Journal of Ethnic and Migration Studies

Routledge Taylor & Francis Group

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/cjms20

The four worlds of recognition of indigenous rights

Claudio A. Fuentes & Juan E. Fernández

To cite this article: Claudio A. Fuentes & Juan E. Fernández (2020): The four worlds of recognition of indigenous rights, Journal of Ethnic and Migration Studies, DOI: 10.1080/1369183X.2020.1797478

To link to this article: https://doi.org/10.1080/1369183X.2020.1797478

Published online: 29 Jul 2020.

Submit your article to this journal

View related articles

View Crossmark data

Full Terms & Conditions of access and use can be found at
https://www.tandfonline.com/action/journalInformation?journalCode=cjms20

JOURNAL OF ETHNIC AND MIGRATION STUDIES
https://doi.org/10.1080/1369183X.2020.1797478

The four worlds of recognition of indigenous rights

Claudio A. Fuentes[a] and Juan E. Fernández[b]

[a]Constitutional lab and School of Political Science, Universidad Diego Portales, Santiago, Chile; [b]Constitutional Lab, Universidad Diego Portales, Santiago, Chile

ABSTRACT
The demands of indigenous peoples pose radical questions about how we understand the capitalist mode of production, socio-cultural relations and the distribution of political power within a state. This paper presents a systematic study of the way in which these three dimensions (territorial, socio-cultural and political) are addressed in the constitutions of 59 countries in different parts of the world. We identify what we refer to as four worlds of recognition, based on these texts' distinctive configurations of indigenous rights. We then analyse emblematic cases as a means of better illustrating each of these groups. The paper makes a theoretical–conceptual and empirical contribution by identifying certain clusters of indigenous rights that are present cross-regionally and within regions of the world.

ARTICLE HISTORY
Received 5 November 2019
Accepted 30 June 2020

KEYWORDS
Indigenous peoples; constitutional recognition; nation-state; plurinationalism; multiculturalism

Introduction

The demands of indigenous peoples in different parts of the world have posed questions, sometimes simultaneously, that refer to three analytically distinguishable spheres: the capitalist mode of production, where the questions are expressed materially in debate about territorial rights and the control over natural resources; socio-cultural relations as expressed, for example, in recognition of linguistic rights; and the nation-state as a monolithic unit, which has a political dimension reflected in indigenous peoples' demand for their own forms of political and social organisation.

In political terms, progress in achieving recognition has taken many different forms. This paper seeks precisely to make a theoretical–conceptual and empirical contribution by examining how the rights of indigenous peoples are expressed in a range of constitutional texts, using systematic analysis of the results to map their recognition. Based on the analysis of 59 political constitutions from around the world, we find that there are some very specific rights that are fundamental in struggles for recognition: land rights and the access and control of natural resources; linguistic rights that express socio-cultural rights; and recognition of indigenous peoples' own forms of organisation, customary law, and participation in the system of representation associated with political rights.

Based on this descriptive analysis, we identify four 'worlds' of recognition of indigenous peoples' rights: a group of countries with low level or no recognition of indigenous rights

CONTACT Claudio A. Fuentes Claudiofuentes.saavedra@gmail.com
© 2020 Informa UK Limited, trading as Taylor & Francis Group

in all dimensions; countries with medium-high levels of recognition in land and socio-cultural rights; countries with high levels of recognition in political rights; and countries with high levels of recognition in all dimensions. However, the specific meaning of a given recognition may substantially vary from text to text. To illustrate the differences found in each of these worlds, we also take four cases where we examine the concrete ways in which certain rights are expressed in the constitution.

This paper seeks to make a theoretical–conceptual contribution by organising the discussion about recognition of indigenous peoples based on three spheres of antagonism (territorial, socio-cultural, and political spheres). In addition, it seeks to make an empirical contribution by examining how such rights are materialised in a wide range of constitutional texts.

The paper is divided into five parts. The first section contains a review of the literature, focusing on those authors who have drawn attention to the fissures of the demands of indigenous peoples with respect to the capitalist system (particularly regarding the use of the land), Western socio-cultural values (acceptance of cultural diversity) and the nation-state. In this section, we also justify the relevance of studying constitutions as an expression of relations of power that, in certain circumstances, become enshrined in law. In the second section, we present our case study, explaining the methodology used as well as the selection criteria and procedures. In the third section, we set out the results of the analysis of the 59 constitutions, providing details of the four 'worlds' of recognition we identify. The fourth section looks more specifically at how recognition of certain rights is expressed in four emblematic cases representing each of these worlds: Chile, Brazil, South Africa and Bolivia. Finally, we set out our conclusions and the implications of this research.

Theoretical framework

Laclau and Mouffe (1987) reveal the dynamics of antagonism that explain conflict in contemporary democracies. What is interesting, according to these authors, is that the new disputes for power (urban, anti-racism, ethnic conflicts and feminism) do not take place in terms of the 'class struggles' of classical Marxism. Instead, these 'movements' question new forms of subordination and, in many cases, do not seek equality of rights or liberty – two of the key principles of Western democracy—but, in some cases, differentiation and difference.

Faced with the question of why this is the case, Laclau and Mouffe note, first of all, the intensification of the process of mercantilization after World War II. In this context, individuals are subordinated not only to capital but also to a multiplicity of social relations that include 'culture, free time, illness, education, sex and even death' (Laclau and Mouffe 1987, 265). They argue that this logic of mercantilization is accompanied by antagonistic processes of resistance with bureaucratic and social expressions that seek precisely to recover or claim autonomy: 'It is also for this reason that there is an identifiable tendency towards the valorisation of 'differences' and the creation of new identities that tend to privilege 'cultural' criteria (clothes, music, language, regional traditions, and so)' (Laclau and Mouffe 1987, 271).[1] In this way, particularist libertarian demands take precedence over the homogenising tendency of liberal democracy's collective struggles for equality, creating an arena of confrontation where the subjects take different positions depending on their specific interests. Laclau and Mouffe conclude that 'the project for a radical and plural

democracy, in a primary sense, is nothing other than a struggle for a maximum autonomization of spheres on the basis of the generalisation of the equivalential-egalitarian logic' (Laclau and Mouffe 1987, 275).

Subsequently, Laclau (with Butler and others) clarified the tension between equality and difference, asserting that these two notions were not incompatible as 'the proliferation of differences is the prerequisite for the expansion of the logic of equality'. Laclau argues that equality presupposes some level of distinction or difference because it would otherwise be an identity. In this way, 'affirming the right of all national minorities to self-determination is to affirm that these minorities are equivalent (or equal) to each other' (Butler et al. 1999, 120). We will return to this latter point in the conclusions because it is vital in the debate about recognition of indigenous peoples.

