.743906
Iteration 4: log likelihood = -42.715029
Iteration 5: log likelihood = -42.714968
Refining estimates:
Iteration 0: log likelihood = -42.714968
```

Cox regression with no ties

```
No. of subjects =      665                Number of obs =      665
No. of failures =       12
Time at risk   = 1,317,724

LR chi2(5)      = 36.38
Prob > chi2    = 0.0000

Log likelihood = -42.714968
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
MvmntNGO	1.29417	.3241664	1.03	0.303	.7921014	2.114473
IndGovtRep	1.298919	.2168525	1.57	0.117	.9364301	1.801726
StateCapacity	1.313048	1.243253	0.29	0.774	.2052697	8.399176
JudStr	.0196077	.0409339	-1.88	0.060	.0003277	1.17337
NeighborResource	.0003196	.0007263	-3.54	0.000	3.72e-06	.0274769

*Resource Rights Adoption Model 3*

```
. stcox Dem MvmntNGO IndGovtRep ResourceRents StateCapacity
```

```
      Failure _d: ResourceBi==1
      Analysis time _t: Year
```

```
Iteration 0: log likelihood = -60.907351
Iteration 1: log likelihood = -53.92462
Iteration 2: log likelihood = -48.704201
Iteration 3: log likelihood = -48.244497
Iteration 4: log likelihood = -48.241313
Iteration 5: log likelihood = -48.241313
Refining estimates:
Iteration 0: log likelihood = -48.241313
```

Cox regression with no ties

```
No. of subjects =    495           Number of obs =    495
No. of failures =     12
Time at risk    = 983,759

LR chi2(5)      = 25.33
Prob > chi2    = 0.0001

Log likelihood = -48.241313
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	.0020447	.0041493	-3.05	0.002	.0000383	.1091394
MvmntNGO	.9223495	.2176703	-0.34	0.732	.5807856	1.464789
IndGovtRep	1.527634	.2391599	2.71	0.007	1.123981	2.076251
ResourceRents	1.118685	.068154	1.84	0.066	.9927722	1.260566
StateCapacity	.5939369	.4682825	-0.66	0.509	.1266545	2.785223



*Resource Rights Adoption Model 4*

Failure d: ResourceBi==1  
 Analysis time t: Year

Iteration 0: log likelihood = -60.907351  
 Iteration 1: log likelihood = -60.144052  
 Iteration 2: log likelihood = -42.416878  
 Iteration 3: log likelihood = -39.375497  
 Iteration 4: log likelihood = -39.174041  
 Iteration 5: log likelihood = -39.172023  
 Iteration 6: log likelihood = -39.172023  
 Refining estimates:  
 Iteration 0: log likelihood = -39.172023

Cox regression with no ties

No. of subjects = 495                                      Number of obs = 495  
 No. of failures = 12  
 Time at risk = 983,759  
 LR chi2(7) = 43.47  
 Prob > chi2 = 0.0000  
 Log likelihood = -39.172023

<u>_t</u>	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
Dem	.0025246	.0055534	-2.72	0.007	.0000339	.1881948
MvmntNGO	1.747078	.6324131	1.54	0.123	.8593929	3.551674
IndGovtRep	1.457322	.2572447	2.13	0.033	1.031104	2.059722
ResourceRents	1.1089	.0669448	1.71	0.087	.9851559	1.248187
StateCapacity	.5863485	.5711961	-0.55	0.584	.0868862	3.956951
NeighborResource	.0000279	.0000845	-3.46	0.001	7.38e-08	.0105464
LanguageSpoken	.9674479	.024391	-1.31	0.189	.9208043	1.016454

.

### Resource Sequential Model 1

```
. stcox RepRights Dem MvmntNGO IndGovtRep StateCapacity LanguageSpoken
```

```
Failure _d: ResourceBi==1
```

```
Analysis time _t: Year
```

```
Iteration 0: log likelihood = -60.907351
Iteration 1: log likelihood = -53.26937
Iteration 2: log likelihood = -51.38661
Iteration 3: log likelihood = -41.191489
Iteration 4: log likelihood = -35.138584
Iteration 5: log likelihood = -32.89828
Iteration 6: log likelihood = -32.719036
Iteration 7: log likelihood = -32.716382
Iteration 8: log likelihood = -32.716381
Refining estimates:
Iteration 0: log likelihood = -32.716381
```

Cox regression with no ties

