

**Empty Promises or Impulses for Progress?  
Constitutional Reform and the Rights of Indigenous Peoples  
in Latin America**

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In the past two decades, 16 Latin American states have reformed their constitutions. Almost all of these include a new recognition of the rights of indigenous peoples; more than half explicitly re-define their states as multiethnic or pluricultural. Indigenous rights advocates have heralded this surge of constitutional change as the first step towards the long-overdue acknowledgment of and respect for the world's most marginalized peoples. Political scientists have argued that the recognition of ethnic diversity and the rights of excluded minorities is evidence of a broader movement to redefine democracy and the state itself in more multicultural terms. They contend that the commitment to indigenous rights in the new constitutions is a commitment to a more inclusive, participatory, representative, and hence, legitimate democracy.<sup>1</sup> They claim these reforms will lead to a greater consolidation of democracy and an improvement in the political and socio-economic situation of indigenous peoples in the region.

Yet, few scholars have attempted to assess the truth of this claim, focusing instead on the process of reform. Whether the reforms have in fact strengthened democracy has been left to hopeful statements bookending the author's argument. Thus, I have sought to determine whether this flurry of multicultural constitutional reform has in reality made a difference for democratization and indigenous peoples. I assess the progress made in the areas of political participation and representation as well as the realization of specific indigenous rights in Venezuela, Ecuador, and Peru.<sup>2</sup> My study demonstrates that constitutional reform is a necessary, but insufficient condition for progress. The three cases suggest conditions under which constitutional reforms may have a significant impact on the full realization of indigenous rights.<sup>3</sup>

#### Constitutional Reforms, Indigenous Rights, and Democratization

Donna Lee Van Cott has written extensively on contentious indigenous politics in Latin America and is a central figure among scholars who assert that successful political activism by

indigenous peoples is helping to broaden, redefine, and consolidate democracy in the region (Van Cott, 2000a, 2000b, 2002, 2003, 2004).<sup>4</sup> In *The Friendly Liquidation of the Past* (2000), Van Cott focuses on this activism in relation to the process of constitutional reform in Colombia and Bolivia. She argues that many of the recent Latin American constitutional reforms were a result of crises of the state in the areas of representation, participation, and legitimacy.<sup>5</sup> States thus turned to constitutional reforms that recognized civil, political, and human rights to restore legitimacy. Such attempts to re-confirm their commitment to democratic values were designed to further democratic consolidation.<sup>6</sup>

Van Cott argues that the struggle for indigenous rights that emerged on the scene at the same time as these reforms was in fact part of a broader dialogue on the nature of democracy and the state. Indigenous rights organizations “linked the ongoing political crises to the problem of social exclusion” (2002: 46) and promoted a democratic model based on multiple national identities and levels of citizenship. The constitutional reforms were an effort by unconsolidated democracies to embrace new democratic models that recognized diversity; strengthened the judicial system, the rule of law, and the rights and protections due to citizens; and increased popular participation in the government.

The indigenous rights reforms are particularly instructive because they represent a new “multicultural model” (2000a: 257-280; 2000b) of constitutionalism. This model is the empirical embodiment of political theorists’ ideals of cultural diversity and democratic participation and representation.<sup>7</sup> As opposed to the Western Liberal constitutional tradition, the new constitutions offer a multi- (rather than mono-) ethnic definition of the nation, the recognition of collective (as well as individual) rights, and the acceptance of multiple forms of authority, such as indigenous customary law, within the state. The reforms are a clear break with Latin

American states' prior *indigenismo* policies of assimilation into one national identity in favor of policies that recognize cultural difference and the distinct rights of collectivities (Stavenhagen, 2002).<sup>8</sup>

As stated earlier, these reforms were undertaken because states deemed their traditional Liberal constitutions failures in the democratic consolidation project; they were exclusionary, elitist, and based on a false conception of uni-national identity. Recognizing ethnic diversity in the constitution drew attention to these problems, emphasizing the importance of democratic citizenship rights and “infusing the political culture with the values of participation, inclusion and tolerance of diversity” (Van Cott, 2002: 53). By extending rights to the historically most excluded populations – indigenous peoples – the reforms were intended to create a more inclusive, participatory, and democratic state, thereby increasing its legitimacy.

Van Cott asserts that these reforms are the beginning of the “constitutional transformation” of Latin American states, in which “the process of constitution making results in the general and habitual application of the new constitutional norms” (Pogany, 1996: 568). We can see this as one method of democratic consolidation, in which states focus on the very documents that constitute their governments and the values contained therein, rather than more structural or institutional reforms.

Van Cott's book focuses on the reform process and the role played by indigenous groups in Colombia and Bolivia. It concludes with a brief discussion of the impact of the reforms. While she acknowledges that it is too early to tell whether these states have achieved transformation, she gives suggestions to assess the degree of change. She concludes that while progress is slow, the fact that almost every other country in the region has made similar reforms is in itself

“perhaps the most important indicator that ethnic rights will make a meaningful long-term impact on the status of indigenous peoples vis-à-vis state and society” (2000a: 256).

I find this assertion questionable: while the fact that “everybody’s doing it” may be significant, it is unlikely a sufficient cause for substantive change. Constitutional reform in and of itself does not necessarily lead to changes “on the ground.” Yet this is precisely the untested claim made by so many scholars. The bulk of these use indigenous movements as the unit of analysis, arguing that they improve democracy and redefine citizenship and societies in multicultural terms.<sup>9</sup> Such studies tend to discuss constitutional reform as a result of state-indigenous interactions, relegating the impact of indigenous mobilization to on-paper changes. They hypothesize that on-paper breaks with the past will lead to substantive breaks as well.

Other scholars have recognized this empirical gap regarding the “new social pact” between indigenous peoples and the state (Assies, 1998; Sieder, 2002), arguing that “the open question is how the new legislation will be implemented and how Indian communities will benefit” (Stavenhagen, 2002: 33). Willem Assies asserts that “though constitutional reforms are at least of symbolic importance, the actual processes of institutional reform...require further attention” (1998: 9). Rachel Sieder also attempts to assess “what recent constitutional and legal changes have meant in practice for indigenous peoples,...and the prospects for democracy” (2002: 5).