When Laclau and Mouffe originally published their work in 1985, their concerns centred on the emergence of movements like feminism (which questioned patriarchal relations) and the peace movement (questioning the relations of power between large blocks). Both movements represented a break with the traditional left-right axis and focused attention on antagonisms not necessarily related to the capital-labor polarity. The intuition and reflection of these two authors were, however, very right in prompting them to review theoretically the essentialisms dominant in the interpretation of social processes.

The relevance that indigenous movements acquired in Latin America in the 1990s reinforced the importance of these anti-essentialist approaches precisely because, as a (de)colonial project, they challenged numerous Western paradigms (Walsh 2008). Indeed, the indigenous movement simultaneously and radically challenged three dimensions of power: a socioeconomic dimension related to the mode of production and the link between natural resources and collective agents (we will called it the territorial dimension); a socio-cultural dimension related to the acceptance of certain traditions and cosmovisions (cultural dimension); and a political sphere related to the oneness of the nation-state (political dimension). It is, in other words, a demand that, at all its levels, challenges how we understand social relations. It could, therefore, be argued that it is the most radical of all current social movements.

From a territorial standpoint, many authors have highlighted the crisis of capitalism as a model based on the short-term logic of the market, individual accumulation and economic growth, and the exploitation of natural resources through the development and deepening of extractivist economies (Escobar 2011; De Castro and Pedreño 2010).[2]

This model is challenged by political projects that emerge from indigenous movements in different part of the globe that advocate a different cosmovision related to 'good living' and the harmony that should prevail between individuals, collectivities and nature. This paradigm establishes a synergic relationship between the economy, the environment, culture, and society.[3] The project described by Escobar (2011) would call for epistemic decolonisation, transforming structures through the incorporation of relational cosmovisions that differ radically from the classical conceptions of development. Escobar indicates, for example, that granting rights to the *Pachamama* is not only an environmentalist expression, but also implies a distinctive cultural-spiritual relationship that profoundly alters the meaning of development: 'both ideas—the rights of the *Pachamama* and good living—are based on notions of life in which all beings (human and non-human) always exist in relations between subjects—not between subject and object and certainly

not individually' (Escobar 2011, 311; see also De la Cadena 2015). The former implies a crucial first antagonism that is related to the capitalist mode of production as opposed to a cosmovision in which the economy is subordinated to the protection of certain social relationships and the relationship of collective subjects with the territories and natural resources.

The second sphere of distinction, which is closely related to the first one, has to do with the socio-cultural relationships that involve a spiritual and integral link between mother nature and collectivities. It includes the development of different relationships and conditions of life, which consider: 'a cosmology about life in general, including knowledge and wisdom, ancestral memory, and the relationship with mother nature and spirituality, among other aspects' (Walsh 2008, 140). Whereas the Western cultural mode emphasises individual rights and rationality, an antagonistic vision would take collectivism and spirituality as the central pillar of socio-cultural relations.

Some of the literature on 'recognition' has paid special attention to the territorial and socio-cultural spheres, focusing on the need for reparation, both in terms of redistribution to compensate for past injustices and recognition of the value of a different culture. There is, however, a third dimension: that of the redistribution of political power (Fraser 1997). This radically questions the nation-state as the entity that organises a community's political and administrative life. These states were built through power struggles which, in the modern age, had their roots in long periods of colonisation, principally but not only by European countries. In the independence processes of the nineteenth and twentieth centuries, patterns of the formation of new entities were established, building a sense of 'national unity' through wars with other states and the occupation of territory. However, the genealogy of the concept of 'nation' in the political history of states was not only a matter of defining an identity based on the demarcation of a territory—which, of course, they did—but was also associated with the construction of a certain type of society. Foucault convincingly shows how the nineteenth-century bourgeoisie sought to control sexuality precisely in order to purify the nation racially. This led to a strong discursive link between nation and race in that some social attributes of certain ethnic origins were considered superior to others. In various parts of the world, the political and economic elites began to implement processes that were, in some cases, assimilationist and, in others, took the form of apartheid based on prejudices about indigenous peoples. For Wade, 'nationalism involves exclusion and inclusion just as racism does; they are not just complementary but 'presuppose' each other' (Wade 2007, 370). Wade explains the dichotomy of nationalism which has a universalist component to the extent that it seeks to achieve an ideal of a homogeneous citizenry in which everyone shares a history and a citizenship, but also has a particularist component in that it seeks to exclude and oppress other nations and 'minorities' within the nation itself. From the political standpoint, the formation of a 'nation-state' implies an attempt to impose order on and homogenise a group of individuals (the 'citizenry'), giving them a set of rights and duties. However, this citizenry also shares a history, experiences and symbols that bind the individuals together, endow them with a certain 'identity' and 'oneness' as members of a 'national' community. They form a group that also goes together with a territory.

By contrast, some indigenous movements question their identification with this 'nation-state'. They identify themselves as collectivities that predated the 'nation-state' so that neither its territorial demarcations, symbols nor history form part of their identity.

They claim the right to self-determination and autonomy because they see themselves as a whole different from the nation-state by which they were colonised.[4]

Since the definition of borders of modern states was the result of post-conflict agreements, indigenous peoples appear as de-located (for example, the Sámi people of Europe's Nordic territory, the Aymara people on the Chilean-Bolivian-Peruvian border or the Mapuche people on the Chilean-Argentine border). This makes the configuration of their self-determination even more complex. Moreover, a developing 'nation-state' is often challenged not only by a people with a single identity but by diverse and territorially disperse identities, with a plural conception of 'nations'.

Therefore, for analytical-conceptual purposes, we distinguish between these three spheres of antagonism—territorial, socio-cultural, and political—which the world's different indigenous movements have helped to position in political debate at the state and international levels. The fact that these movements antagonise and question these three spheres makes the challenge particularly difficult to address, hence the obstacles and resistance they have faced. When the territorial, cultural, and political-institutional structural patterns that organise the Western capitalist way of life are simultaneously at stake, the opportunities for transformation certainly tend to be small.

Constitutions and indigenous peoples

This paper seeks to explore how these three central antagonisms have been expressed legally. For this purpose, it uses an empirical study of how constitutions in different regions of the world have demarcated recognition of indigenous peoples, observing inductively the way in which the antagonisms described theoretically manifest themselves in the political arena. We start from the premise that a constitutional text not only defines what is legally permitted and prohibited, but also represents the outcome of a process of political negotiation and, therefore, they expresses relations of political, economic, social, cultural and symbolic power.

