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Ethno-territorial rights and the resource extraction boom in Latin America: do constitutions matter?

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ABSTRACT

In recent times a growing number of Latin American rural groups have achieved extended ethno-territorial rights, and large territories have been protected by progressive constitutions. These were the outcomes of extended cycles of national and transnational contentious politics and of social movement struggle, including collective South–South cooperation. However, the continent has simultaneously experienced a resource extraction boom. Frequently the extractivism takes place in protected areas and/or Indigenous territories. Consequently economic interests collide with the protection and recognition of constitutional rights. Through a review of selected demonstrative cases across Latin America, this article analyses the (*de jure*) rights on paper versus the (*de facto*) rights in practice.

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Introduction

Ethno-territorial rights have improved greatly since the 1990s in many parts of Latin America. In this article we study how the extractivist booms of the late 2000s have challenged these established rights.¹ There are new constitutional frameworks protecting these rights. Our focus is on studying their role: do constitutions matter or not in the face of a major resource rush? The new constitutions of Bolivia and Ecuador are thus far possibly the most radical constitutions in the world, both in the field of recognising Indigenous grievances, such as legal pluralism, territorial autonomy and collective rights, and in declaring the state to be intercultural and pluri-national;² similarly they declare the ‘rights of nature’, ie the constitutional protection of the environment/Mother Nature/Pachamama.³ Nonetheless, as we show, neither the ratification of ILO-169 on the rights of Indigenous peoples nor progressive constitutional reform guarantees that Indigenous and other ethnic land rights are given priority over mining, logging, pasture-land, industrial plantation expansion, oil extraction, or similar industrial extractivisms.

By ethnic (ethno/Indigenous) territorial rights, we refer to territories controlled by self-identified indigenous (ethnically defined) people or groups, afro-descendants (quilombola

communities, etc) and traditional populations (eg seringueiros and quebradeiras de coco), not including peasant or other non-ethnic territorial rights. We also include the rights of Bolivian peasant-indigenous peoples, even though many of these individuals and collectives prefer to identify as peasants.⁴

We ask whether and how constitutional reforms matter. Through the analysis of illustrative cases of clashes between ethno-territorial rights and extractive activities, we examine different *de jure* and *de facto*-settings in Latin America. Instead of a traditional comparative study, specific but crucial cases are examined in order to highlight possible inconsistencies between *de jure* and *de facto* rights. We provide a region-wide comparison. Our analysis consolidates many existing claims and provides a more consistent look at the key dimensions of the debate on the relation between *de facto* and *de jure* rights.

We also contribute to the scholarship on South–South relations, showing how these deepening interactions can also be implicit. The challenges experienced by the region were globally defined (neoliberalism in the 1990s, extractive impetus in the late 2000s), and solutions were mostly homebred in Latin America. We study the transnational processes to the extent that these mattered and explain their roots by looking at domestic and local struggles.

Activist citizens and collectives in Latin America present a long history of linkages to transnational politics. The recent constitutional reforms had transnational roots, while their implementation was national.⁵ The transnational sources of national politics and policies have indirectly (albeit crucially) affected the outcome of the struggles of recognition that contributed to the reinforcement of ethno-territorial rights.

The creation of the new constitutional rights was largely motivated by constant pressure from increasingly powerful and state-embedded social movements, which started to create region-wide networks in the 1980s. These region-wide social movements included the Coordinator of Indigenous Organizations of the Amazon River Basin (COICA), founded in 1984, which coordinates nine national Indigenous organisations, and the Latin American Coordinating Board of Rural Organizations (CLOC), which is a member of La Via Campesina and an important networker between Indigenous and broader rural groups. Besides pushing for *de jure* rights, La Via Campesina, CLOC and their member organisations' concerted cooperation has been decisive in the struggle for constitutional reform and making ethno-territorial rights a *de facto* reality, independently of constitutional backing. The People's Global Action (PGA) – a transnational network of the Global Justice Movement – is another important radical and anti-capitalist organisation that since 1997 has challenged the global governance institutions. Ecuadorian and Bolivian Indigenous organisations have collaborated with the PGA on issues of territories, water, ethnically defined rights, and resistance to the World Trade Organization (WTO) and the (Free Trade Area of the Americas (FTAA), for example during the third international encounter of PGA in Cochabamba, Bolivia in 2001.⁶

The new ethno-territorial rights have from the start been a globally attuned project. The ILO-169 had a far-reaching impact on the continent and inspired the constitutional texts of several countries.⁷ Indeed, ethnically defined groups were successful in the promotion of the convention and 13 Latin American countries ratified the document between 1990 and 2002.⁸ The nexus of progressive constitutions and increased territorial rights of ethnically marginalised populations that base their livelihoods on traditional territorial occupation of land formed two major processual changes that have swept across Latin America in the past three decades. First, the 'neoliberal multiculturalism' of the 1990s put identity-based movements into the limelight.⁹ Second, the more recent wave of neo-constitutionalism

characterised by the expansion and deepening of ethnically defined rights, particularly on behalf of the current progressive governments in Ecuador and Bolivia, led to increased state protection of marginal collective identities that gained better land rights.¹⁰ Track records vary on how well the new ethno-territorial rights, and the new constitutional frameworks amounting to a *de jure* protection of rights, have been respected *de facto*, but they show a shared pressure by governments to tap nature's bounty.

We will discuss some recent scenarios of extractive industries in relation to the political turn to the Left in Latin America and the experiments in post-neoliberal or even post-developmental politico-economic state projects on the continent,¹¹ that is, the recent wave of Latin American neo-constitutionalism.¹² This political change towards the so-called Leftist wave, or progressive governments, has characterised several countries, such as Argentina, Bolivia, Brazil, Ecuador, Uruguay and Venezuela. The new administrations have different styles, ranging from more radical postures (Venezuela, Bolivia, Ecuador) to more moderate ones (Argentina, Brazil, Uruguay). However, all of them display the return of a more active state and contribute to new understandings of developmentalism. Particular attention will be paid to two of the countries associated with the political banner of 21st-century socialism – Bolivia and Ecuador – as well as to Brazil, the globally most significant Latin American case. We will also discuss Chile, Colombia, Mexico and, very briefly, Venezuela.

21st-century socialism

Latin America's '21st-century socialism' and Leftist transformation – which can be understood as a reflection of discontent with neoliberalism – was initiated by the election of Hugo Chávez Frías in Venezuela in 1998, soon followed by Leftist movements achieving executive power in Brazil, Argentina, Uruguay, Bolivia, Ecuador and other parts of Latin America. In Venezuela, Bolivia and Ecuador constitutional reform was already the principal proposal during the campaigns and popular movement activities of the 1990s that led to the Leftist transition.

The Bolivian ratification of the ILO-169 in 1991 was a reflection of a mobilisation by the lowland Indigenous organisation Confederation of Bolivian Indigenous Peoples (CIDOB) in 1990 under the banner, 'March for Territory and Dignity'. However, the practical implementation of ILO-169 and the more extended right to prior consultation on hydrocarbon activities in Bolivia was delayed until 2007, ie after the presidential inauguration of Evo Morales.¹³ This is a crucial example of the historical roots of the constitutional reforms as regards the reinforcement of ethnic and territorial rights. It is also a clear example of an extended cycle of contention in which social movements' grievances of the 1990s achieved recognition decades later.¹⁴ Since the 1990s CIDOB and other Indigenous organisations have been increasingly active in transnational networks.