Both Assies and Sieder present a collection of case studies on the process of institutional reform and the dilemmas it poses for the state and indigenous peoples.<sup>10</sup> In general, these are in depth, country-specific analyses of recent interactions between indigenous peoples and the state. However, these scholars still do not present a systematic, cross-country comparison of the impact of constitutional reforms on the creation of more inclusive democracies throughout the region.

Such a study is sorely needed, for “constitution making...does not lead automatically to constitutional transformation” (Pogany, 1996: 589).<sup>11</sup>

### Progress towards Constitutional Transformation?

I test Van Cott’s claims by applying her analysis of the impact of constitutional reform to Venezuela, Ecuador, and Peru in order to assess the degree to which these states have made progress towards constitutional transformation. I hope to add to the empirical body of knowledge on whether constitutional recognition of indigenous rights does, in fact, have a positive impact on democratic consolidation and the political situation of indigenous peoples. I conclude that while the reforms are laudable, Van Cott and others are overly optimistic; the mere fact of reforms throughout the region does not mean that they will necessarily have their intended effect. While such reforms may be necessary in order to provide the institutional and legal support for the full realization of indigenous rights, they are not a sufficient condition for the transformation of democracy and on-the-ground improvements for indigenous peoples.

My cases suggest several factors – including constitutional reform – which facilitate the full realization of indigenous rights. In Venezuela, constitutional reform institutionalized indigenous political participation and power. The case implies that constitutional reform may have the most impact where the indigenous population is proportionally small and lacks the political power to effect change on its own, through party politics or social movements. In Ecuador, the reform was both an effect of indigenous mobilization and a factor in further progress, suggesting that in states in which indigenous peoples are mobilized and wield political power, constitutional reform may be one of many factors that contribute to the full realization of their rights. In Peru, constitutional reforms were minimal and ineffective; the progress that has occurred since

Fujimori's exit appears to have been a result of other factors. The hypotheses suggested by all three cases should be the object of further study.

### Case Selection and Indicators of Constitutional Transformation

Venezuela and Ecuador both enacted reforms in response to state crises of legitimacy. In Venezuela, economic decline which fractured party system stability, two attempted coups, and the repressive state response to mass protests of economic adjustments culminated in the 1998 election of Hugo Chávez on a platform of constitutional reform to build a more participatory democracy (Van Cott, 2003). Likewise, in Ecuador, a failure of representation in the party system and popular protests that led to the president's impeachment meant "political institutions had completely lost their authority" (Van Cott, 2001: 45).

These cases also conform to all but one of Van Cott's elements of multicultural constitutionalism (see Table 1). They are therefore cases in which one would most expect to see a transformation in indigenous peoples' situation vis-à-vis the state. Also, the Venezuelan reforms are the most comprehensive in the region.<sup>12</sup> Ecuador's indigenous movement is perhaps the most powerful in the region, ousting presidents in 1997, 2000, and 2005. The Indigenous Peoples Fund predicts that "results should be apparent within five years in Ecuador" (Van Cott, 2000: 237), because of its educational system and level of public investment by rural elites.

While Peru also reformed its constitution in the 1990s, this was not a normative effort to improve democracy in response to a legitimacy crisis. President Alberto Fujimori orchestrated the reforms to consolidate his power and allow for his own reelection.<sup>13</sup> The reforms included a weak recognition of the state's cultural plurality and the right to customary legal jurisdiction – already recognized by law – and actually weakened land rights (Van Cott, 2001). Thus, Peru

functions as a control case in my study: its lack of multicultural, democracy-building constitutional reforms means that one would not expect a transformation in the quality of democracy or the status of Peru’s indigenous population.

Although other countries share this feature, Peru is similar in key ways to the other cases, which holds other variables constant. It shares the regional tension between the highlands, jungle, and coastline characteristic of the Andean countries. Like Bolivia and Ecuador, its population has a high percentage of indigenous peoples, in contrast to Colombia and Venezuela. Finally, like Colombia and Bolivia, Peru enacted reforms in the early 1990s, well before Ecuador and Venezuela.

Table 1. Multicultural constitutional reforms in select Latin American states

<b>COUNTRY (year of reform)</b>	<b>Bolivia (1994)</b>	<b>Colombia (1991)</b>	<b>Ecuador (1998)</b>	<b>Venezuela (1999)</b>	<b>Peru (1993)</b>
<b>Indigenous population (%)</b>	56-76	2	23-46	1-2	37-50
<b>Impetus for reform: re-legitimize the state</b>	Yes	Yes	Yes	Yes	No
<b>Rhetorical recognition of cultural or ethnic diversity</b>	Yes	Yes	Yes	Yes	Yes (weak)
<b>Recognition of customary law</b>	Yes	Yes	Yes	Yes	Yes
<b>Collective property rights</b>	Yes	Yes	Yes	Yes	Yes*
<b>Official language recognition</b>	No	Yes	Yes	Yes	In own zones
<b>Bilingual education</b>	Yes	Yes	Yes	Yes	No
<b>Autonomy regime<sup>14</sup></b>	No	Yes	Yes	Yes	No
<b>Reserved political representation</b>	No	Yes	No	Yes	No

Sources: Van Cott, 2000a, 2003. Estimates of indigenous population from “Democracy in Latin America: Towards a Citizens’ Democracy, Statistical Compendium.” Prepared for the United Nations Development Programme, 2004.

\*Collective property rights are codified in Peru’s 1974 *Ley de Comunidades Nativas* (Law of Native Communities), part of an agrarian reform package, rather than the constitution (Yashar, 2005: 252-254).

### Indicators of Constitutional Transformation

I use Van Cott’s indicators to assess the degree to which my cases have begun the process of constitutional transformation. These are divided into two categories: political participation and representation, and the realization of indigenous rights.<sup>15</sup> In the area of political participation

and representation, I look first at polls on citizens' perceptions of government legitimacy and then discuss indigenous representation in public office.