```
No. of subjects =      665      Number of obs =      665
No. of failures =       12
Time at risk   = 1,317,724

Log likelihood = -32.716381      LR chi2(6)   = 56.38
                               Prob > chi2    = 0.0000
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
RepRights	7.622055	3.42148	4.52	0.000	3.162091	18.37256
Dem	.0000707	.0002114	-3.20	0.001	2.02e-07	.0248102
MvmntNGO	.4240331	.1359106	-2.68	0.007	.2262422	.7947416
IndGovtRep	1.145997	.1983702	0.79	0.431	.8162855	1.608886
StateCapacity	3.283222	3.455865	1.13	0.259	.4171955	25.83812
LanguageSpoken	.9854319	.0244832	-0.59	0.555	.9385954	1.034606

## Resource Sequential Model 2

```
. stcox RepRights MvmntNGO IndGovtRep StateCapacity JudStr NeighborResource
```

```
      Failure _d: ResourceBi==1
Analysis time _t: Year
```

```
Iteration 0:  log likelihood = -60.907351
Iteration 1:  log likelihood = -44.7596
Iteration 2:  log likelihood = -34.51542
Iteration 3:  log likelihood = -30.26634
Iteration 4:  log likelihood = -29.168331
Iteration 5:  log likelihood = -29.155455
Iteration 6:  log likelihood = -29.15544
Refining estimates:
Iteration 0:  log likelihood = -29.15544
```

Cox regression with no ties

```
No. of subjects =      665          Number of obs =      665
No. of failures =       12
Time at risk    = 1,317,724

LR chi2(6)      = 63.50
Prob > chi2     = 0.0000

Log likelihood = -29.15544
```

_t	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
RepRights	4.843389	1.837803	4.16	0.000	2.302315	10.18906
MvmntNGO	.6134614	.255001	-1.18	0.240	.2716211	1.385514
IndGovtRep	.9575903	.1723989	-0.24	0.810	.672875	1.362778
StateCapacity	1.038374	1.174866	0.03	0.973	.1130484	9.537699
JudStr	.0339003	.0782252	-1.47	0.142	.0003682	3.121453
NeighborResource	.0007769	.0018155	-3.06	0.002	7.96e-06	.075778

*Resource Sequential Model 3*

Failure **\_d**: ResourceBi==1  
 Analysis time **\_t**: Year

Iteration 0: log likelihood = -60.907351  
 Iteration 1: log likelihood = -53.340682  
 Iteration 2: log likelihood = -42.394388  
 Iteration 3: log likelihood = -35.393004  
 Iteration 4: log likelihood = -32.838722  
 Iteration 5: log likelihood = -32.784924  
 Iteration 6: log likelihood = -32.784689  
 Iteration 7: log likelihood = -32.784689  
 Refining estimates:  
 Iteration 0: log likelihood = -32.784689

Cox regression with no ties

No. of subjects =	495	Number of obs =	495
No. of failures =	12		
Time at risk =	983,759		
Log likelihood =	-32.784689	LR chi2(6) =	56.25
		Prob > chi2 =	0.0000

<b>_t</b>	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
RepRights	6.663697	2.539862	4.98	0.000	3.157044	14.06533
Dem	.0001644	.0004832	-2.96	0.003	5.17e-07	.0522627
MvmntNGO	.4053161	.1481428	-2.47	0.013	.1980069	.829674
IndGovtRep	1.119662	.1832379	0.69	0.490	.8124264	1.543086
ResourceRents	1.048004	.0967997	0.51	0.612	.8744618	1.255986
StateCapacity	2.324899	2.754179	0.71	0.476	.2280514	23.70148

### Resource Sequential Model 4

Failure `_d`: ResourceBi==1  
 Analysis time `_t`: Year

Iteration 0: log likelihood = -60.907351  
 Iteration 1: log likelihood = -44.907413  
 Iteration 2: log likelihood = -31.479338  
 Iteration 3: log likelihood = -29.644344  
 Iteration 4: log likelihood = -29.164443  
 Iteration 5: log likelihood = -29.154061  
 Iteration 6: log likelihood = -29.154042  
 Refining estimates:  
 Iteration 0: log likelihood = -29.154042