Many authors have examined the concept of 'indigeneity', the evolution of the recognition of indigenous peoples and the conceptual distinctions of what is recognised in legal texts. Concerning the first dimension, we recognise that the concept of 'indigenous peoples' may vary from region to region of the world and it has been particularly contested in Asia and Africa, given their historical backgrounds and ethnic settings (Gerharz, Uddin, and Chakkarath 2018, 5–6). Dorothy Hodgson, for instance, analyses the way by which the concept of 'indigenous peoples' in African societies was adopted in recent decades as a tool for social and political mobilisation (Hodgson 2011), while in Southeast Asia the concept has been highly debated (see Baird 2015).

As regards its evolution, some authors have highlighted cycles that range from the most generic recognition of cultural diversity to multiculturalism or pluriculturalism and to deeper recognition in the form of plurinationalism (Irigoyen 2009). In the case of Latin America, Van Cott (2000) discusses the factors that may have influenced a greater or lesser recognition of indigenous peoples in constitutions, associating them with the specific circumstances in which negotiation took place in a particular country, the strength with which indigenous organisations were able to press for institutional changes, and the role of the international context in generating political and legal options that validate discourses of acceptance of diversity (the International Labour Organization's Convention

169 (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007)).

From a conceptual standpoint, much of the work on this subject has been organised around three definitions found in constitutional texts: denial of recognition, multiculturalism and plurinationalism. The first notion corresponds to the colonialist pattern discussed above, which aspires to a sense of a common nation and is characterised by a Eurocentric cultural approach and an individualist matrix of property rights. It is a matrix of coloniality (Esterman 2014) which, in several cases combine adherence to the capitalist market economy and to the nation-statehood (Walsh 2008, 139). The concept of multiculturalism also alludes to a Western vision, linked to the coexistence of a diversity of cultures in the same territorial space 'without a deep equitable interrelation' (Walsh 2008, 140). In other words, it is a form of recognition that tends to be functional to the structures of domination and acceptance of differences of origin does not have a transformative objective. It recognises territorial diversity, but does not imply a change in the power relations of subordination of indigenous peoples. Finally, 'plurinationalism' call for a radical change in the dominant structures because recognition of the different national identities that coexist within the same territory would imply altering relations of political, social, economic and symbolic power in order to put the different nations on an equal footing: 'The importance of plurinationalism is its rethinking and refounding of what is uni-national, colonial and exclusive within a project of state and society built on the basis of plurality and ancestral differences' (Walsh 2008, 143; see also Tubino 2015).

A number of studies have organised their findings in a matrix that examines the evolution, determinants and/or implications of constitutional definitions that deny indigenous peoples recognition, accept some lower or higher level of rights under the umbrella of multiculturalism or view the state as plurinational. For example, Kymlicka and He (2005) examined institutional transformations in Asian countries which, in some way, incorporate notions of multiculturalism, adapting them to their culture. Iguanazo (2013) analyses recognition of the rights of the indigenous peoples of Southeast Asia, focusing on the factors that would explain why certain rights are given greater recognition in some countries than in others. She asserts that, in both Latin America as in the Anglo-Saxon world, a Westernized mode of recognition of multiculturalism has prevailed, which is not necessarily the case in other contexts such as Southeast Asia. She suggests investigating in greater depth the type of rights (territorial, linguistic, cultural, political) accepted by different societies in a bid to identify more detailed patterns of recognition of indigenous peoples. In the case of Latin America, Van Cott (2000) indicates that, in the 1990s, there was a wave of 'multicultural constitutionalism' with a series of dimensions that included rhetorical recognition of multiculturalism in constitutions, recognition of indigenous jurisprudence, collective property rights and language, bilingual education, and regimes of autonomy. Uprimmy (2011) takes a similar stance, albeit from a more legal standpoint, when analysing constitutional transformations in Latin America. The issue of multiculturalism and plurinationalism has also been studied theoretically and empirically from an interdisciplinary perspective (Walsh 2002; Faundes 2015; Aguilar et al. 2010; Martí and Villalba 2012). In this article we suggest that, according to the empirical evidence, there is not necessarily a correlation between the way a state defines itself in its constitution ('multicultural', 'plurinational') and the quantity and quality of the recognition of

specific rights (political, territorial, cultural, social, etc.) (Fernández and Fuentes 2018; Iguanazo 2013).

Case study

In line with Aguilar et al. (2010), Yrigoyen (2009) and Iguanazo (2013), we explore how the so-called 'recognition' of indigenous peoples has been materialised in constitutional texts. We take an inductive approach, identifying mentions in constitutional texts of the political, territorial and cultural rights that are recognised. Like Iguanzo, we distinguish analytically between, on the one hand, the global 'label' a state adopts when identifying itself as 'multicultural', 'plurinational' or 'multi-ethnic' or simply by not making the distinction and, on the other, the specific rights enshrined in the constitution such as the right to self-determination, autonomy and linguistic and territorial rights, etc. As indicated above, this distinction is fundamental because the quantity of rights recognised and the quality of their recognition varies widely. Some states that identify themselves as 'multicultural' define a very limited number of rights while other states that also identify themselves as 'multicultural' recognise a broad range of them. Therefore, this 'label' does not tell us much about the type of recognition a state provides.

Methodology of analysis

We reviewed a total of 59 constitutional texts from different parts of the world. The data used in this research was taken from the *Comparative Constitutions Project,* which contains 192 constitutions from countries on different continents.[5] The 59 constitutions were selected according to the following criteria (Appendix 1):

(1) All constitutions from North and Latin America were selected, as the topic has been very relevant in constitution making debates for the last two decades in this region.
(2) The constitutions of countries with documented indigenous populations were selected.[6]
(3) A further selection criterion was the presence of the word 'indigenous', 'aboriginal' or 'tribe' in the constitution. We are aware that these three terms do not have the same meaning in the different contexts where they are used but that is precisely why this criterion is relevant since this study seeks to visualise the different rights that the use of the word implies.[7]
(4) Under a final criterion, those countries whose constitution includes distinctive rights such as customary law (principally African countries) were selected.

We need to be aware of the limitations of observing constitutional texts as in some cases the recognition of indigenous peoples are defined in separate statutes or acts. For instance, in the United States, Norway, Canada, and Australia, several relevant aspects of the relationship between the state and the indigenous peoples are defined in other legal documents. In this regard, we are not addressing how much legal recognition a given country provides to indigenous peoples, but more specific questions about how much and what kind of indigenous rights are recognised in a given constitutional statute. We think we can learn from this exercise on the way certain rights are considered at the constitutional level.