Progress is more difficult to measure for the realization of indigenous rights. I emulate Van Cott, offering a qualitative analysis of the implementation process. First, I discuss the ways in which indigenous peoples have gained "symbolic capital" (Van Cott, 2000: 238) from new constitutional declarations of value and the insertion of indigenous rights into mainstream discourse. Second, I evaluate the progress made in terms of statutory legislation designed to implement the constitutional reforms. Third, I examine the implementation of land and resource rights, which has run into obstacles in spite of the passage of statutory legislation.

My study seeks to answer the question, does constitutional reform have an impact for the full realization of indigenous rights? Further research – beyond the focused scope of this investigation – should seek to discover under what conditions this statement is true. Taken together, my three cases suggest several hypotheses; to this end, I conclude with a summary and analysis of each case, in which I discuss these hypotheses and other lessons learned.

### **Political Participation and Representation**

Van Cott posits that "the end result of constitutional reform would be a transformation of both countries' exclusionary states and regimes...[into] a consolidated democracy" (Van Cott, 2000: 223). Political participation and representation are useful measures of democratic inclusion and thus progress towards constitutional transformation. The most basic measure of political participation is voter registration and turnout. Van Cott discusses these indicators both at the national level and for indigenous peoples specifically. However, disaggregated data were unavailable for my cases, and I find that national levels of voter registration and turnout were inconclusive, making these ineffective indicators of constitutional transformation.<sup>16</sup>

### Public Perception of Rights Protection and Government Legitimacy

Improvements in political participation were intended to increase the public perception of the state's legitimacy in Venezuela and Ecuador, particularly with regard to its inclusion of previously excluded populations. While public opinion data is unavailable specifically for indigenous peoples, the United Nations Development Program report, "Democracy in Latin America" (2004) may suggest a correspondence between the extensive constitutional recognition of indigenous rights and public perception of the government's protection of equal rights for its most vulnerable citizens.<sup>17</sup>

The UNDP's index of confidence in institutions and political actors is less conclusive. Venezuela scores the highest, while Ecuador scores the lowest, just behind Peru. However, it is important to note that all of the public opinion data provide no indicator of change over time within a country since the year of constitutional reform. It may be the case that public confidence in political institutions and actors has always been higher in Venezuela than in the other two cases, even before the 1999 reforms. By the same token, public confidence may have risen in Ecuador since the reforms but remained low relative to other states.

### Representation in Public Office

Both the Venezuelan and Ecuadorian constitutional reforms aimed to specifically improve the level of political inclusion for their historically marginalized indigenous populations. A useful measure of this goal is the change in indigenous peoples' representation in public office since the constitutional reforms. This has improved in both Venezuela and Ecuador; Peru's Indians have experienced lesser improvements. However, the circumstances of the Venezuelan

and Ecuadorian electoral gains lead me to conclude that constitutional reforms that recognize indigenous rights do not necessarily improve political participation and representation.

In Venezuela, indigenous peoples' representation dramatically increased as a direct result of the 1999 constitutional guarantee of reserved seats at every level of government.<sup>18</sup> Indigenous peoples also made gains for regularly contested seats at the national level in the 2000 elections in alliance with other parties. Before then, representation had been primarily confined to the state level, because indigenous parties had been viable players only in states with sufficiently large indigenous populations (Van Cott, 2005: 207).<sup>19</sup> The constitutional reform process also had a positive impact on indigenous political organization. For example, although the government created the National Indian Council of Venezuela (CONIVE) in 1989, it was relatively inactive until the constituent assembly, when it mobilized to pressure for indigenous interests. Also, in order to compete for the new reserved seats, indigenous organizations formed new parties for the 2000 elections that ended up competing for non-reserved seats as well (Van Cott, 2005: 198). Although most of these did not win any seats, "the activities that CONIVE organized in 1999 to promote indigenous participation in the National Constituent Assembly...strengthened CONIVE considerably" (Van Cott, 2003: 56).<sup>20</sup> Thus, the reforms did indeed allow indigenous peoples to increase their participation in formal electoral politics and their representation in public office.

In Ecuador the relationship seems to be reversed: the specific multicultural constitutional reforms were in part an effect of earlier increased indigenous representation. In 1995 the Pachakutik Movement of Plurinational Unity (MUPP) formed; in its first elections in 1996, Pachakutik won 8 out of 70 National Congress seats – making it the fourth largest bloc – in addition to a number of provincial and municipal offices. It was partly Pachakutik's national strength that enabled indigenous peoples to pressure for such extensive reforms in 1998 (Van

Cott, 2002, 2005). While the constituent assembly was debating, Pachakutik's congressional deputies helped pass the International Labor Organization's Convention No. 169 (ILO 169), the primary international document on the rights of indigenous peoples.<sup>21</sup> In addition, Pachakutik led the center-left coalition to capture 10 out of 70 seats in the Constituent Assembly. The resulting constitution was at the time the most progressive in the region.

Since its "meteoric rise" (Van Cott, 2005: 99) in formal politics, Pachakutik has remained a strong electoral contender at all levels of government. In 2000, the party experienced its "then-greatest electoral success" (Van Cott, 2005: 132), becoming the sixth-most successful party in the country. A majority of Pachakutik's elected officials were indigenous, and it won the highest number of seats of any party in *juntas parroquiales* (parish advisory councils).<sup>22</sup> In 2002, Pachakutik backed the winning candidate for the presidency, Lucio Gutiérrez; five of its members were then made cabinet ministers. In addition, the party won municipal councilor seats in 18 of Ecuador's 22 provinces (Van Cott, 2005).

Several factors contributed to the formation of a strong indigenous party before the constitutional reforms. By the early 1980s, Ecuador was fairly decentralized and its party system was historically one of the most fragmented in the region, necessitating coalition-forming and allowing for the participation of smaller parties. Also, the country enfranchised illiterates in 1979, which led to an increase in indigenous electoral participation from 19% in 1979 to 45% in 1986 (Van Cott, 2005: 113). Combined with institutional changes in party registration, these factors facilitated indigenous peoples' access to formal political office.<sup>23</sup>

However, Pachakutik's strong performance does not mean that the problem of political exclusion of Ecuador's Indians is "solved." Pachakutik is the political party of the national indigenous organization Confederation of Indigenous Nationalities of Ecuador (CONAIE). The

organization, coherence, and power of CONAIE is such that “the indigenous movement in Ecuador is, at present, the most organized and institutionalized of any in Latin America” (MacDonald, 2002: 176); it represents 80% of regional and local indigenous organizations and led mass mobilizations with a major national effect in 1990, 1992, 1994, 1999, 2000, and 2001. These frequent uprisings are the repeated expression of indigenous peoples’ desire for increased participation in the state (Macdonald, 2002).<sup>24</sup> The fact that these demonstrations continued after the creation of Pachakutik and the opening of formal avenues for participation indicates that indigenous peoples have yet to be incorporated in a satisfactory manner.