Cox regression with no ties

No. of subjects = 495                      Number of obs = 495  
 No. of failures = 12  
 Time at risk = 983,759  
 LR chi2(8) = 63.51  
 Log likelihood = -29.154042              Prob > chi2 = 0.0000

<code>_t</code>	Haz. ratio	Std. err.	z	P> z	[95% conf. interval]	
RepRights	5.461877	2.111446	4.39	0.000	2.560268	11.65194
Dem	.0016952	.0051719	-2.09	0.037	4.29e-06	.6701954
MvmntNGO	.5579042	.2117185	-1.54	0.124	.2651783	1.173765
IndGovtRep	1.184357	.2141482	0.94	0.349	.8309472	1.688074
ResourceRents	1.133163	.0976528	1.45	0.147	.9570575	1.341672
StateCapacity	.923667	1.099952	-0.07	0.947	.0895075	9.53172
NeighborRepresent	.0012307	.0035155	-2.35	0.019	4.56e-06	.332354
LanguageSpoken	.9529748	.0320816	-1.43	0.152	.8921255	1.017974

## **Appendix H: List of Constitutional Documents**

Constitutional documents used to create the indigenous rights dataset used in this dissertation were obtained from a few key sources. First, through original documents preserved on national government websites when and where available. As a back-up source, some constitutions were sourced from [constituteproject.org](http://constituteproject.org). All documents were examined in their original Spanish and Portuguese Languages. Amendments or constitutional overhauls that result in increased political protection for indigenous populations are coded according to rights type (recognition, representation, resources, or autonomy).

Constitution of Argentina, 1853

Constitution of Argentina, 1983

Constitution of Argentina, 1994

Constitution of Bolivia, 1967

Constitution of Bolivia, 1994

Constitution of Bolivia 2004

Constitution of Bolivia, 2009

Constitution of Brazil, 1967

Constitution of Brazil, 1988

Constitution of Chile, 1925

Constitution of Chile, 2022 (Draft)

Constitution of Colombia, 1886

Constitution of Colombia, 1991

Constitution of Costa Rica, 1919

Constitution of Costa Rica, 1949

Constitution of Ecuador, 1939

Constitution of Ecuador, 1945

Constitution of Ecuador, 1967

Constitution of Ecuador, 1998

Constitution of Ecuador, 2008

Constitution of El Salvador, 1962

Constitution of El Salvador, 1983

Constitution of Guatemala, 1879  
Constitution of Guatemala, 1945  
Constitution of Guatemala, 1965\*  
Constitution of Guatemala, 1985  
Constitution of Honduras, 1965  
Constitution of Honduras, 1982  
Constitution of Mexico, 1917  
Constitution of Mexico, 1990  
Constitution of Mexico, 2007  
Constitution of Nicaragua, 1974  
Constitution of Nicaragua, 1987  
Constitution of Panama, 1941  
Constitution of Panama, 1946  
Constitution of Panama, 1972  
Constitution of Paraguay, 1967  
Constitution of Peru, 1933  
Constitution of Peru, 1979  
Constitution of Venezuela, 1947  
Constitution of Venezuela, 1999

\* Contains a discussion of indigenous populations, but in the form of assimilation into society, rather than creating representative minority policies-not counted as a positive change.

## CURRICULUM VITAE

**SAMANTHA ANN HAGLE**

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### EDUCATION

**PhD** University of Wisconsin- Milwaukee, Political Science May 2023  
Dissertation: “Determinants of Indigenous Rights Adoption in Latin America: Political Implications and Incrementalism 1960-2016”  
Committee: Natasha Borges Sugiyama, PhD (chair), Shale Horowitz, PhD, and Ora John Reuter, PhD, Erin Kaheny, PhD, and Patrick Kraft, PhD

**MA** University of Wisconsin-Milwaukee, Political Science May 2019  
Thesis: “Theories of International Criminal Court Membership: Coups, Conflict, and Legitimacy”  
Advisor: Shale Horowitz, PhD