Ecuador presents a similar historical pattern of social mobilisation among Indigenous organisations and transnational activism to achieve recognition of ethnic and territorial rights. Deborah Yashar has illustrated how Amazonian Indigenous people were particularly successful in negotiating territorial autonomy in the 1990s. An example was the Ecuadorian Organización de los Pueblos Indígenas del Pastaza (OPIP), which achieved large territorial gains for their communities.¹⁵ Importantly and interestingly these movement's victories were achieved without the judicial platform (or national political opportunity) of a 'progressive' constitution as regards ethno-territorial rights. These achievements were undoubtedly the results of a combination of local Indigenous movement struggle and transnational activism

Table 1. The de jure and de facto division of ethno-territorial rights: examples from Latin America.

Ethno-territorial rights (with examples)		<i>De facto</i>	
<i>De jure</i>		Yes	No
	Yes	TIPNIS (until 2015), Bolivia; Raposa/Serra do Sol, and RESEX Tapajós-Arapiuns, Brazil; Yasuní (until 2013), ^a Ecuador	Belo Monte, Brazil; Afro-Colombians, West Colombia; Yasuní (after 2013)
	No	Chiapas, Zapatistas, Mexico	Mapuche, Southern Chile

Note: In this text we refer exclusively to the three blocks of Yasuní territory labelled Yasuní-ITT, which were the subject of the progressive initiative to leave the oil in the soil. Oil drilling has been carried out for many years in other parts of the Yasuní territory.

– leaning on ILO-169 and the ‘relatively ethno-friendly’ global atmosphere associated with neoliberal multiculturalism. This historical case suggests that contentious agency and the transnational setting are more important in explaining ethno-territorial rights than national policies: the progressive constitutions enshrined in the 2000s allow for the studying of this claim comparatively here.

In Ecuador’s constitutional reform of 1997–98 the Indigenous movement – spearheaded by the Ecuadorian Confederation of Indigenous Nationalities (Confederación de Nacionalidades Indígenas del Ecuador, CONAIE) and its politico-electoral movement Pachakutik – were clearly inspired by the recent constitutional modifications in Bolivia, and they achieved some important recognition of collective grievances.¹⁶ The National Federation of Peasant, Indigenous and Black Organisations (Federación Nacional de Organizaciones Campesinas, Indígenas y Negras, FENOCIN) has been a central ally of the government of Rafael Correa since 2007. FENOCIN is a member of CLOC and La Vía Campesina and has been active in the constitutional reforms of 1997–98 and 2008, particularly as regards issues of Indigenous and Afro-Ecuadorian collective rights. Many popular and cross-Latin America organisations were highly active in the recent processes of rewriting the constitution in Venezuela, Bolivia, Ecuador and (in the 1980s) Brazil.

Increased South–South and intra-continental cooperation have characterised the region even more after the establishment of the Leftist governments, and has included the advancement of ethno-territorial social movements struggling on transnational and global levels. Different intra-continental organisations have emerged, such as ALBA-TCP, Unasur and CELAC, in order to strengthen the Latin American countries vis-à-vis the Global North.¹⁷ The new socialist projects are consequently both nationalist and internationalist.¹⁸

Some common characteristics of the ‘progressive governments’ are: a strengthened role and presence of the state in the economy and in society; a reduction in poverty; recognition of traditionally marginalised sectors of society; nationalisation of strategic industries; and stronger governmental steering of key companies.¹⁹ Through state control of strategic (mainly hydrocarbon) industries, revenues are redistributed more fairly in society, on other words benefiting marginalised sectors, although there is still a very long way to go to make the model less elite-based.²⁰ Our discussion of the ills of extractivism illustrates how this state-level South–South process challenging the global North has affected minority populations.

De facto and de jure ethno-territorial rights

We will seek answers to the question of the relative importance of constitutional reform for the recognition of ethno-territorial rights by analysing different cases. Cases defined as having *de jure* ethno-territorial rights were based on having constitutional frameworks that recognise Convention 169 of the International Labour Organization of 1989 (ILO-169), without significant contradictory laws or practices of law that contradict it. For this reason, we do not consider Chile's treatment of the Mapuche to fulfil the *de jure* or *de facto* categories of ethno-territorial rights.

De facto rights are defined by the actual territorial absence of large-scale extraction projects which the local people resist and consider a violation of their ethno-territorial rights, eg the absence of a large open-pit mine causing severe socio-environmental damage in a studied sub-area of a country (such as the Mexican territory controlled by the Zapatistas). We will examine cases of:

- Both *de facto* and *de jure* rights largely (not necessarily completely) protected (eg TIPNIS in Bolivia (until 2015) and Yasuní (until 2013), both in Ecuador).
- *De facto* rights to a considerable degree, but relatively no constitutional rights (eg Zapatistas, Chiapas, Mexico); this includes groups who have attained *de facto* rights despite the absence of progressive constitutional ethno-territorial rights.
- Harsh violations of *de facto* rights, in spite of having *de jure* rights (e.g. Belo Monte dam project, Brazil; Afro-Colombian territories on the West Coast of Colombia). This category may include pockets of domination and land grabbing based on physical violence. Such a case is Colombia, whose 1991 Constitution established celebrated ethno-territorial rights, although these were countered by state-supported paramilitary violence.
- Harsh violations of *de facto* rights and absence of considerable *de jure* rights (e.g. the Mapuche people in forestry areas of Southern Chile).

These cases are summarised in Table 1, which will function as the organising framework of the analysis.

The study is based on participant observation and field research in Latin America, particularly in Ecuador and Bolivia between 2010 and 2015, and in Brazil in 2004–14, and is supplemented by reviews of documents. The method of finding extremes and comparing them was used, and accompanied by more comprehensive comparison, after the main categories (above) were identified through triangulation. The following questions guide the analysis:

- How have the new constitutions changed the territorial rights/recognition of the Indigenous/other ethnic group in areas affected by resource exploitation?
- Considering the expansion of extractive industries, how are (the implementation of) state policies justified by the central government?
- Are there contradictions in the new constitutional texts (and secondary legislation)?

The final question is the point of departure for our study, in that the 'progressive' constitutions include contradictions and in practice clashes between the recognition of (ethnic and territorial) rights and the rights of the state to commercialise natural resources for the common good.²¹

Table 1 can also be used to study capitalist land rights, producing a similar table for such rights (*de jure* and *de facto*). The discrepancies between the distribution of *de facto* and *de jure*

capitalist and ethno-territorial land rights offer strong empirical support for inequality. We hypothesise that the contents of Table 1 (as presented above) can be more or less inverted for capitalist land rights. For example, in the Mapuche territory, capitalists have both *de facto* and *de jure* land rights (while Mapuche have neither), while in the Extractive Units of Brazil, capitalist land rights are curtailed both *de facto* and *de jure*.

Progressive (neo-)extractivism and the Latin American 'brown left'

The positive *de facto* outcomes in Table 1 are a product of contentious agency spreading on a continental scale – the movements involved in the cases discussed are well aware of each other and actively network.²² The several positive *de jure* outcomes in Table 1, on the other hand, suggest that the creation of new ethno-territorial rights is also a 'top-level' official policy cooperative project: this process can be called a parcel of 'progressive constitutionalism'. Both of these outcomes have common roots as well as shared dynamics and impulses – as does the Latin American extractivism of the progressive governments.²³ However, the civil society and popular movement processes of South–South cooperation have been a necessary and prior condition in order for later state-based cooperation on progressive lines to take place – new movements brought people into power that listened to the movements' demands, and shared the local views with foreign colleagues in the state.

With the advent of high commodity prices and strong international pressure from rising powers in the global South – particularly China, and more recently Brazil in the case of Latin America – this development of ethno-territorial rights both outside and within the state has been sidelined. The progressive governments have jumped on the extraordinary opportunity to use the new 'commodity paradigm' of huge price increases to gain windfall gains by massive increases in resource exports.