As expected, Peru’s Indians experienced no dramatic improvement in political representation as a result of their minimal constitutional reform. Fujimori’s authoritarian tendencies and centralizing measures stifled political opposition and hindered the exercise of local political power. However, indigenous peoples did make slight gains in representation at the end of Fujimori’s reign. It thus seems more likely that these gains were a result of the political opening created by Fujimori’s exit than the minor constitutional reforms of almost a decade earlier.

Indigenous peoples in Peru have traditionally been organized along class lines, allying themselves with leftist parties. As no strictly indigenous party exists comparable to Pachakutik or PUAMA, formal representation is difficult to measure. Even though the collapse of the party system in the 1990s opened up political space, as in Venezuela and Ecuador, a nationally viable indigenous party did not form and leftist parties did not play to indigenous interests for support (Van Cott, 2005: 169). All indigenous electoral gains were made through alliances with other parties and were confined to the district level.<sup>25</sup>

Indigenous peoples’ formal representation was further hindered by Fujimori’s semi-autocratic regime of the 1990s. While Ecuador and Venezuela decentralized to increase

democratic inclusion, Fujimori “centralized power in the executive [and] dissolved regional governments” (Van Cott, 2001: 51). His presidency put a damper on democratic participation and party formation, particularly restricting the power and resources of local governments, the only level at which indigenous peoples had representation (Van Cott, 2005: 163).<sup>26</sup>

In spite of these obstacles, indigenous peoples began to make moderate gains in the late 1990s. The party system collapse allowed indigenous organizations to become more independent of traditional parties, making temporary alliances with a range of independent and smaller parties, but they were only able to fully capitalize on this opportunity after Fujimori’s resignation. Alejandro Toledo, Fujimori’s replacement, was Peru’s first Indian president and could not have won the election without the support of the indigenous population (Van Cott, 2005). In the same election, Paulina Arpasi became the first indigenous woman in Congress.<sup>27</sup> Indigenous peoples again made slight progress in the 2002 elections: alliances between indigenous organizations and other political parties increased, and Amazonian indigenous parties improved their electoral strength (Van Cott, 2005).<sup>28</sup>

These gains are minor, however, compared with those of Venezuela and Ecuador. While Toledo’s 2002 decentralization law reestablished regional governments and reserved spaces for indigenous candidates on party lists for municipal council and regional assemblies, this party list quota system did not work as desired to increase indigenous representation (Van Cott, 2005: 166-167).<sup>29</sup> Moreover, difficulties with basic registration and voting procedures in indigenous communities – including language barriers, complicated ballot instructions, a lack of basic infrastructure, and the absence of authorities to monitor electoral fraud – hinder indigenous political participation and the performance of indigenous representatives (Van Cott, 2005: 174).

Peru's constitution did not create opportunities for indigenous representation in public office. Further, the lack of a constitutional commitment to political inclusion for indigenous peoples meant that they "lacked the moral boost that successful participation in constitutional reform gave to indigenous movements in neighboring countries...[and] lacked an important incentive to form parties: that is, to ensure their autonomous representation in the process of writing implementing legislation" (Van Cott, 2005: 164). In comparison to Venezuela and Ecuador, Peru's indigenous peoples have a long way to go in terms of representation in public office.

There seems to be no direct causal link between the passage of constitutional reforms that generally recognize indigenous rights and an improvement in indigenous peoples' formal political representation. However, the cases do suggest that constitutional reforms that institutionalize indigenous participation may be necessary when the indigenous population is proportionally small and cannot enter formal politics on its own, as in Venezuela. Reforms seem to be less significant in cases such as the Ecuadorian, where they were instead partly an effect of prior indigenous gains in representation. The relatively large size of the Peruvian indigenous population – comparable to Ecuador's – suggests that they will be able to make further electoral gains in the future, even without the passage of constitutional guarantees of participation.

### **Realization of Indigenous Rights**

Constitutional reforms are declarations of value. They provide symbolic capital – rhetorical expressions of support for indigenous rights – that can supply strong leverage for the passage of legislation, the first step towards actual implementation. Implementation is a lengthy process: Van Cott states that "the realization of substantive benefits from the reforms in [Colombia and Bolivia] would require a comprehensive overhaul of ordinary legislation at all levels" (Van Cott,

2000: 240). Clearly, this could not have happened within a decade of the reforms. However, one can assess the extent to which states have begun the implementation process.

To do this, we must ask of constitutional reforms: 1. has legislation been passed to give legal weight to these new declarations of value? and 2. is this legislation upheld in practice? My cases suggest that it is particularly difficult to achieve the latter in situations in which there is a real conflict of interests, such as land and resource rights.

### Symbolic Capital

Van Cott argues that “formal state recognition of indigenous customs, traditions, authorities, and forms of political organization” (2000: 238) constitutes “symbolic capital” which can be used by indigenous peoples to further the recognition, acceptance, and maintenance of their rights. The insertion of indigenous rights discourse into mainstream political issues and societal dialogue is also an indication of symbolic support for indigenous peoples in the broader society.

In addition to the constitutional reforms, Venezuela’s indigenous peoples have enjoyed some gains in the form of official state declarations, but these have not been widely accepted in the society at large. By contrast, Ecuador’s have enjoyed greater gains in official language and the broader political discourse, some of which appeared before the reforms. In Peru, Indians have recently begun to self-identify as indigenous; thus, it seems that although the indigenous rights discourse did not gain power in the broader society as a result of the minimal constitutional reforms (as expected), it is beginning to take hold within the indigenous community itself.