The research comprised two stages of which the first used quantitative techniques followed by qualitative analysis. In the case of the quantitative analysis, we used a type of k-means cluster analysis, supported by SPSS statistical software. Through this type of analysis, it is possible to determine and group variables within a sample and it, therefore, serves as an inductive non-arbitrary grouping technique, minimising internal variation and maximising the distance between each cluster (Fernández 1991). To this end, we first analysed each of the constitutions for the presence/absence of the rights mentioned in the texts.[8] We then analysed the extent to which there were patterns or groupings of constitutions, based on an analysis of what are known as hierarchical clusters. In other words, we organised countries into clusters that share certain characteristics in terms of recognition of rights, establishing recognition patterns. In descriptive terms, and as Appendix 2 shows, we found that, out of the 59 constitutional texts, 26 (44%) explicitly mention linguistic rights and indigenous peoples' right to their own social organisation; 25 (42.3%) mention land rights; 9 (15,3%) mention natural resources control right; and 19 (32.2%) explicitly mention the participation of indigenous peoples in the system of representation and customary law.

Given that, on the one hand these are the rights most frequently mentioned, and on the other hand these aspects conform our theoretical definition, we organised the analysis taking into account the territorial, socio-cultural and political dimensions. For the territorial dimension, we used the presence or absence of the right to lands on the grounds that inalienable ownership of the territory permits and fosters traditional forms of land use. We also use the presence or absence of the right to control natural resources within the indigenous realm, as it is consistent with the theoretical notion of the link between humans and nature previously discussed. In the case of the socio-cultural dimension, we use the presence or absence of recognition of indigenous languages as official while, for the political dimension, we use three variables: the existence of indigenous peoples' right to their own social organisation, the existence of the right to a system of special representation in the spheres of power (reserved parliamentary seats, parliamentary quotas, indigenous electoral districts, etc.) and the presence or absence of the recognition of customary law. As shown in the results section, each of these rights (land, natural resources, language, own social organisation, right to a system of representation and customary law) were found to be very significant and differentiating in terms of recognition, permitting the texts' organisation into four large clusters or groups of countries. Below, we also look at a particular example of each group in order to explain how constitutional recognition is expressed in these cases, highlighting the nuances that it is essential to take into account Table 1.

Four worlds of recognition

Table 2 shows the results of the cluster analysis. We have identified four groups with different characteristics. It is important to mention here that, as we show in the 'Classification results' in Appendix 2, we validated our model by means of a discriminant analysis, which shows a percentage of correct assignments of 79.7%, which indicates an acceptable goodness of analysis (Penelas 1999; Santesmases Mestre 1997). The different columns indicate the percentage of the countries in a group that recognise the corresponding right. It can be seen, for example, that, in all 13 countries (100%) in Group 4, the

Table 1. Antagonisms raised by the indigenous peoples movement.

Dimensions	Hegemonic position	Alternative position
Territorial	Capitalism • Accumulation • Individual Property rights	'Good living', post-development • Harmony • Collective rights
Socio-cultural	Individualism • Individual rights • Rationality	Collectivism • Collective rights • Spiritualism
Political organisation	Nation-state • Oneness • Borders • Integration	Territorial identities • Diversity • Cross-border relations • Indigenous autonomy

Source: Compiled by the authors.

constitution contains language rights but, in this group, matters of natural resources control are mentioned less frequently. Below, we look at each group and its main trends.

Group 1: countries with a very low level or no recognition in all dimensions

This group is the second largest in our analysis, accounting for 17 of the 59 countries. It includes countries such as Cameroon, Australia, Chile, Uruguay, the US, and Costa Rica. All of these countries do not recognise specific political, socio-cultural or territorial rights for the indigenous peoples in their constitution.

The United States (US), Australia, and Norway are considered within this group but they deserve certain attention. In the case of the US, the constitution makes a general statement mentioning that the Congress shall have power to 'regulate commerce with foreign nations, among the several states, and with the Indian Tribes' (art. 1, 8). Moreover, several acts have defined the relationship between the U.S. and the Native American Tribes at the Federal and States level. The Australian constitution does not mention indigenous peoples but several Acts have been enacted to regulate the relationship between them concerning

Table 2. Composition of rights by cluster[a]

		Territorial dimension		Socio-cultural dimension	Political dimension		
Group	N° of countries	% Land	% Natural resources	% Language	% Own social organisation	% Representation	% Customary law
1	17	0,0	0,0	0,0	0,0	0,0	0,0
2	19	68,4	10,5	63,2	21,1	21,1	15,8
3	10	20,0	0,0	0,0	90,0	60,0	80,0
4	13	84,6	53,8	100,0	100,0	92,3	61,5

[a]In this table, as well in the descriptions that follows, we show a general view of the clustering results. Appendix 1 shows the entire composition of groups.
Source: Compiled by the authors using data from the *Comparative Constitutions Project*.

land rights, heritage, compensation, and elections. In Norway, the Constitution mentions the responsibility of the authorities to 'create conditions enabling the Sami people to preserve and develop its language, culture and way of life' (article 108). Thus, the constitution does not officially recognise the Sami People or its language but it defines certain role to the state. In this case, a specific act was enacted between the State and the Sami People in 1987.

Group 2: countries with medium-high levels of recognition in land and cultural rights

This group is the largest in our analysis, accounting for 19 of the 59 countries. It includes countries from all continents such as America (Argentina, Brazil, Canada), Europe (Finland and Switzerland), Africa (Kenya and Sudan), Southeast and western Asia (Singapore and Iraq) and Oceania (Papua New Guinea and Fiji). This is a diverse group in which land and cultural rights are recognised by more than half of the countries. Political rights are critically low in this group, however there are some countries that recognises own social organisation (Finland and Philippines), special representation systems (Philippines and Nepal) and, to a lesser extent, customary law (Kenya and Sudan). In Canada, the constitution recognises existing aboriginal treaty rights and land claims agreements as well (Section 35).

Group 3: countries with high levels of recognition in political rights

This is the smallest group in the analysis, accounting for only 10 of the 59 countries. Given the minimisation of internal distances that this type of analysis implies, this group has in common the countries with high recognition of indigenous peoples' right to their own social organisation and customary law. Also, this group has the partial recognition of the right to a special system of indigenous representation. The group is composed entirely of African, Polynesian and Southeast Asian countries such as Sierra Leone, Zambia, and Botswana in the African side, Malaysia and Indonesia in the Asian side, and finally Solomon Islands in the Polynesian side.