In Bolivia the government of Evo Morales has continuously argued that the state should have control over extractive industries, in order to achieve economic development and to siphon off the financial proceeds for socioeconomic welfare reforms. The Morales administration also instituted radical legal reforms regarding both human rights and environmental criteria in the hydrocarbon sector. These advances, including the recognition of rights in the 2009 Constitution, were the result of decades of grassroots struggle, mainly by lowland Indigenous peoples.

However, economist Pablo Dávalos, among others, refers critically to these changes as 'progressive neo-extractivism', characterised by a stronger role and presence of the state in extractive industries. The progressive trait, and the legitimation, of this extractivist model is the usage of the revenues for state social programmes, mainly in education and health.²⁴ In theory, even though extractive projects may threaten territorial rights, at the same time the social reforms will generally benefit the Indigenous peoples and other marginalised groups. The progressive condition of this development style is legitimated through repeated references to the need for extractivist activities to generate the necessary funding to attack poverty and finance other social programmes. Progressive governments have expanded and deepened economic assistance programmes, particularly conditional cash transfers. Social ecologist Eduardo Gudynas argues that neo-extractivism in these countries can be understood as the emergence of a 'brown left', which is less red and particularly less green than it presents itself. Yet, this 'new' left is more progressive than prior governments, particularly in the sense of providing broader socioeconomic benefits to marginalised groups.²⁵

An increasing number of conflicts have accompanied this development policy, which promotes two models of development that are difficult to merge into a coherent whole. In a sense the new development policy of the 'brown left' has entered into conflict with the new constitutions, some of which were based on the mobilisation of those who put the new Left into power. Currently,, in its myriad of localised and seemingly distinct local land struggles, Latin America is witnessing a general battle between the 'brown left' in power and a new, emerging 'green left' at a grassroots power level.

One variation of this Latin American 'green left' tide are the *buen vivir* and *Sumak Kawsay/ Suma Qamaña* platforms of several Indigenous Andean populations. *Buen vivir* is an ontologically distinct cosmology and way of ecologically sustainable and harmonious life in comparison to modernist and capitalist projects such as progressive and/or extractive governments.²⁶ The states of Bolivia and Ecuador have recently embraced *buen vivir* and codified this into law, but green left activists such as Gudynas argue that they have distorted the original radical idea, since extractivism is a modernist process deeply at odds with the traditional cosmologies.²⁷

The progressive constitutions gave space for a green left to consolidate its position, but the brown left has found this problematic, as its core is the use of extractivism as a political-economic model of development to increase their power and address the problems that the traditional Left has confronted. Perhaps most visibly Brazil has, since about 2010, taken a very controversial path. The forest code was radically deregulated by parliament, and in many (but not all) places Indigenous and other marginalised rural populations have borne the brunt of an extractivism even more vigorous than that of the 1970s authoritarian regime, in terms of building new dams such as the Belo Monte, and of displacing local people.

Do constitutions matter?

Why were the new constitutions unable to fully secure (*de facto*) land rights in the face of this extractivist boom? To answer this question, both Latin American South–South cooperation and the progressive constitutions created through this process should be studied from a longer historical perspective, in which the 19th-century Latin American liberal constitutionalism still bears a strong path-dependent legacy for constitution making and implementation. This history helps explain why the seemingly radical new constitutions are in fact rather moderate when compared with *de facto* rights. Their basis is still in liberal law, which in Latin America implies that many laws are still made 'for the English to see', as the popular saying goes in Brazil.²⁸

However, the progressive (or partly progressive) constitutions' ethno-territorial rights sections, such as the part of Brazil's 1988 constitution demanding the full demarcation of traditional Indigenous lands, have for the most part been followed, with most Indigenous lands having now been officially recognised.²⁹ For other ethno-territorial groups, such as the Afro-Brazilian quilombola communities, however, the situation is not so good, as only about 5% of the self-identified quilombolas have received land rights: for officially recognised quilombolas the figure is much higher, and half of all self-identified communities have received an official certificate (but not necessarily land titles).³⁰ Another question is whether the new *de jure* rights are confirmed *de facto* in real practice.

In Brazil between 2004 and 2011, Indigenous lands were sanctioned to correspond to 20% of the Amazon territories, and 15 million hectares of Extractive Units for traditional

populations were created.³¹ In total, these endeavours have placed over 40% of the Amazon region under some sort of official protection, with 60% of these lands under *socioambientalismo*, ie they are governed by locals. *Socioambientalismo* is one of the results of a broader cross-Latin American networking and ideology-building process by rural social movements, initiated with the end of the dictatorships in the 1970s and 1980s. *Socioambientalismo* was the key in fostering the partly progressive constitution of 1988 and later, in the 2000s, in gaining political power in the Brazilian parliament for some supporters of *socioambientalismo*, such as Marina Silva and Lula.³²

Notwithstanding this, in an influential study of Indigenous people's rights amid Latin America's new constitutionalism, Van Cott emphasises the relatively weak position of Brazil in comparison to other Latin American countries in terms of ethnically defined rights.³³ However, Brazil has been highly successful in pioneering ethno-territorial rights for non-indigenous rural populations. The ethno-territorial rights of extractive populations were legally established after the Chico Mendes-led Rubber Tappers' Movement successfully halted the expansion of illegal logging and pasturelands in many parts of the Amazon at the turn of the 1980s and 1990s. The success of this process was dependent on transnational activism, which pressured the state to fulfil the demands of its new constitution.³⁴ New instruments were created after this struggle. Most importantly, they included Multiple-purpose Conservation Areas, where different traditional extractive populations could live while safeguarding nature (these and other similar social natures are labelled *socioambientalismo* among Latin American movements and academics). These have been very important in extending the reach of ethno-territorial rights in Brazil,³⁵ where in many cases, people are *caboclos*, that is, they have ethnically mixed identities.

In the Amazon, as one of the authors of this article has observed, since 2005 in the case of Extractive Unit (Reserva Extrativista, Resex) Tapajós-Arapiuns, the majority of the population living within the forested territory did not self-identify as Indigenous, although their way of life was otherwise almost indistinguishable from the few Indigenous self-identified villages in the area. It was more preferable for them to identify as traditional populations with an Extractive Unit than with an Indian Land (which they most probably would not have attained). These examples illustrate how the story does not end with Indigenous populations, and also that Brazil's constitution of 1988, and subsequent amendments, have allowed for a *de jure* recognition of ethno-territorial rights.

Extractivism clashing with ethno-territorial rights

We will next discuss the exemplary cases in Table 1 to illustrate how constitutions matter and do not matter in the context of a 'commodity paradigm' and of progressive states that have contradictory clauses on such rights.

TIPNIS

One of the most emblematic cases of the clash between ethno-territorial rights and economic development politics is that of TIPNIS in Bolivia. Between August and October 2011 a huge number of Indigenous and other activists marched for 65 days from the Bolivian lowlands to the capital protesting against a highway construction project through a protected area and Indigenous territories, the Territorio Indígena y Parque Nacional Isiboro Secure (TIPNIS).³⁶

The 602 km highway project would connect the lowland Beni department with highland Cochabamba – it would be a key project of Latin American integration by the new progressive governments following the commodity-export strategy, and Brazil was heavily involved in pushing for the road as a way to reach Pacific markets faster.³⁷ The protesters presented a list of 16 demands concerning respect for the territory, as well as other social, economic and cultural concerns. After violent clashes between police forces and the marchers President Morales agreed to all their demands. However, after a few months, the highway project was reinitiated, despite heavy resistance and international media and academic coverage.³⁸

However, the TIPNIS conflict suddenly ended – at least temporarily – in a rather strange way. In January 2014 local academics and activists were evidently surprised by some declarations (as quoted in the local mass media on 4 January) by Vice President Álvaro García Linera regarding the destiny of the TIPNIS highway in June 2013 at a conference in Argentina, ie half a year before. García Linera admitted several mistakes committed by the government over the construction project and in its communication with affected Indigenous groups. He emphasised that the highway would be necessary but that it had to be postponed 20, 50 or 100 years and that consideration should be given to the protection of the environment.³⁹ During interviews carried out in La Paz in January and February 2014 even government officials confirmed that construction of the highway had been cancelled.