While both Venezuela and Ecuador declare their states multiethnic and pluricultural, Venezuela’s uses the term “cultures,” while Ecuador’s states that indigenous peoples “define themselves as nationalities...” (art. 83). In addition, Venezuela’s states that “the term people shall not be interpreted in this Constitution in the sense that it has in international law” (art. 126),

meaning that indigenous peoples do not have the right to self-determination, assumed to entail statehood. Thus, the Venezuelan constitution represents fewer gains in symbolic capital than the Ecuadorian. Peru's constitution provides minimal symbolic capital for indigenous peoples; it does not even use the term indigenous, but instead uses "*Comunidades Campesinas y Nativas*" ("Peasant and Native Communities," PDBA, 1998). In addition, the right to cultural identity is individual, not collective: it is under the "Fundamental Rights of the Person" (art. 2, no. 19).

Venezuelan indigenous peoples have not experienced a sweeping societal acceptance of indigenous rights discourse since the constitutional reforms. However, the reform process itself helped indigenous peoples insert their demands into the national political dialogue on Venezuelan democracy and statehood. In this way, the state created institutional space and support for indigenous rights discourse in the broader society (Van Cott, 2003: 51).<sup>30</sup> President Chávez provided further official support when he changed October 12 from "The Day of the Race" to "The Day of Indigenous Resistance" in 2002.

This type of official symbolic support is an important first step to combat deeply entrenched racism. Historically, Venezuelans have believed that their "frontiers are unprotected and sparsely populated by backward subsistence Indians with no sense of national identity" (Arvelo-Jimenez and Cousins, 1992).<sup>31</sup> The history of cultural exclusion is so entrenched that the new official discourse is only the beginning; the goal of widely accepted indigenous rights principles is far from being reached (Avalos, 2004). This suggests that the official rhetorical support of the state may be most important when the indigenous population is proportionally small and lacks the power to push acceptance of the indigenous rights discourse on its own.

Ecuador's indigenous peoples have made more impressive gains in symbolic capital since the constitutional reform. CONAIE has set the language used to define indigenous peoples, making

the term “nationalities” official. The indigenous movement was powerful enough that “indigenous activists were able to insert [this term] into movement, state, and international discourses” (Lucero, 2003: 41), making explicit the idea of Ecuador as a multinational state, in contrast to the traditional nation-state (Lucero, 2003: 33).<sup>32</sup>

Since the inclusion of plurinationalist values in the constitution, the indigenous movement has “perceived itself not simply as a new and legitimate political party, but as a, if not *the*, vanguard for advancing broad popular participation and democratization” (Macdonald, 2002: 186). Time and again, it has successfully led calls for democratic reform, injecting indigenous rights norms into debates over the nature of democracy and the nation-state. In the process, it has gained important support from non-indigenous Ecuadorians.<sup>33</sup>

It is important to note, however, that the indigenous movement’s symbolic capital began increasing before the constitutional reforms. CONAIE led popular protests for democratic reforms in 1990, 1992, and 1994 and created a movement with specifically indigenous demands, distinct from the peasant movements of the past (Selverston, 1995). Historically, indigenous peoples were seen as lazy, backward, passive, and holding back development; with their mobilization, indigenous organizations “successfully challenged these stereotypes” (Selverston, 1995: 137). Thus, gains in symbolic capital were part of the overall trajectory of the indigenous movement’s rise to national political power, begun in the early 1990s.

Not surprisingly, the indigenous rights discourse was almost completely absent from Peruvian national politics in the 1990s. However, since Fujimori’s departure, the language of indigenous rights has begun to take hold, perhaps most significantly among Indians themselves. Historically, ethnic politics have been subjugated to classist orientations. Officially and among themselves, Peru’s Indians are either Andean “*campesinos*” or Amazonian “*nativas*”. In 1995,

María Isabel Remy wrote that “While it is possible to identify state policies geared toward indigenous populations...most of the sectors to which such policies are directed do not identify, organize, or mobilize as indigenous peoples” (107-8). This lack of indigenous identification can be traced to the Velasco regime (1968-75), which, “largely because of its class-based orientations...sidelined any recognition of indigenous cultural orientations...and the potential for ethnicity-based mobilization” (Gelles, 2002: 248).<sup>34</sup>

However, since the beginning of this decade, indigenous rights discourse has emerged on the national political scene. Highland Indians are casting off *mestizo* (mixed-race) labels in favor of ethnic identities. An indigenous leader remarked in 2003 that “the mere fact that we can debate with each other about interculturality and our rights as Quechuas and Peruvian citizens is in itself revolutionary” (quoted in García, 2003: 90). In addition, Andean and Amazonian Indians are uniting, rejecting the historical division of peasant versus native. When these groups submitted their proposal for new constitutional reforms in 2004, leaders of both communities espoused their shared identity as “*pueblos indígenas*” (“indigenous peoples,” Greene, 2005). This indigenous self-identification demonstrates an increase in the power of indigenous rights discourse among indigenous peoples themselves and a highly significant switch from classist to ethnic discourse.

Thus, the Peruvian case suggests that there may be factors other than official state declarations that can give power to the indigenous rights discourse, such as the “cross-border diffusion” effect (quoted in Van Cott, 2003: 51).<sup>35</sup> The successes of Peru’s neighbors’ may be contributing to its recent growth of indigenous self-identification and mobilization, for “in the last two or three years there's been a sea change in Latin American society...in the eyes of an increasingly watchful world, politicians from Mexico to Colombia are moving to enshrine native

rights and opportunity” (Contreras, 2001). Future researchers may wish to investigate the contagion of rights discourse across national borders as a cause of recent indigenous mobilization in Peru.<sup>36</sup>

### Statutory Legislation

Symbolic capital can supply strong leverage for the passage of legislation, the first step towards the implementation of indigenous rights. When assessing the degree of constitutional transformation in each case, it is important to acknowledge the difference between the recognition and realization of indigenous rights. Constitutional principles only have an impact through statutory legislation, and statutory legislation only has an impact when it is enforced.<sup>37</sup> Thus, statutory legislation acts as the intermediate mechanism between constitutional declarations of value and their maintenance in practice.