Malaysia and Namibia make up 20% of this group, which also recognises indigenous land rights. None of the 10 countries recognises the natural resources control rights, implying, with the low rate of land rights recognition, a low level of recognition as far as the territorial dimension is concerned.

Group 4: countries with high levels of recognition in all dimensions

This group comprises 13 of the 59 countries. The tendency of this group is, in general, to recognise all rights, albeit with certain nuances. Constitutions such as those of Bolivia, Colombia, Venezuela and Mexico, for example, recognise all the rights presented here except for customary law. Ecuador is the only case in the whole sample that recognises all rights. Other countries outside the Latin American zone such as New Zealand, Zimbabwe and South Sudan recognise all rights except natural resources. This last right makes a difference in this group, because while all Latin American countries recognise the right to control natural resources within the territories, the rest of the countries do not.

Analysis of cases: the importance of details

The analysis above allows us to observe trans-regionally how constitutions recognise certain rights that appear as fundamental in the recognition of indigenous peoples. There are two extremes (Group 1, with very low recognition, and Group 4, with high recognition) and two groups in between, which recognise territorial rights with greater intensity (Group 2) and political rights (Group 3). However, this snapshot does not tell us much about the specific way by which certain rights are recognised. In order to look qualitatively at how the rights of indigenous peoples are materialised, we analyse a case from each of these groups, selected as being representative of its group as regards the number of rights recognised.

(Group 1) Chile, denial of recognition

Chile is one of the countries that have so far denied their indigenous peoples constitutional recognition. This is a paradigmatic case because a significant minority of the country's population is indigenous (in the most recent census, 12.8% of the population identified themselves as belonging to an indigenous people) and there is a strong and persistent indigenous protest movement demanding constitutional recognition. In this case, it is interesting to analyse how the main political coalitions (right, centre-left and left) have put the issue on the agenda. A study of the presidential candidates platforms since the restoration of democracy in 1990 found that, in the 1990s, the issue of recognition was invisible but acquired more importance in the last two presidential elections (2013 and 2017), accompanied by greater polarisation between the left and the right regarding the type of recognition proposed. While the left tends to favour 'pluri-nationalism', including cultural, political and territorial rights, the right tends to propose more generic recognition and to refer only to cultural aspects (Aguero 2018).

A recent study has underlined the tensions that exist in Chile's Congressional elite. A survey covering 92.4% of the National Congress found that 48.1% favoured recognising Chile as a multicultural state (a state where different cultures coexist) while 34% favoured its recognition as a plurinational state (a state comprising several nations) and 16.9% favoured its recognition as a single nation-state (without making distinctions). There was also a strong correlation between ideological position and the preferred type of recognition, with more left-wing sectors favouring greater territorial, political and cultural rights and more centre and right-wing sectors favouring mainly cultural recognition under the paradigm of multiculturalism (Universidad Diego Portales 2018).

Although the political elites have recently accepted the possibility of constitutional recognition of indigenous peoples, the proposals of the two main coalitions (which account for 88% of seats in the current Congress) tend to focus on cultural recognition. The idea of discussing the paradigm of the nineteenth-century 'nation-state' is strongly resisted and the issue of territorial rights in the Constitution is avoided.

(Group 2) Brazil: limited territorial rights

Brazil is one of the countries in Group 2 of the cluster analysis, that is, the group with low recognition of political rights, an intermediate position on the socio-cultural dimension

and a high position on the territorial dimension. Brazil is an interesting case in that it recognises indigenous peoples' right to land but, as explained below, does so in a quite particular way.

In the preamble to Article 231 of Chapter VIII (Indigenous Peoples) of its Constitution, it states that: 'The social organisation, customs, languages, beliefs and traditions of indigenous peoples are recognised, as well as their original rights to the lands they have traditionally occupied. The Union is responsible for delimiting these lands and protecting and ensuring respect for all their properties' (Constitution of Brazil 1988). Then, in the first and second subsections of the same article, it specifies what will be understood as indigenous lands: 'The lands that have traditionally been occupied by indigenous peoples are those on which they live permanently, are used for their productive activities, are indispensable for the preservation of the environmental resources necessary for their well-being and those that are necessary for their psychic and cultural reproduction, in accordance with their uses, customs and traditions.' The second subsection states that: 'The lands traditionally occupied by indigenous people are destined for their permanent possession (…)' Thus, Brazil's Constitution effectively recognises and ensures the right to both possession and use of lands, as well as to the social organisation of indigenous peoples. However, it has nuances.

In Article 49 on the exclusive powers of the National Congress, subsection XVI empowers it to 'authorize the exploitation and use of water resources, the exploration and exploitation of mineral wealth in indigenous lands'. In subsection 6, it adds that: 'Acts aimed at the occupation, control and possession of the lands referred to in this article, or the exploitation of the natural wealth of the ground, rivers and lakes that exist there, are null and void, without producing legal effects, except in the case of important public interest of the Union, in accordance with the provisions of a complementary law.'

In other words, while the right to the possession and use of indigenous lands is included in Brazil's Constitution, it is not fully guaranteed to the extent that, if warranted by national public interest and after consultation in the National Congress, dispossession is possible. This idea is at odds with the principles of ILO Convention 169 (signed by Brazil) which, in subsections 1 and 2 of Article 16, states that indigenous peoples may not be removed from their lands and that, if this is necessary, they must only be relocated with the free and informed consent of those involved and not only as a result of a decision by the National Congress.

From a Western and capitalist point of view, the use of land is fundamental in two ways: the right of property (individual) and the exploitation of natural resources. Brazil's Constitution formally accepts the rights of indigenous peoples over the lands they have traditionally inhabited and even respects their cultural use. However, the right of access to these territories is reserved for the dominant actor, leaving indigenous peoples in a position of subordination and creating a source of potential conflict.

(Group 3) South Africa, political recognition

Group 3, in which political rights are recognised with greater intensity, comprises mostly African countries. This is not surprising given the tribal conformation of many of the continent's countries. In most countries in this group, recognition of indigenous peoples' own social organisation is accompanied by a special system of political representation. South Africa is one of the countries that adhere to this trend.

Section 6 of Chapter 1 of its Constitution (Constitution of South Africa, 1996) states that: 'The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.' The second subsection of the same chapter stipulates certain measures to enhance the status of these languages: 'Recognizing the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.' These measures include the use of indigenous languages by municipal and provincial governments.