Nevertheless, the government's position rapidly altered after the presidential elections of October 2014. In June 2015 Evo Morales drafted and established a presidential decree (2.366) that radically changed the rules of the political game in the protected areas (natural reserves), some of which are also Indigenous territories. Morales argued that the national parks had been established by elite groups in Bolivia and beyond as a kind of standby supply of natural resources. State authorities are planning to initiate oil drilling in eight of the existing 22 protected areas of the nation.⁴⁰ According to the superior decree 2.366, all the hydrocarbon resources located in the nation could be exploited and commercialised for the common good (social welfare and poverty reduction).⁴¹

Furthermore, vice-president García Linera announced that there should be a legal modification of the statute on the 'untouchability' of TIPNIS,⁴² which was one of the central achievements of the Indigenous march for TIPNIS. In the table, TIPNIS is placed in the field of both *de jure* and *de facto* rights only until 2015, as the position is likely to be change in the near future, given the above shifts in the government stance.

Yasuni-ITT

The Yasuní territory of the Northern Ecuadorian Amazon is a protected national park and biosphere reserve, with some of the richest biodiversity in the world. It is also the home of several Indigenous groups, some of whom live in voluntary isolation. But Yasuní-ITT is also a territory of unexploited oil riches. In 2007, with the slogan of 'Leaving the oil underground' Ecuador asked the international community for 50% of the income that would have been generated from oil exploitation, in order to protect the biodiversity and the Indigenous peoples of the area. The initial compromise was to leave roughly 850 million barrels of oil underground without time limits. Moreover, the constitution of 2008 gave further protection to the national park and the Indigenous peoples.

The Yasuní initiative as a rejection of hydrocarbon capitalism dates back many years. In 1995 the Indigenous Confederation CONAIE demanded the suspension of oil drilling in the

Yasuní national park. Later the proposal was developed among academics and different environmentally related civil society groups, such as Oilwatch and Acción Ecológica. Nonetheless, the Correa government implemented the initiative the year before popular approval of the 2008 constitution. The international compensation component of the initiative was invented by the Correa government.

The Yasuní Project enjoyed worldwide attention, and academics and activists even began speaking of a 'Yasunisation' in other parts of the world. The Yasuní-ITT initiative, together with the rights of nature in the Constitution, is undoubtedly among the most important and symbolic contributions of Ecuador on a global level. Yet international collaboration proved to be insufficient (only 0.37% of expected contributions were received) and critical voices speculated that it was only a question of time before oil drilling would be initiated.

On 15 August 2013, Correa officially declared the ending of the Yasuní-ITT initiative and thus gave the green light for oil drilling in this natural park in the Amazon. He claimed it was his 'toughest political decision ever...Deeply saddened, albeit with responsibility, I have signed the executive decree for the liquidation of the Yasuní-ITT trust fund and through it, [I] end the initiative,' Correa said in a televised statement.⁴³ The closure of Yasuní-ITT was officially established via presidential decree. On 3 October 2013, oil drilling in the Yasuní-ITT was approved in the National Assembly. Whereas the Amazonian federation of Indigenous peoples, CONFENIAE and its national umbrella organisation CONAIE are mobilising against the government, some Indigenous groups have shown their support for Correa.

This is a cautionary example of tying a leave-it-in-the-ground policy into a compensation scheme: when the compensation fails to 'pay for the nature,' extraction ensues. The dynamics demonstrates how the progressive governments of Latin America typically opt for extraction if this is in conflict with ethno-territorial rights.

Raposa/Serra do Sol and Resexs

During the 2000s Brazil's Northern, Venezuela-bordering Roraima state had a long-lasting ethno-territorial conflict between Indigenous populations backed by the state and large rice farmers who had entered Brazil's largest Indigenous territory, Raposa/Serra do Sol. A new governmental decree by President Lula da Silva created an Indian Land in the area in 2005, and the Supreme Court ordered in 2009 that only Indigenous peoples could inhabit the area. In contrast to the earlier role of the state, the president ordered the military to intervene to expel agribusiness and other non-Indigenous people from the area (most of whom had occupied land recently and speculatively, in order to get *bona fide* refunds for land loss).⁴⁴ This was a case of both *de jure* and *de facto* support for ethno-territorial rights.

So also were the many Extractive Units created during the 2000s, exceeding millions of hectares and offering *de jure* rights to 'traditional people' (an official ethnic-legal category in Brazil) who were already enjoying *de facto* rights in the areas wherein they cultivated small plots of land and collected the usufruct of forests and rivers.⁴⁵ The mid-2000s was a crucial time to enshrine those rights by law, as land grabbing and the new resource boom was starting in earnest then. Illegal soya bean and rice plantations and pastures soon covered the areas left outside legal protection, such as those areas outside the Resex Tapajós-Arapiuns close to the city of Santarém by the Amazon River.

Massive deforestation has taken place since 2005 in that area – but satellite photos attest to the fact that the official reservation units where people live have remained mostly forested

(although conservation has been even better in Indigenous Lands and other strict-use conservation units).⁴⁶ Without official legal recognition, which was actually the culmination of a major political mobilisation that brought the people living in the area by similar livelihoods together to demand the *de facto* legalisation of their rights under the constitution, it is unlikely that the people could have withstood the onslaught of land grabbers.

A kind of extended cycle of contention may thus be discerned in Brazil,⁴⁷ where certain initial ethno-territorial rights were established in the 1988 Constitution, but were implemented many years later during the Lula da Silva presidency. As one of the present authors noted (via insider participant observation between 2005 and 2008), these processes were strongly supported by international development cooperation projects gained by the Rubber Tapper's Council (CNS) and the Rural Trade Unions (STTRs). These projects helped the riverine Amazonian peoples to organise themselves, and the progressive state institutions and actors in Brazil to be a part of the embedding process.

Belo Monte

Brazil's Belo Monte dam project was successfully resisted in the 1980s by local Indigenous organisations. However, in the 2000s the project was reinitiated by the Workers' Party governments.⁴⁸ Later investigations by prosecutors have found evidence of large-scale corruption, in the form of bribery of political parties by construction and other companies to get the major contracts to build the dam.⁴⁹ The dam will inundate large areas and expel local populations, and is already almost complete: parts of the river have dried up, and the impacts have been devastating for local inhabitants; they are referred to by public prosecutors as 'ethnocide'.⁵⁰ The project is unconstitutional, in that it was built as a *fait accompli* before proper licences or permits were issued or the affected populations heard.⁵¹ The government has not listened to the decrees issued by the courts, neither nationally nor internationally. The Inter-American Commission on Human Rights (IACHR) issued a demand to the government to immediately suspend construction of the dam for violating Indigenous rights.⁵² This enraged the Brazilian government authorities, which responded with a withdrawal of its representatives in the IACHR and in the Organization of the American States (OAS). The ALBA governments have been in conflict with the OAS, since the latter accused them of human rights violations (eg in the extractive projects discussed in this article).⁵³

The Belo Monte case is a strong example of how constitutions do not matter – specifically, how neo-developmental agendas, accompanied by murky schemes of vote-buying by progressive governments requiring the support of corporations and other parties to pursue their compensatory agendas, trump constitutions. However, the resistance – including prosecutors bringing class action suits – has been able to rely on the constitution to postpone the imposition of the project and attain a substantial compensatory package in monetary terms for the affected populations, in contrast to prior dam projects.⁵⁴ Nonetheless, such compensation is not really valid, given that the violation of human rights – by not listening to the Indigenous people – by Belo Monte is worse than it was during the dictatorship, according to prosecutors.⁵⁵ In the case of Belo Monte the outcome was a clear failure in terms of ethno-territorial rights to having a voice in decision making – in spite of existing *de jure* rights.