In Venezuela, institutional guarantees of indigenous political participation and official support for indigenous rights have aided the passage of a few statutory laws. Ecuador has made greater progress, unsurprisingly, given the political and symbolic strength of its indigenous movement. With minimal constitutional reforms, little symbolic capital and few avenues for political participation under Fujimori, Peru did not make any legal progress until very recently.

As stated, the Venezuelan constitutional reforms reserved seats for indigenous peoples at every level of government. In addition, the state created public bodies to further institutionalize indigenous participation in public policy-making, such as the National Assembly’s Permanent Commission on Indigenous Peoples, created with the aim of advancing indigenous rights legislation (Colmenares Olívar, 2003).<sup>38</sup> The inclusion of indigenous leaders in this and other legislative bodies has facilitated the approval of statutory legislation (Colmenares Olívar, 2003):

the law on land demarcation and ILO 169 were both passed within a year of the reforms. These two documents serve to support and protect constitutional rights while the Organic Law of Indigenous Peoples and Communities (LOPCI), designed to implement all elements of the constitutional reforms, is in discussion. Progress has also been made in language rights and education, from two important resolutions issued by President Chávez.<sup>39</sup> Thus, the passage of statutory legislation in Venezuela has been directly facilitated by the institutionalization of indigenous political participation and the executive's support for indigenous rights.

Ecuador's equivalent of the LOPCI, the Law of Indigenous Nationalities and Peoples, was passed in 2003. Among other things, the law regulates the development and coordination of indigenous peoples' institutions with those of the state, defines the limits of indigenous authority, outlines bilingual education and language rights, elaborates land and resource rights, requires indigenous participation in certain public institutions, and legitimizes indigenous legal authority. As mentioned previously, indigenous representatives successfully pushed for the passage of ILO 169 – which has the status of national law in signatory countries – in the Congress while the constituent assembly was still debating the constitutional reforms. In effect, ILO 169 gave legal support to indigenous rights in Ecuador even before they were enshrined in the constitution.

Peru signed ILO 169 in 1994 but failed to pass any implementing legislation of its limited reforms until well after the end of the Fujimori administration. In 2002 and 2003, the Congress approved two laws on the establishment of indigenous legal jurisdiction (Peru's constitution is as progressive as those of Venezuela and Ecuador regarding customary law). This is particularly significant given the extreme repression experienced by indigenous legal authorities in Peru during the Fujimori years.<sup>40</sup> A thorough explanation of what made it possible for this legislation to be passed is beyond the scope of this paper. Further research should explore a combination of

factors, including the post-Fujimori political opening, the regional trend of indigenous rights legislation, and the mobilization of Peruvian Indians.<sup>41</sup>

### Land and Resource Rights

In order to truly assess the degree of constitutional transformation, one must ask whether new statutory legislation is actually enforced, for there is often a disconnect between written laws and their implementation. An examination of land and resource rights across cases suggests that even with legal support, on-the-ground implementation is difficult to achieve. Van Cott argues that land and resource rights are the most difficult to implement, largely because of resistance from elites (personal communication, 2005). Also, even when indigenous peoples have obtained legal titles to their land, subsoil resources – such as oil – remain the property of the state. Finally, while they are guaranteed rights to consultation over resource use, “in no case has ‘consultation’...been defined in a way that gives indigenous authorities the power to veto or control natural resource exploitation” (Van Cott, 2002: p. 69).<sup>42</sup>

Others have also acknowledged the particular tension between respect for the rights of indigenous peoples, who often occupy resource-rich territories, and the pressures of economic globalization. In the past few decades, increased state cooperation for transnational development projects and capital investment in such projects has put pressure on states to develop their natural resources, often at great social and environmental cost to indigenous peoples (Miller and Soltani, 1999). Thus, the particular nature of land and resource rights suggests that successful implementation may be especially difficult where a real conflict of economic interests exists.

Both the Venezuelan and Ecuadorian constitutions declare indigenous lands the inalienable property of indigenous peoples and recognize the right to participation and consultation in public policy decisions regarding the use, exploration, extraction, and administration of natural resources in their lands. Both states have also passed statutory legislation regarding land demarcation and use. The Peruvian constitution was actually a step backwards for indigenous peoples; it overturned the inalienability of their lands, legalizing their outright sale (Dean, 2002; Yrigoyen Fajardo, 2002: 180). Thus, one would expect Venezuela and Ecuador to have made much more progress than Peru regarding the demarcation and protection of indigenous lands from damaging resource exploitation. However, even with the legal resources to defend their land rights, Venezuelan and Ecuadorian indigenous peoples have had tremendous difficulties.

Only a year after the constitutional reform, Venezuela's National Assembly passed the "*Ley de Demarcación y Garantía del Habitat y Tierras de los Pueblos Indígenas*" (Law of Demarcation and Guarantee of Indigenous Peoples' Habitat and Lands) which outlined a national plan of land demarcation for indigenous peoples according to the rights guaranteed them in the constitution. Nevertheless, economic pressures and competition for natural resources in the Amazon continue to plague Venezuela's indigenous peoples. In 1994 Brazil and Venezuela agreed to build an electric power line through the Amazon, because transnational companies needed electricity to carry out mining projects. Indigenous peoples opposed the power line and argued that they were not consulted in its development (IWGIA, 1999). Although they had no legal title to the land yet, they protested, blocked crews, and brought lawsuits against the government. Government ministers agreed to a dialogue, but they broke off the talks before an agreement was reached (Miller and Soltani, 1999). This case became an example of the state's resistance to the indigenous rights principles espoused in its own constitution, when "the populist

Chávez broke a personal pledge and approved a controversial plan to run a power line through the Peon Indian homeland” (Contreras, 2001) two years after the reforms. Thus, tensions between indigenous land rights and economic development projects remain a strong obstacle to implementation in Venezuela, in spite of its legal progress.