**BA** University of Wisconsin-Parkside May 2015  
Graduated Cum Laude  
Double Major in Political Science and International Studies

### HONORS AND AWARDS

**Teaching Assistantship** 2017-2022  
University of Wisconsin-Milwaukee; Includes TA and Instructor duties

**FLAS Fellowship** Summer 2017  
Federal funding for research-related accelerated Portuguese language study

### RESEARCH EXPERIENCE

- Research experience in comparative political policies, legal systems, regimes, conflict resolution, and constitutional law
- Advanced experience in statistical software and analysis (R, Stata, SPSS)
- Expertise across global political systems, institutions, and institutional outcomes
- Created original typology for Indigenous and minority rights outcomes in Latin America



## PRESENTATIONS

**Paper Presentation**, “Explaining Variation in Rights Outcomes for Indigenous Peoples in Latin America,” Midwest Political Science Association (MPSA), April 9<sup>th</sup>, 2022\*

\*This research was also presented at the 1<sup>st</sup> GSEI UWM and Sun Moon University joint Political Science Conference, June 8<sup>th</sup>, 2022.

## WORKING PAPERS

“Determinants of Regional Patterns of Indigenous Rights Adoption in Latin America,” Working Paper, Expected 2023.

“Incrementalism and Minority Rights Adoption: The Process of Indigenous Constitutional Inclusion in Latin America,” Working Paper, Expected 2023.

## TEACHING AND ADMINISTRATIVE EXPERIENCE

**Marquette University, Milwaukee**  
**Adjunct Instructor**

August 2022 to Present

- Designed and taught Comparative Politics of the World’s Nations, an undergraduate course averaging 50 students per semester, covering the following topics: structural and functional frameworks of different political systems, European politics, Latin American politics, Chinese politics, American politics, and comparative constitutions.
- Advise students on research projects and other academic or professional endeavors.

**University of Wisconsin, Milwaukee** May 2021 to Present  
**Instructor/Doctoral Dissertator**, Political Science Department

- Taught course: Introduction to Comparative Politics
- Developed lectures, discussions, exams, and homework for a class of 60 students
- Revised the syllabus to meet university standards
- Ensured compliance and proper conduct according to university guidelines and protocols.

**University of Wisconsin, Milwaukee** May 2022 to Aug 2022  
**Project Assistant**, Natasha Borges Sugiyama, PhD

- Assistance with curriculum development for an online Latin American politics course

**University of Wisconsin, Milwaukee** May 2017 to May 2021  
**Teaching Assistant**, Political Science Department

Experience teaching, and coordinating the following political science courses with supervising faculty (\*denotes classes taught in both in person and online formats):

- Introduction to Comparative Politics
- Introduction to International Relations
- The UN and other International Organizations\*
- Introduction to Research Methods Using R
- The Politics of China\*
- Sex and Power
- Sex, Gender, and the Law\*
- Constitutional Law\*
- Law and Society\*
- Administrative Law\*

**University of Wisconsin, Milwaukee** May 2017 to August 2017

**Project Coordinator**, UN Summer Seminar

- Created course schedule and content for UWM UN seminar in New York City
- Scheduled meetings with UN embassy representatives
- Facilitated group discussion between students, diplomats, and UN representatives

University of Wisconsin-Milwaukee August 2022 to May 2023

Student Research and Outreach Coordinator, College of Letters and Sciences

- Targeted feeder schools for potential student recruitment
- Gathered data on which programs were most popular among a wide population of students in Wisconsin and Illinois
- Facilitated targeted recruitment programs at feeder schools in the region.

## LANGUAGES

**English:** Native Language

**Spanish:** Advanced Listening, Speaking, Reading, and Writing

**Portuguese:** Intermediate Listening, Speaking, Reading, and Writing

## COMPUTER SKILLS

**Online Course Instruction:** Experience with course preparation and management on Canvas, D2L, BlackBoard, TEAMS, Zoom, and Kaltura

**Applications:** Office, Canvas, D2L, BlackBoard, Kaltura

**Statistical Software:** Proficiency in R, Stata, SPSS, and Excel.

## REFERENCES

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