What seems to be the distinctive feature between the previously discussed cases of Resex and Raposa/Serra do Sol in comparison to Belo Monte is that, in the former, the private sector was the one violating ethno-territorial rights. The affected people could thus refer to the

constitution to ask for executive intervention from a progressive government. In Belo Monte the government was the violator. Consequently, the resistance was ineffective *vis-à-vis* the bending of law by the government.

Zapatistas and other *de facto* movements

There are cases in Latin America that fall outside the dynamics described above, wherein states play a key role. One such is the case of the Zapatistas, who unilaterally and successfully created an ethnic-territory, with its own human rights in Chiapas, Mexico, in 1994. For the Zapatistas the constitution of Mexico did not really matter.

On a smaller scale Latin America is replete with similar cases, where popular mass movements occupy territories in a way that depends less on constitutions and more on direct action land reform. The Brazilian landless movements, such as the MST and Indigenous groups that have replicated their model of forging contentious agency are other examples of this tendency of more *de facto*- than *de jure*-based land claiming.⁵⁶ In Espírito Santo, the Indigenous people replicated the MST model and cut down thousands of hectares of eucalyptus to occupy land. Thus they attained success: the Lula government recognised their claim.⁵⁷ This was considered an even stronger victory than Raposa/Serra do Sol by the Brazilian Indigenous people's movement, because the struggle was so tough, the opponent so powerful and the odds so remote in Espírito Santo in comparison to Roraima (whose rice farmers were of little importance to the state, in comparison to the pulp-exporting Aracruz company).

The recognition of ethno-territorial rights in contexts without conflict with corporate or state extractivists is relatively easy, but ensuring this outcome amid conflict is no easy feat. In fact, only when movements have concomitantly used all possible strategies available have they succeeded in this goal in Latin American pulp conflicts.⁵⁸ The particular reasons why the Espírito Santo *de facto* mobilisation led to a *de jure* recognition, and the *de jure* recognition in Roraima led to *de facto* (state-backed) rights, may vary depending on specific contexts and the sectors concerned. Future research should make a more detailed and systematic comparison between cases. What is clear is that the presence of progressive constitutions neither hinders nor makes it harder to attain rights, and that the pursuance of *de facto* rights by direct land occupations appears to be an effective strategy. Action comes first, and constitutions and other structures are among the political and discursive resources that social actors can use in their struggles for land rights.

Mapuche

The Chilean Mapuche case of neither *de jure* nor *de facto* rights illustrates how the (inter-) cultural context strongly influences the attainment of ethno-territorial rights. Considered important actors in the resistance to the Pinochet regime, the Mapuche were promised large ethno-territorial rights and constitutionally guaranteed and self-regulated Indian affairs institutions. Nevertheless, these promises were largely unfulfilled, partly as a consequence of industrial tree plantation encroachment on Mapuche territories.⁵⁹ Chile continues to apply its laws in a discriminatory manner. As reflected in a recent blog article:

One of the worst factors in keeping state-indigenous tensions near boiling point has been the continued application of a controversial anti-terrorist law, created during the military

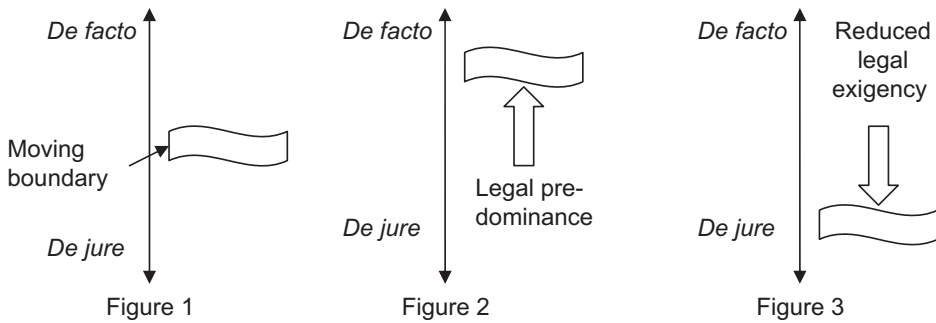


Figure 1-3. Ethno-territorial rights and change in *de jure*-recognition. ^aNote: The authors are most grateful to Eduardo Gudynas for the proposal to include these figures and for other constructive comments on a previous draft of the article.

dictatorship of General Augusto Pinochet (1973–1990), which is more or less only ever used against indigenous protesters and activists, and leads to secret court hearings and harsh punishments... Despite the return to democracy in 1990, successive governments have used this law in attempts to quell indigenous protests, despite continued pledges not to do so.⁶⁰

As an organic document, the Chilean constitution cannot be said to offer ethno-territorial rights. If such rights were truly recognised in the constitution (seen as an organic document), the situation would change dramatically. However, the majority of the Chilean population is relatively unconcerned by Mapuche issues. The case suggests that both *de jure* and *de facto* rights are easier for Indigenous and other ethnically defined populations to achieve if the overall intercultural context is not racist and where there is a notion of Indigenous people being at the same time native and national. This is the case, for example, in Brazil,⁶¹ where Indigenous and other rural groups seek to embed the state and self-identify according to both the specific ethnic identity and the Brazilian nationality. This dynamic is visible in differing sub-variations throughout much of Latin America.

Future research framework

The discrepancy between the state's and the private sector's extractivist initiatives in Latin America has led to a new wave in the 2010s of large landholders and other entities engaged in resource extraction to flexibilise the existing constitutions' ethno-territorial rights. The private sector extractivists would not go to the trouble of changing the law if the law did not matter for them; in other words if it was not an obstacle. Perhaps the biggest significance of constitutions unfolds when we look at them from the viewpoint of government leeway. If not backed by a progressive constitution, a progressive government will soon be labelled authoritarian if it does the kind of thing that President Lula did with Raposa/Serra do Sol.

Progressive constitutions thus seem to offer a convenient tool for these new governments to defend their actions against the backlash by the old elite and conservative forces fearing the mobilisation of environmentally conscious rural groups, whose land demands are in direct conflict with their own. In our cases, however, constitutions do not seem to signify that governments must follow them. Nevertheless, progressive constitutions have been highly usable, politically, for progressive governments: they can defend themselves against

their elite critics by saying that they are just obeying the laws and executing them – not addressing radical movement demands.

These linkages should be more thoroughly theorised. In particular, the role of the international arena (in ‘having a say’) should be revisited. While the Brazilian government listened to the strong pressure placed on it at the end of the 1980s in the rubber tapper–cattle-herder conflict, in the 2010s the government listened little to similar international demands not to proceed with Belo Monte and similar projects in the Amazon. We assume that this discrepancy has to do with the changed world political arena, where the rise of BRICS to a strengthened position in the emerging multipolar world order has made them less susceptible to such international pressure. This increased domestic autonomy suggests that international cooperation has less impact now, and that existing provisions, such as progressive constitutions created before the current era, are more important tools for movements. The current era thus justifies our looking primarily at domestic dynamics.

In relation to the dynamics analysed above it is possible to bring Table 1 a step further, in order to demonstrate how temporality and changes in *de jure* constitutional rights affect local situations. Figure 1 illustrates how the relationship between *de facto* and *de jure* rights can be conceived as a moving boundary in the broader Latin American progressive state–social movement impulsion of ethno-territorial rights. Figure 2 reflects the situation of the late 2000s, when the moving boundary between *de jure* and *de facto* rights had increased, so that there were more *de jure* rights. Consequently, there is a reduction of the proportion of people enjoying *de facto* rights only, in comparison to the prior period. Figure 2 thus illustrates a case of legal predominance. Figure 3, on the other hand, illustrates the current situation of the mid-2010s, where strong extractivism has resulted in the weakening of several socio-environmental protection laws, and an increased level of flexibility to provide legal space for state and corporate extraction. In Figure 3 the bar of *de jure* rights is lowered, which means that the legal exigency is reduced. In situations of reduced *de jure* rights and legal elasticity, the state and companies may still argue that they respect legal ethno-territorial rights.