The same phenomenon is evident in Ecuador. The 2003 Law of Indigenous Nationalities and Peoples recognizes the right to communal authority over indigenous lands and the right to grant permission for resource exploration and use. Indigenous territory cannot be expropriated under any circumstances, and indigenous peoples must be consulted about any activity that uses resources found in their lands or affects them or their environment. The planning of such activities must include indigenous participation, and their communities must receive some of the benefits. The final transitory disposition states that indigenous peoples enjoy the same property rights as other Ecuadorians, and that the state will adopt the means to regulate land tenure, titling, and development for indigenous peoples.

Such legal support is theoretically important given that indigenous land and resource rights have been tenuous throughout the country’s history (as in almost every South American state). The 1992 Agrarian Development Law allowed communal lands to be sold with the approval of three-quarters of the local community assembly (IADB, 1999). In 1999, although the government had stated it was committed to titling indigenous communal lands, almost two and a half million hectares remained untitled (IADB, 1999). In some cases, even where lands were titled, encroachment by other settlers remained a problem because of unclear boundaries and lack of government regulation (IWGIA, 1999).

As in Venezuela, Amazonian oil exploration impedes the full realization of indigenous land and resource rights (IADB, 1999) and Indians continue to struggle against resource exploitation

by the state and multinational corporations who largely ignore their concerns.<sup>43</sup> In August of 2005, indigenous peoples organized a national protest to demand Petrobras' withdrawal and a moratorium on oil drilling. The company suspended its exports after the government declared a state of emergency. Thus, in Ecuador as in Venezuela, legal progress has not translated into improvements on the ground.

The Peruvian state has been the most hostile to indigenous land and resource rights. The case shows the particularly negative effect of state prioritization of resource development and neoliberal policies on the realization of these rights. Constitutional support is weak and the proposed law on land demarcation was struck down in commission in 2002, leaving Peru legally well behind its neighbors. Although Peru has signed ILO 169, which guarantees indigenous rights to consultation in resource development projects, "actual participation of indigenous communities in the planning and implementation of large-scale development initiatives has, to date, been all but absent" (Dean, 2002: 220) and "large-scale exploitation of natural resources and raw materials in indigenous territories remains commonplace" (Dean, 2002: 201).

Official state policy has been opposed to indigenous land rights from the beginning. Communal land rights were originally recognized in the 1974 Law of Native Communities, but this law also allowed oil and gas pipelines and anything else necessary for resource extraction free passage through indigenous lands, without requiring any compensation to indigenous communities (Crovetto, 2000). Shortly after this a new law was passed that made it easier for extractive industries to enter the Amazon, halting the land titling process (Dean, 2002: 211). Throughout the 1990s, this pattern of state legal opposition to indigenous land rights continued with the passage of several new laws couched in terms of free market enterprise, with the stated goal of integrating Indians into the free market economy of the state (IWGIA, 1999).<sup>44</sup>

In addition, the Fujimori administration aggressively pursued major natural resource development projects with devastating effects on indigenous land ownership. In 1996, the government began to concede access to indigenous territories to international oil companies for exploration to promote external capital investment (Crovetto, 2000).<sup>45</sup> Under Fujimori, there was a “dramatic upswing in the rate of privatization and parceling of communal areas” (Dean, 2002: 212), particularly for use by oil companies. By the end of the 1990s, indigenous peoples had titled ten percent of the Amazonian rain forest – less than a third of what was conceded to oil companies in the same time (Dean, 2002: 214). By 2004, “of the 5660 [legally recognized] communities in all of Perú, there exist[ed] mining claims (*denuncios*) in 3200 of them” (quoted in García and Lucero, 2004: 177). Thus, the state’s emphasis on natural resource development has meant that indigenous “lands are continuously threatened not only by individuals and companies who seek to profit from their natural resources, but also by state practices aligned with the interests of transnational corporations” (Crovetto, 2000: 275).

The one bright star in the fight for indigenous land rights has emerged since Fujimori’s departure: the National Coordinator of Communities Affected by Mining (CONACAMI). CONACAMI formed in 1999 and has been called “the most coherent and influential indigenous highland organization to come along in a while” (García and Lucero, 2004: 179). It began as an Andean organization but has integrated its work into the national indigenous rights struggle (Greene, 2005). Recently, it has gained support in civil society and even threatened the government with *levantamiento* – the tactic used so effectively by CONAIE (García and Lucero, 2004: 179).

In conclusion, the Venezuelan and Ecuadorian cases show that legal change does not necessarily imply similar on-the-ground improvements. The Peruvian case shows the particular

difficulty of both types of improvement in cases where the state's economic priorities are at odds with indigenous rights.

### **Case Summary and Analysis: Suggested Hypotheses for Further Study**

In the preceding sections, I have sought to answer the question, does constitutional reform have an impact for the full realization of indigenous rights? My research demonstrates that this is true in some cases, leading me to believe that constitutional reform is a necessary, but insufficient condition for progress. Taken together, the three cases present some potential conditions under which constitutional reforms may have a significant impact.

#### Venezuela

In Venezuela, constitutional reform had a direct positive impact on the advancement of indigenous rights. Reserved seats at every level of government helped Indians achieve greater political representation, and the state provided symbolic capital where indigenous peoples had been unable to push acceptance of indigenous rights discourse on their own. This institutionalization of indigenous participation and official rhetorical support were important vehicles for the passage of statutory legislation. Indigenous peoples took advantage of these new opportunities to work within the system for legal changes, although it remains to be seen how these legal changes will be upheld in practice. At only two percent, Venezuela's indigenous population is proportionally the smallest in my study. This suggests that the institutionalization of indigenous participation and institutional support for indigenous rights is important to drive progress in states in which the indigenous population lacks the political power to effect change on its own. Further research should investigate the particular importance of special institutional guarantees for populations who lack the human capital to create large, politically powerful,

social movements. It should also explore whether states are more willing to grant such guarantees and rhetorical support in these cases, as indigenous peoples' movements may be too weak to exert any real influence over subsequent policymaking and implementation.<sup>46</sup>

### Ecuador

The Ecuadorian case suggests two lessons. First, there has been progress for indigenous rights since the constitutional reforms. However, we must situate this progress in the general trajectory of the indigenous movement in order to see its place in the broader pattern of indigenous-state relations. The indigenous movement's national power was evident before the 1998 constitutional reforms.<sup>47</sup> Pachakutik's "politics of power" as a party built from CONAIE's earlier "politics of influence" as a social movement (Zamosc, 2004), allowing it to remain at the forefront of national political struggles, leading mass mobilizations with a major national effect in 1990, 1992, 1994, 1999, 2000, 2001, and 2005 (Macdonald, 2002: 176).<sup>48</sup>

Secondly, however, recent developments demonstrate the difficulties of implementing indigenous rights reforms, even with significant legal changes and an indigenous movement that has been called "the most organized and institutionalized of any in Latin America" (Macdonald, 2002: 176). Repeated clashes in indigenous-state dialogue since the reforms highlight "the obstacles to indigenous peoples' full political participation as citizens [such as] the effects of structural asymmetry during negotiations...and relegation to the "back burner" when political or economic stress leads to political retrenchment" (Macdonald, 2004).