An interesting figure found in this Constitution, and also more generally in the other African constitutions reviewed here, is that of the traditional leader. Section 212 on 'The Role of Traditional Leaders' explains that this figure's powers are directly related to customary law: 'To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law: a. national or provincial legislation may provide for the establishment of houses of traditional leaders; and b. national legislation may establish a council of traditional leaders.' This measure ensures that the country's different tribes are represented at both the provincial and national levels through their traditional leaders.

Peoples' right to their own social organisation is established precisely through the recognition of customary law. Subsection 2 of Section 211 includes the following sentence: 'A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.' Subsection 3 of the same section goes on to state that: 'The courts must apply customary law, when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.' Thus, we see that, although South Africa shows advances on political rights as compared to other countries, a closer examination of indigenous peoples' right to their own organisation reveals that, despite the recognition of customary law, this is determined by national legislation and the Constitution. Customary law is limited because it applies only in certain cases.

(Group 4) Bolivia and the paradigm of pluri-nationalism

Group 4 includes those countries where recognition of rights is more substantive. One of the paradigmatic cases is Bolivia which, in 2008, approved a new Constitution specifying the construction of a new matrix of understanding of rights. The preamble to this text indicates that: 'We have left the colonial, republican and neoliberal state behind us. We assume the historic challenge of collectively building the Social Unitary State of Community Plurinational Law, which brings together and articulates the purposes of advancing towards a democratic, productive Bolivia that is the bearer and inspirer of peace, committed to the integral development and self-determination of the peoples' (Constitution of Bolivia 2008). Bolivia declares itself a free, independent, sovereign, democratic, intercultural and decentralised state with autonomy. The free determination of indigenous peoples is guaranteed within the framework of the unity of the state 'which consists in their right to autonomy, self-government, their culture, recognition of their institutions and the consolidation of their territorial identities' (Article 2). From this standpoint, Bolivia recognises itself as a 'nation of nations' in that the Constitution indicates that: 'The Bolivian nation is formed by all Bolivian women and men, the indigenous nations and rural indigenous

peoples, and the intercultural and Afro-Bolivian communities which together make up the Bolivian people' (Article 3).

As an alternative to the Western paradigm of the exclusive individual well-being of persons, this Constitution emphasises that the state assumes and promotes a series of ethical-moral principles of a plural society, including *ama qhilla, ama llulla, ama suwa* (don't be lazy, don't be a liar or a thief), *suma qamaña* (live well), *teko kavi* (the good life) and *ivi maraei* (land without evil) (Article 8). It is stated that both persons and collectivities, as well as other living beings, have a right to their normal and permanent development. This represents a significant step in recognising the interconnection of human communities with other living beings and the territory. In addition, the Constitution's provisions include recognition of individual and collective territorial rights. The establishment of specific regimes of territorial autonomy and the protection of sacred places are also accepted.

On cultural rights, the Constitution recognises indigenous peoples' right 'to their cultural identity, religious and spiritual beliefs and practices and customs and their own cosmovision'. In addition, 'their traditional wisdom and knowledge, their traditional medicine, their languages, their rituals and their symbols and clothing are valued, respected and promoted' (Article 30). This includes respect for the collective intellectual property of their knowledge and intracultural, intercultural and plurilingual education.

Politically, the Constitution recognises indigenous peoples' own political and legal systems and establishes the right to prior compulsory consultation on issues that may affect them as well as the right to participate in the organs and institutions of the state (Article 30).

Conclusion

In modern times, the demands of indigenous peoples have posed acute and simultaneous challenges toward the recognition of territorial, socio-cultural, and political rights. Supporting our theoretical expectations, constitutional provisions precisely reflect such dimensions, tough in very specific ways. The radical nature of these claims may explain why very few political systems in the world have incorporated such demands into their constitutional frameworks. Indeed, in the majority of cases analysed, they incorporate very few rights and, if they are included, are conditioned by the decision-making mechanisms of the dominant actors. This diagnosis is consistent with what the literature has described regarding the struggles of indigenous peoples to protect their ancestral, territorial, socio-cultural and political rights (Van Cott 2000).

This comparative analysis suggests four coherent paths: countries that have very little or no recognition of indigenous rights in their constitution; countries in which land and cultural rights are underlined; countries (mostly in Africa and Asia) in which political rights are recognised; and some countries in which all the dimensions analysed in here are considered within the texts. In this sense, rather than focusing in the specific 'label' a given constitution adopts ('multicultural', 'pluri-ethnic', 'plurinational'), we argue, following Iguanazo (2013) and Aguilar et al. (2010), that it would be much fruitful to study which specific rights are included in a given institutional setting. Thus, for example, we find cases with a high level of recognition of political, cultural and even territorial rights where the state does not have a specific label (for example, Peru). In other cases, the state's label recognises only 'cultural diversity' but these countries have, nonetheless, advanced on a wide range of rights (for example, Colombia). In yet other cases, the

state is labelled as 'pluricultural' or 'pluri-ethnic' but indigenous peoples lack mechanisms of effective participation in the system of political representation (for example, Paraguay).

But we need to take into account not only the number of rights mentioned in a given text but the way such rights are written. In the previous section, we observe, for example, that, although territorial rights are recognised in Brazil, they are delimited by the will of the dominant actors, reiterating the subordination of indigenous peoples. Further research need to be done concerning, for instance, the conditions allowing some rights (and not others) to be expressed in the constitutions. Other dimensions to be integrated into this analysis are timing (the moment in history in which constitutions were enacted), historical trajectories (as process of colonisation impacted differently in different regions), the role of international agreements, and critical junctures that may have an impact on defining specific constitutional provisions..

Although identification of these four worlds of recognition is feasible, some methodological and conceptual precautions are called for. The first has to do with the existence of special statutes recognising indigenous rights in some countries (for example, in Canada, New Zealand, Norway, and the US). Thus, analysing constitutions provides a relevant, but still a partial picture of the whole process of recognition. In other cases, certain rights are recognised in norms that do not have constitutional status. For example, in Chile, although indigenous peoples are not recognised in the Constitution, a law introduced in 1992 (the Indigenous Law) recognised the existence of certain 'ethnic groups' and, in 2009, Chile signed ILO Convention 169, obliging the state to consult indigenous and tribal peoples. Moreover, we also need to take into account the different meanings the concept of 'indigenous peoples' adopts in these legal instruments.