Figures 1–3 can serve as a heuristic framework for future research to assess what factors make the boundary move up or down, and with what consequences. The Yasuni-ITT case – after 2013 with the decision to move ahead with oil drilling – is a clear example of moving boundaries. As a result of the massive extractivist and developmentalist pressure and in order to be able to fulfil their social and economic commitments, progressive governments have found themselves obliged to modify the scope of the *de jure* dimension.⁶²

Conclusions

In this paper we have discussed contemporary ethno-territorial rights in Latin America during the recent wave of neo-constitutionalism in the continent, characterised by an expansion in the field of rights. Our analysis includes the commodity boom coinciding with the rise of progressive Latin American governments and considers the dependence on export incomes to finance the provision of welfare politics. In practice ethnically defined territorial rights have often been subordinated in relation to economic development policies. Our focus on the progressive governments of Bolivia and Ecuador has been complemented by scenarios of struggle for ethno-territorial rights amid extractive industries in other Latin American countries. Through a review of exemplary cases throughout Latin America, we have analysed the (*de jure*) rights on paper versus the (*de facto*) rights in practice.

We have also discussed the importance of the focus on ethno-territorial rights in specific cases for a more comprehensive understanding of the role of geopolitical changes and increasing South–South cooperation. We found that there are broad similarities in the processes of South–South cooperation inside Latin America that have contributed to:

- (1) *de jure* creation of ethno-territorial rights, indirectly by a South–South dynamics (inside Latin American progressive constitutionalism) and directly by politics in several national settings;
- (2) *de facto* taking or securing of rights by local socio-environmental communities across the area, which is also part of a broader networking and of building of a Latin American alternative.

All our examples included a significant degree of cross-border relations and networking, Latin America-wide intellectual currents, intellectuals, activists and progressive politicians being rather Pan-Latin American than national (networks including Via Campesina, CLOC, COICA, ALBA, Unasur and the *Buen vivir* platform). Latin American South–South cooperation is also markedly intercultural and takes place very much at the level of civil society and popular movements, not just at the level of states.

The *de facto* results of securing ethno-territorial rights are outcomes of social movement-level direct action and the spread of contentious agency on a continental scale, while the *de jure*-outcomes tell us that the expansion of these rights is also a ‘top-level’ official policy cooperative project enshrined in progressive constitutionalism, which has common roots, shared dynamics and impulses. Among these are the shared roads away from dictatorships, as well as the linkage back to a common history as colonies and the redeeming of historical wrongs.

Constitutions did matter in almost all of our cases, the Zapatista case being an exception – but even this is debatable, given the ethno-territorial rights, decentralisation and regional autonomy clauses in the Mexican constitution, possibly supporting their *de facto* land rights. However, a constitution that provides ethno-territorial rights is neither sufficient by itself, nor a necessary causal condition for local populations to attain autonomy or local land control. We also found that constitutions function differently for local populations depending on who the extractivist agent is. The *de jure* function works better when communities face private sector extractivism than when confronting land grabbing conducted by the state (or actors closely associated with the state, such as key commodity exporters). In situations in which the private sector violates ethno-territorial rights, the affected people and national and transnational movements or networks could refer to the constitution to ask for executive intervention from a progressive government. But, when the government was the protagonist (eg Belo Monte and Yasuní after 2013), social movement resistance was insufficient to prevent the bending of law by the state.

Governments are compromised by international relations of diplomacy and trade. Frequently, as has been argued, international demands for the protection of ethno-territorial rights are ignored by governments in Latin America (as elsewhere). The world of today has become more multipolar, and the relative power of the global South has increased, although the reinforcement of the South’s global position leans (heavily) on a strategy of accumulation by dispossession, which clashes with ethno-territorial rights.

For whom do constitutions matter? The results indicate that the new progressive constitutions are useful for movements in conflict with private corporations, particularly

multinationals, whose operations are not liked by the progressive governments. They also offer governments the ability to show that they and their economies are operating in an ethical environment. If *de jure* rights are lowered and socio-environmental laws stretched, as is currently happening across the global South (including Latin America) as a legislative result of the global commodity boom, the corporate and state extractivists can say that they are obeying legal norms. We see two reasons for the increased flexibilisation of forest, mining and other laws across the region. First, progressive constitutions have allowed social movements the possibility to more effectively address the problems of land grabbing and other territorial disputes, and to make progressive governments execute the law. Progressive constitutions thus provide tools for social struggle and opportunities for constructive debate on contentious issues. Second, the increased international criticism that the progressive extractivist governments have received, eg from the OAS and its IACHR, concerning extractive projects that violate the countries' own constitutions and international human rights,⁶³ has troubled these states. Therefore they feel obliged to stretch the interpretation of the constitutional principles in order to retain their international reputation as progressive.

So when and how do constitutions matter? The principles of the constitution need to be accepted as the only game in town. In order to function, constitutions must be socially anchored, and reinforced by detailed secondary legislation. Constitutions also require correlation with state development policies. The general political dynamics should also be such that stakeholders are involved in decision-making procedures at local level. In this sense constitutions are just a framework, which needs to be supplemented by other factors to secure ethno-territorial rights. However, as has been emphasised in this paper, if there are contradicting messages and principles in one and the same constitution, then the outcome of each conflictive scenario will be more uncertain. In practice, economic development politics tend to be superior to ethno-territorial rights, even in the contexts of progressive governments.

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Notes

1. The ethno-territorial areas mostly already existed before being legally recognised. A few examples from Brazil are Resex Tapajós-Arapiuns (over 700,000 ha) and Resex Verde para Sempre (over one million ha), both of which had traditional populations living off the rainforest in the Amazon, and the Indigenous Land of Raposo/Serra do Sol (the largest ethno-territorial legal unit in Latin America, possibly in the world). There are also counter-tendencies, such as in Peru, where legal rights were withdrawn in the mid-1990s (Ley de la tierra 26505).
2. Both constitutions are strongly inspired by the International Labour Organization (ILO) Convention 169 on the Rights of Indigenous Peoples (1989) and the United Nations declaration on the Rights of Indigenous Peoples (2007).
3. Lalander, "The Ecuadorian Resource Dilemma"; and Lalander, "Entre el ecocentrismo y el pragmatismo ambiental."
4. See Fontana, "Indigenous Peoples vs. Peasant Unions." In Latin America during historical land reform processes the nation-states have generally referred to all rural citizens and collectives as 'peasants' (*campesinos*). The rights obtained during these processes are simply territorial, not ethno-territorial.
5. For theoretical discussions on transnational activism and the internationalisation of social movements, see, for instance, Tarrow, *The New Transnational Activism*; and Tarrow, *Power in Movement*.
6. Flesher Fominaya, *Social Movements & Globalization*, 64–66.
7. Van Cott, *The Friendly Liquidation of the Past*; and Ortiz-T., "Justicia comunitaria y pluralismo jurídico en América Latina."
8. Mexico (1990), Bolivia and Colombia (1991), Costa Rica and Paraguay (1993), Peru (1994), Honduras (1995), Guatemala (1996), Ecuador (1998), Argentina (2000) and Brazil, Venezuela and Dominica (2002).
9. Hale, "Neoliberal Multiculturalism." The first phase of neoliberal multiculturalism saw the constitutional reforms of Bolivia (1994) and Ecuador (1997–98) strongly shaped by ILO-169 on the rights of Indigenous peoples. The new progressive constitutions of Ecuador (2008) and Bolivia (2009) were then further motivated by the UN declaration of the rights of Indigenous peoples (2007).
10. Schilling-Vacaflor and Kuppe, "Plurinational Constitutionalism."
11. Escobar, "Latin America at a Crossroads." Post-neoliberalism might still refer to a system of capitalist logics, but post-developmentalism is a radical critique of growth and 'progress'. See Gudynas, "El postdesarrollo como crítica."
12. Nolte and Schilling-Vacaflor, *New Constitutionalism in Latin America*.
13. Schilling-Vacaflor, "Prior Consultations in Plurinational Bolivia."
14. Tarrow, *The New Transnational Activism*; and Tarrow, *Power in Movement*.
15. Yashar, *Contesting Citizenship in Latin America*, 294.
16. Van Cott, "Constitutional Reform in the Andes."
17. These acronyms stand, respectively, for: the Bolivarian Alliance for the Peoples of Our America – Peoples' Trade Agreement (Alianza Bolivariana para los Pueblos de Nuestra América – Tratado de Comercio de los Pueblos); the Union of South American Nations (Unión de Naciones Suramericanas); and the Community of Latin American and Caribbean States (Comunidad de Estados Latinoamericanos y Caribeños).