Despite the need for these precautions, we believe this first exercise of systematizing indigenous rights at the constitutional level is useful as it provides very consistent clusters, illustrating varieties of recognition across regions and within regions. It is, for example, interesting that, apart from the emphasis found in African constitutions on indigenous peoples' right to their own social organisation, other configurations do not correspond strictly to geographical patterns, partly belying the myth that the demand for certain indigenous rights is confined to Latin America. Even more, within Latin America we observe very different paths of recognition, showing the need to explain why the struggle for constitutional recognition has had such distinct results within similar historical and institutional backgrounds. Finally and as several authors have shown across the globe (De la Peña 2006; Chen 2010; Thio 2010; Bertrand 2011), the systematization of rights at the constitutional level is a crucial legal feature as it reflects the social and political struggles for recognition.

Notes

1. Nancy Fraser subsequently continued this discussion in the mid-1990s with reference to 'struggles for recognition' (Fraser and Honneth 2003).
2. De Castro and Pedreño relate this process of mercantilization with a logic of de-democratization that implies a loss of citizen rights and the destruction of both local communities and ecological balance, in response to which a new moral economy of the crowd emerges.
3. Escobar (2011) recognizes a number of contradictions in the materialization of this alternative conceptualization. Analyzing the case of Ecuador, he notes that, at odds with anti-capitalist stances, traditional individualist conceptions persist along with the establishment of extractivist objectives in certain strategic areas of development. However, for the purposes of our conceptualization, the point here is to draw attention to this paradigm's distinctive emphases.

4. Even though there is a gray area between 'sovereignty' and 'self-determination' in many cases of indigenous groups the struggle is for the achievement of greater levels of political autonomy within an organized state. In few cases the demand is related to the emergence of a new, independent state (see Hannum 1990).
5. The Comparative Constitutions Project was implemented by the Department of Government of the University of Texas in conjunction with the University of Chicago Law School and *Google Ideas*. They developed an open database of constitutional texts. In order to allow comparisons, the database provides the English translation of the different texts.
6. In most cases, the data was taken from the country's latest census. In other cases, data from ECLAC, large-scale Population Characterization surveys and the *CIA World Factbook* was used.
7. In this sense, we acknowledge the limitation of this descriptive methodological option as the concept 'indigenous peoples' may adopt different meanings in several institutional and political settings. However, our goal is to account for the types of rights defined in a variety of constitutional texts. Methodologically speaking, we use the English translation of the constitutions in order to make comparable assessments which it may affect our understanding of what the word 'indigenous' means. However, in all cases refers to the pre existing nations prior to the creation of modern nation-states no matter if they are numerically minorities or not. Hence, we suggest it is suitable to use it.
8. We identified the presence of 11 types of rights: self-determination, autonomy, own social organization, mechanisms of political representation, right to be consulted, customary law, right to language, bilingual education, traditional medicine, protection of natural resources and rights to land and territories.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by the National Fund for Scientific and Technological Develpment (FONDECYT) [Grant #1170025].

References

Aguero, F. 2018. *Derechos Indígenas e Institucionalidad: Visiones desde las candidaturas presidenciales*. Santiago: ICSO-UDP.

Aguilar, G., et al. 2010. "The Constitutional Recognition of Indigenous Peoples in Latin America." *International Law Review Online Companion* 2 (2): 44–96.

Baird, I. 2015. "Translocal Assemblages and the Circulation of the Concept of "Indigenous Peoples" in Laos." *Political Geography* 45: 79–89. doi:10.1016/j.polgeo.2014.12.001.

Bertrand, J. 2011. "'Indigenous Peoples Rights' as a Strategy of Ethnic Accomodation: Contrasting Experiences of Cordillerans and Papauans in the Philippines and Indonesia." *Ethnic and Racial Studies* 34 (5): 850–869. doi:10.1080/01419870.2010.537358.

Butler, J., E. Laclau, R. Laddaga, and M. Mansour. 1999. "Los Usos de la Igualdad." *Debate Feminista* 19: 115–139.

Chen, A. 2010. "Pathways of Western Liberal Constitutional Development in Asia: A Comparative Study of Five Major Nations." *International Journal of Constitutional Law* 8 (4): 849–884. doi:10.1093/icon/mor002.

Constitution of Bolivia. 2008. *Nueva Constitución Política del Estado*. La Paz: Asamblea Constituyente de Bolivia.

Constitution of Brazil. 1988. *Constitución política de 1988*. Brazilia: Republica Federativa de Brasil.

Constitution of South Africa. 1996. Constitution of the Republic of South Africa.

De Castro, C., and A. Pedreño. 2010. “El péndulo de Polanyi: de la desdemocratización a la resistencia social.” *AREAS* 31: 9–24. http://revistas.um.es/areas/issue/view/10831.

De la Cadena, M. 2015. *Earth Beings. Ecologies of Practice Across Andean Worlds*. Durham: Duke University Press.

De la Peña, G. “A new Mexican Nationalism? Indigenous Rights, Constitutional Reform and the Conflicting Meanings of Multiculturalism.” *Nations and Nationalism* 12 (2): 279–302. doi:10.1111/j.1469-8129.2006.00241.x.

Escobar, A. 2011. “Una minga para el posdesarrollo.” *Signo y Pensamiento* XXX (58): 306–312.

Esterman, J. 2014. “Coloniualidad, descolonización e interculturalidad. Apuntes desde la Filosofía Intercultural.” *Polis, Revista Latinoamericana* 13 (38): 347–368.

Faundes, J. 2015. “Pensando un horizonte democrático, pluralista e intercultural para el reconocimiento de los pueblos indígenas en Amperica Latina, desde una relectura crítica a Laclau y Mouffe.” *Revista Chilena de Derecho y Ciencia Política* 6 (3): 85–121. doi:10.7770/rchdcp.v6i3.1013.

Fernández, Ó. 1991. “El Análisis de Cluster: Aplicación, Interpretación y Validación.” *Papers: Revista de Sociología* 37: 65–76. doi:10.5565/rev/papers/v37n0.1596.

Fernández, J., and C. Fuentes. 2018. *Reconocimiento de los pueblos indígenas: Qué y cuánto se reconoce en las constituciones del mundo*. Santiago: ICSO-UDP.

Fraser, N. 1997. *Iustitia Interrupta: Reflexiones críticas desde la posición “postsocialista”*. Bogota: Siglo de hombres editores.

Fraser, N., and A. Honneth. 2003. *Redistribution or Recognition? A Political-Philosophical Exchange*. London & New York: Verso.