18. However, Venezuela, Bolivia and Ecuador are far from being socialist societies. Nevertheless, a high number of far-reaching reforms can be traced to socialist ideology, as also the possibilities of popular participation beyond the representative state authorities, particularly in Venezuela.
19. Kröger, "Neo-mercantilist Capitalism."
20. Gudynas, "El nuevo extractivismo progresista en América del Sur"; and Rosales, "Going Underground."
21. This is exemplified by the cases of the Bolivian Constitution of 2009 and the Ecuadorian Constitution of 2008. See Lalander, "The Ecuadorian Resource Dilemma"; and Lalander "Entre el ecocentrismo y el pragmatismo ambiental."
22. Kröger, *Contentious Agency and Natural Resource Politics*; and Vergara-Camus, "Neoliberal Globalization."
23. Gudynas, "Estado compensador e nuevos extractivismos."
24. Dávalos, "No podemos ser mendigos sentados en un saco de oro." However, Dávalos does not agree that post-2007 Ecuador should be labelled progressive, because, as a percentage of the extractive revenues, the share dedicated to social welfare shows a relative decrease. Ibid.
25. Gudynas, "Estado compensador e nuevos extractivismos."
26. See Gudynas, "Buen Vivir"; and Lalander, "Entre el ecocentrismo y el pragmatismo ambiental."
27. For example, as regards the issue of nationalisation of vital industries – mainly hydrocarbons, agri-business and mining – the Bolivian Constitution declares the industrialisation and commercialisation of natural resources to be a key priority of the state, albeit taking into consideration the rights of nature and of Indigenous peoples and provided that revenues are directed at the common good (art. 355). This is also a central policy of the Ecuadorian government, to a large extent backed up by the 2008 Constitution (eg in articles 275, 276, 277, 313, 314, 317 and 395–399), in subsequent legislation and in the National Development Plan. See Lalander, "The Ecuadorian Resource Dilemma"; and Lalander "Entre el ecocentrismo y el pragmatismo ambiental."
28. Kröger, *Contentious Agency*.
29. Valenta, "Disconnect."
30. Leite, "The Brazilian Quilombo."
31. Hecht, "From Eco-catastrophe to Zero Deforestation?"
32. See, for example, Hochstetler and Keck, *Greening Brazil*; and Collier and Handlin, *Reorganizing Popular Politics*.
33. Van Cott, *The Friendly Liquidation*, 266–268.
34. Hochstetler and Keck, *Greening Brazil*.
35. Hecht, "From Eco-catastrophe to Zero Deforestation?"
36. The Mojeño-Ignaciano, Yuracaré and Chimán peoples are the principal Indigenous groups in the TIPNIS area. The lowland Indigenous confederation CIDOB was one of the central organisations involved in the march.
37. The Initiative for the Integration of the Regional Infrastructure of South America (IIRSA) is a strategic project of regional integration for the common good (welfare reforms), which is a technical project of the South American Council of Infrastructure and Planning (Cosiplan) of Unasuar. In the case of TIPNIS the Brazilian Development Bank financed the highway project and the Brazilian construction company OAS was contracted to build it, which together with the interests of oil company, Petrobras, highlights the changing geopolitical order in the continent.
38. See, for instance, Fundación Tierra, *Marcha indígena por el TIPNIS*; and McNeish, "Extraction, Protest and Indigeneity in Bolivia."
39. Página Siete, *El Vicepresidente descarta carretera por el TIPNIS*, January 4, 2014. <http://www.paginasiete.bo/nacional/2014/1/4/vicepresidente-descarta-carretera-tipnis-10441.html>; and García Linera, *Los desafíos del proceso de cambio en Bolivia*.
40. Página Siete, "Bolivia se sumó a la corriente de explotar áreas protegidas," June 24, 2015. <http://www.paginasiete.bo/nacional/2015/6/24/bolivia-sumo-corriente-explotar-areas-protegidas-60974.html>.
41. Morales Ayma, *Decreto Supremo No. 2366*, Presidential decree, Estado Plurinacional de Bolivia, La Paz, 2015.

42. <http://www.noticiasfides.com/g/politica/vicepresidente-anuncia-que-se-discutira-ley-para-anular-intangibilidad-del-tipnis-35669/>, accessed August 9, 2015.
43. Correa Delgado, "Cadena Nacional sobre Iniciativa Yasuní ITT."
44. <http://news.bbc.co.uk/2/hi/americas/8030223.stm>; and <http://g1.globo.com/Noticias/Brasil/0,,MUL464471-5598,00-ENTENDA+O+CONFLITO+NA+TERRA+INDIGENA+RAPOSA+SERRA+DO+SOL.html>, accessed June 26, 2015.
45. Nolte et al., "Governance Regime and Location Influence."
46. Ibid.
47. Tarrow, *The New Transnational Activism*; and Tarrow, *Power in Movement*.
48. Kröger, "O papel do estado brasileiro na criação de fronteira capitalista."
49. <http://oglobo.globo.com/brasil/delator-dira-que-camargo-correa-pagou-100-milhoes-em-propina-para-pt-pmdb-em-belo-monte-15521906>, accessed June 17, 2015.
50. http://brasil.elpais.com/brasil/2014/12/01/opinion/1417437633_930086.html, accessed June 26, 2015.
51. In Belo Monte the government does not for example follow Court closure orders, using 'safety suspension', a decree created by the dictatorship (Law 8.437) to protect any government project from suspension to safeguard health, safety or the public economy. Personal communication, Professor Sônia Magalhães, June 5, 2015.
52. http://www.aida-americas.org/sites/default/files/press_rel/Belo%20Monte%20ENG%2011-04-05.pdf, accessed June 26, 2015.
53. <http://www.ipsnews.net/2013/03/inter-american-human-rights-system-reform-faces-deadline/>, accessed June 26, 2015.
54. <http://belomontedeviolencias.blogspot.fi/search/label/hist%C3%B3rico%20judicial>, accessed June 26, 2015.
55. <http://www.portal.abant.org.br/index.php/2-uncategorised/103-dossie-belo-monte>, accessed June 26, 2015.
56. Kröger, "Promotion of Contentious Agency."
57. Ibid.
58. Ibid.
59. Ibid.
60. Eye on Latin America, "Latin American Green, Social and Political News and Analysis." Blog. <https://eyeonlatinamerica.wordpress.com/2014/07/03/chile-reaches-out-to-its-indigenous-mapuche-people/>, accessed June 23, 2015.
61. Guzmán, *Native and National in Brazil*.
62. See, for example, Gudynas, *Extractivismos*.
63. <http://www.ipsnews.net/2013/03/inter-american-human-rights-system-reform-faces-deadline/>, accessed June 26, 2015.