Gerharz, E., N. Uddin, and P. Chakkarath, eds. 2018. *Indigeneity on the Move. Varying Manifestations of a Contested Concept*. New York & Oxford: Berghahn books.

Hannum, H. 1990. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*. Philadelphia: University of Pennsylvania Press.

Hodgson, D. 2011. *Being Maasai, Becoming Indigenous: Postcolonial Politics in a Neoliberal World*. Bloomington: Indiana University Press.

Iguanazo, I. 2013. *Reconocimiento de los derechos de los pueblos indígenas en el sudeste asiático (PhD thesis)*. Salamanca: unpublished.

International Labour Organization. 1989. Indigenous and Tribal Peoples Convention, 1989 (Nº 169). http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

Kymlicka, W., and B. He. 2005. *Multiculturalism in Asia*. Oxford: Oxford.

Laclau, E., and C. Mouffe. 1987. *Hegemonía y estrategia socialista. Hacia una radicalización de la democracia*. Madrid: Letra E.

Martí, S., and S. Villalba. 2012. “¿Pocos pero guerreros? Multiculturalismo constitucional en cinco países con población indígena minoritaria.” *Revista Uruguaya de Ciencia Política* 21: 1–17. http://cienciassociales.edu.uy/institutodecienciapolitica/rucp-vol-21-no-2-julio-2012-diciembre-2012/.

Penelas, A. 1999. “Aplicación del análisis de cluster.” In *Análisis multivariante*, edited by J. Hair, R. Anderson, R. Tatham, and W. Black, 533–536 5a. ed. Madrid: Prentice Hall.

Santesmases Mestre, M. 1997. *Dyane. Diseño y análisis de encuestas en investigación social y de mercados*. Madrid: Prentice Hall.

Thio, L. 2010. “Constitutional Accomodation of the Rights of Ethnic and Religious Minorities in Plural Democracies: Lessons and Cautionary Tales from South-East Asia.” *Pace International Law Review* 22 (1): 43–202. Accessed May 26 2020.

Tubino, F. 2015. *La Interculturalidad en Cuestión*. Lima: Fondo Editorial Pontifica Universidad Católica del Perú.

United Nations. 2007. Declaration on the Rights of Indigenous Peoples. http://un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

Universidad Diego Portales. 2018. Percepciones y opiniones de los y las congresistas de Chile. Capítulo 1: Pueblos Indígenas. Universidad Diego Portales. September 2018. http://www.icso.cl/noticias/laboratorio-constitucional-udp-realizo-encuesta-a-congresistas-sobre-pueblos-indigenas/.

Uprimny, R. 2011. “The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges.” *Texas Law Review* 89 (7): 1587–1609.

Van Cott, D. 2000. *Multicultural Constitutionalism: Politics of Diversity in Latin America*. Pittsburg: University of Pittsburg.
Wade, P. 2007. "Identidad racial y nacionalismo: una visión teórica de Latinoamérica." In *Formaciones de indianidad. Articulaciones raciales, mestizaje y nación en América Latina*, edited by M. De la Cadena, 367–390. Lima: Envión.
Walsh, C. 2002. "Interculturalidad, Reformas Constitucionales y Pluralismo Jurídico." In *Justicia Indígena*, edited by J. Salgado, 23–35. Quito: Abya Yala.
Walsh, C. 2008. "Interculturalidad, Plurinacionalidad y Decolonialidad: Las insurgencias Político-Epistémicas de refundar el Estado." *Tabula Rasa* 9: 131–152. doi:10.25058/issn.2011-2742.
Yrigoyen, R. 2009. *A los 20 años del Convenio 169 de la OIT: Balance y retos de la implementación de los derechos de los pueblos indígenas en Latinoamerica*. Lima, Peru: Portal de Derecho y Sociedad.

Appendices

Appendix 1. Clustetabr composition.

	1	2	3	4
Americas	Chile	Argentina		Bolivia
	Belice	Brazil		Colombia
	Costa Rica	Canada		Ecuador
	Cuba	Guatemala		Mexico
	El Salvador	Guyana		Paraguay
	United States*	Nicaragua		Peru
	Haiti	Panama		Venezuela
	Honduras			
	Jamaica			
	Dominican Rep			
	Uruguay			
Africa	Cameroon	Kenia	Angola	Burkina Faso
		Sudan	Botswana	South Africa
			Ghana	South Sudan
			Mozambique	Uganda
			Namibia	Zimbabwe
			Sierra Leona	
			Zambia	
Europe	Norway*	Switzerland		
	Ucrania	Finland		
Asia	Kazakhstan	Iraq		
		Nepal		
		Philippines		
		Singapore		
		Sri Lanka		
Oceania	Australia*	Fiji	Indonesia	New Zealand
	Kiribati	*P.* New Guinea	Malaysia	
		Vanuatu	Solomon I.	
	N=17	N=19	N=10	N=13

Source: Compiled by the authors using data from the Comparative Constitutions Project. In the case of the United States the Constitution only mentions the power of Congress to regulate commerce with Indian tribes. Special acts have been enacted since its independence. In the case of Australia, the Parliament has the power to make law with respect to 'the people of any race for whom it is deemed necessary to make special laws' (section 51). Several acts have been enacted as well. In the case of Norway, the Constitution mentions the responsibility of the authorities to 'create conditions enabling the Sami people to preserve and develop its language, culture and way of life' (article 108). In this case, a specific act was enacted in 1987.

Appendix 2. Descriptives.

		N	%
Lands	Yes	26	44.1%
	No	33	55.9%

(*Continued*)

Appendix 2. Continued.

		N	%
Natural Resoruces	Yes	9	15.3%
	No	50	84.7%
Indigenous Offical Language	Yes	25	42.4%
	No	34	57.6%
Customary Law	Yes	19	32.2%
	No	40	67.8%
Own Social Organization	Yes	26	44.1%
	No	33	55.9%
Representation system	Yes	22	37.3%
	No	37	62.7%

Source: Compiled by the authors using data from the Comparative Constitutions Project.

Appendix 3. Classification Results[a].

Number of TwoStep Cluster			Predicted Group Membership				Total
			1	2	3	4	
Original	Count	1	17	0	0	0	17
		2	0	18	0	1	19
		3	1	0	9	0	10
		4	0	0	0	13	13
	%	1	100,0	0,0	0,0	0,0	100,0
		2	0,0	94,7	0,0	5,3	100,0
		3	10,0	0,0	90,0	0,0	100,0
		4	0,0	0,0	0,0	100,0	100,0

[a]96,6% of original grouped cases correctly classified.