Bibliography

- Collier, R. B., and S. Handlin (eds.). *Reorganizing Popular Politics: Participation and the New Interest Regime in Latin America*. University Park, PA: Penn State University Press, 2009.
- Correa Delgado, R. "Cadena Nacional sobre Iniciativa Yasuní ITT." *Televised speech*. August 15, 2013. <https://www.youtube.com/watch?v=IFc1topfPqM>.
- Dávalos, P. "No podemos ser mendigos sentados en un saco de oro: las falacias del discurso extractivista." In *El Correísmo al desnudo*, edited by J. Cuví, D. Machado, A. Oviedo and Natalia Sierra, 190–215. Quito: Montecristi Vive, 2013.
- Escobar, A. "Latin America at a Crossroads: Alternative Modernizations, or Post-Development?" *Cultural Studies* 24, no. 1 (2010): 1–65.
- Flesher Fominaya, C. *Social Movements & Globalization: How Protests, Occupations & Uprisings are changing the World*. Basingstoke: Palgrave Macmillan, 2014.
- Fontana, L. P. "Indigenous Peoples vs. Peasant Unions: Land Conflicts and Rural Movements in Plurinational Bolivia." *Journal of Peasant Studies* 41, no. 3 (2014): 297–319.

- Fundación Tierra. *Marcha indígena por el TIPNIS: La lucha en defensa de los territorios*. La Paz: Comunicaciones El País, 2012.
- García Linera, Á., Los desafíos del proceso de cambio en Bolivia. Conference, Centro Cultural de Cooperación Floreal Gorini, Buenos Aires. <http://www.centrocultural.coop/videos/la-patria-grande-alvaro-garcia-linera--1-.html> (accessed 27 June 27, 2013).
- Gudynas, E. "El nuevo extractivismo progresista en América del Sur: tesis sobre un viejo problema bajo nuevas expresiones." In *Colonialismos del Siglo XXI: Negocios extractivos y defensa del territorio en América Latina*, edited by VVAA. Barcelona: Icaria Editorial, 2011.
- Gudynas, E. "Buen Vivir: Today's Tomorrow." *Development* 54 (2011): 441–447.
- Gudynas, E. "Estado compensador e nuevos extractivismos: Las ambivalencias del progresismo sudamericano." *Nueva Sociedad* 237 (2012): 128–146.
- Gudynas, E. "El postdesarrollo como crítica y el Buen Vivir como alternativa." In *Buena Vida, Buen Vivir: imaginarios alternativos para el bien común de la humanidad*, edited by GC Delgado Ramos, 61–95. Mexico City: UNAM, 2014.
- Gudynas, E. *Extractivismos: ecología, economía y política de un modo de entender el desarrollo y la naturaleza*. Cochabamba: CLAES/CEDIB, 2015.
- Guzmán, T. *Native and National in Brazil: Indigeneity after Independence*. Chapel Hill: University of North Carolina Press, 2013.
- Hale, C. "Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America." *POLAR. Political and Legal Anthropology Review* 28, no. 1 (2005): 10–28.
- Hecht, S. "From Eco-catastrophe to Zero Deforestation? Interdisciplinary Politics, Environmentalisms and Reduced Clearing in Amazonia." *Environmental Conservation* 39, no. 1 (2011): 4–19.
- Hochstetler, K., and M. Keck. *Greening Brazil: Environmental Activism in State and Society*. London: Duke University Press, 2007.
- Kröger, M. "Promotion of Contentious Agency as a Rewarding Movement Strategy: Evidence from the MST–Paper Industry Conflicts in Brazil." *Journal of Peasant Studies* 38, no. 2 (2011): 435–458.
- Kröger, M. "Neo-mercantilist Capitalism and Post-2008 Cleavages in Economic Decision-making Power in Brazil." *Third World Quarterly* 33, no. 5 (2012): 887–901.
- Kröger, M. *Contentious Agency and Natural Resource Politics*. London: Routledge, 2013.
- Kröger, M. "O papel do estado brasileiro na criação de fronteira capitalista e novas naturezas no passado e futuro." In *Estado, burocracia e controle democrático*, edited by C Santana and W Iglecias, 171–196. São Paulo: Alameda, 2015.
- Lalander, R. "The Ecuadorian Resource Dilemma: Sumak Kawsay or Development?" *Critical Sociology*, December 23, 2014. doi: 10.1177/0896920514557959
- Lalander, R. "Entre el ecocentrismo y el pragmatismo ambiental: consideraciones inductivas sobre desarrollo, extractivismo y los derechos de la naturaleza en Bolivia y Ecuador." *Revista Chilena de Derecho y Ciencia Política* 6, no. 1 (2015): 109–152.
- Leite, I. "The Brazilian Quilombo: 'Race', Community and Land in Space and Time." *Journal of Peasant Studies* (2015): doi:10.1080/03066150.2015.1016919.
- McNeish, J. A. "Extraction, Protest and Indigeneity in Bolivia: The TIPNIS Effect." *Latin American and Caribbean Ethnic Studies* 8, no. 2 (2013): 221–242.
- Nolte, D., and A. Schilling-Vacaflor (eds.). *New Constitutionalism in Latin America: Promises and Practices*. Farnham: Ashgate, 2012.
- Nolte, C., A. Agrawal, K. Silvius, and B. Soares-Filho. "Governance Regime and Location Influence avoided Deforestation Success of Protected Areas in the Brazilian Amazon." *Proceedings of the National Academy of Sciences* 110, no. 13 (2013): 4956–4961.
- Ortiz, T. P. "Justicia comunitaria y pluralismo jurídico en América Latina: una panorámica de cuarto de siglo." IWGIA, Quito, 2014. <http://repositorio.uasb.edu.ec/handle/10644/4003>.
- Rosales, A. "Going Underground: The Political Economy of the 'Left Turn' in South America." *Third World Quarterly* 34, no. 8 (2013): 1443–1457.
- Schilling-Vacaflor, A. "Prior Consultations in Plurinational Bolivia: Democracy, Rights and Real Life Experiences." *Latin American and Caribbean Ethnic Studies* 8, no. 2 (2013): 202–220.

- Schilling-Vacaflor, A., and R. Kuppe. "Plurinational Constitutionalism: A New Era of Indigenous-State Relations?" In *New Constitutionalism in Latin America: Promises and Practices*, edited by D Nolte and A Schilling-Vacaflor, 347–370. Farnham: Ashgate, 2012.
- Tarrow, S. *The New Transnational Activism*. Cambridge: Cambridge University Press, 2005.
- Tarrow, S. *Power in Movement: Social Movements and Contentious Politics*. Cambridge: Cambridge University Press, 2011.
- Valenta, L. "Disconnect: The 1988 Brazilian Constitution, Customary International Law, and Indigenous Land Rights in Northern Brazil." *Texas International Law Journal* 38, no. 4 (2003): 643–662.
- Van Cott, D. L. "Constitutional Reform in the Andes: Redefining Indigenous-State Relations." In *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*, edited by R Sieder, 45–73. Basingstoke: Palgrave Macmillan, 2002.
- Van Cott, D. L. *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*. Pittsburgh, PA: University of Pittsburgh Press, 2000.
- Vergara-Camus, L. "Neoliberal Globalization, Peasant Movements, Alternative Development and the State in Brazil and Mexico." PhD dissertation, Department of Political Science, York University, Toronto, 2007.
- Yashar, D. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*. Cambridge: Cambridge University Press, 2005.