In 1999, CONAIE organized protests because economic crises had caused promised funds for indigenous development projects to be withheld. In response, the state re-promised the funds and established regular forums for dialogue (Macdonald, 2002: 187), but these were tabled when the economy began to slide again (Macdonald, 2004). Indigenous peoples' resulting frustration

that the new constitutional principles of participatory democracy were not being upheld was part of what led to their 2000 coup with the military (Macdonald, 2002).

Also, in 2004 Pachakutik withdrew from its pact with President Gutiérrez, citing his deal with the IMF and his failure to fulfill campaign promises for indigenous development projects. Gutiérrez dismissed all Pachakutik cabinet members, and after a series of protests in April 2005 Congress ended up voting Gutiérrez out of office. Once again, Ecuador's indigenous movement flexed its political muscles at the national level.<sup>49</sup>

Thus, the Ecuadorian case suggests that where proportionally large indigenous populations with a high degree of indigenous self-identification are politically powerful, constitutional reform is one of many factors that contribute to the realization of indigenous rights. The case also demonstrates state resistance to indigenous rights even when such national power and legal support exist. Further research should investigate whether states with these types of indigenous populations are more hesitant to enshrine indigenous participation.

### Peru

Bartholomew Dean called the 1990s “a lost decade” for Peru's indigenous peoples (2002), stating that “indigenous Peruvian” was doomed to become an oxymoron. Given the state's history of authoritarianism and class-based politics, the recent progress for indigenous rights is remarkable. What is the cause? I would propose that the political opening created by Fujimori's departure combined with a spillover effect from the progress made in other countries. I would also propose that the type of progress – ethnic mobilization of a people into a social movement – has the potential for real political impact, if the Ecuadorian case is any indication. Finally, the fact that Peruvian Indians put forth a constitutional reform proposal in 2002 demonstrates that they themselves believe in the power of such documents for the advancement of their rights.

Dean argues that “intimidation, complicity, and censorship were common leitmotifs of Fujimori’s authoritarian regime” (2002: 204), and that Amazonian Indians also suffered from guerrilla groups operating in the central jungle.<sup>50</sup> Coupled with the lack of ethnic mobilization among highland *campesinos*, there were few demands for the implementation of the minimal rights guaranteed in the 1993 constitution. There was also a general lack of awareness by political officials of the reforms’ content (Yrigoyen Fajardo, 2002: 175).

However, there has been a surge in indigenous mobilization post-Fujimori, as indigenous peoples “have emerged in an unprecedented way during a critical juncture in Peru’s political history” (García and Lucero, 2004: 182). In 1998 indigenous leaders created the Permanent Coordinator of the Indigenous People of Peru (COPPIP), a national, pan-ethnic, and pan-regional organization to bring together various groups, much like CONAIE in Ecuador. Through this and other organizations, they have mobilized to pressure the state to address their concerns.<sup>51</sup>

It may be time to rethink the assumption that Peru is an exception to the indigenous mobilization sweeping Latin America. Recently, Andean peasants have re-claimed their ethnic indigenous identity, moving away from classist orientations. The new alliance between Andean and Amazonian Indians, the focus of Andean representatives on an indigenous identity, the use of global networks, frameworks, and legal norms, and the increasing demands on national politics indicate that a national indigenous movement is gaining force in Peru (Greene, 2005).<sup>52</sup>

Although it is unclear where this mobilization will lead, the success of Ecuador’s movement suggests the potential for similar success in Peru, particularly given that Peruvian Indians constitute nearly half of the country’s population. Already in 2002, they put forth a constitutional reform proposal that posits a new collective subject of rights: the indigenous peoples. The constitution mimics the provisions of others in the region.<sup>53</sup> The mere fact of this

proposal confirms the importance Peruvian Indians place on such official documents for the advancement of their rights. Also, the new constitution would guarantee indigenous representation, suggesting that Peru's indigenous peoples may be learning from their Venezuelan counterparts. Further research should investigate the transnational contagion effects of rights discourse in the region, as well as the learning capacities of states and social movements across borders and the particular relevance this may have to the Peruvian case.<sup>54</sup>

## **Conclusion**

In conclusion, I have attempted to test Van Cott's claims regarding constitutional transformation by applying her analysis of the impact of constitutional reforms to Venezuela, Ecuador, and Peru. While some progress has been made, in general "the new wave of political pronouncements has yet to yield real results, and for every success story there are hundreds of broken promises that carry on a centuries-old pattern" (Contreras, 2001). Reform seems to be a necessary, but insufficient condition for the full realization of indigenous rights, and the particular cases present us with potential factors that facilitate the impact of the reforms. With this knowledge, an indigenous rights activist working in a democracy might want to push constitutional reforms and other institutional guarantees if the indigenous population were proportionally small and weakly mobilized. However, in a state with a proportionally large indigenous population, she might instead focus on grassroots mobilization of indigenous peoples into social movement organizations and political parties in order to flex their muscle through existing channels of influence.

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<sup>1</sup> A liberal democracy, according to Larry Diamond (1997), includes free and fair elections, the protection of individual and group civil liberties, accountability of elected officials, the rule of law, autonomy of the judiciary, subordination of the military to civilian control, and "inclusive pluralism in civil society as well as party politics" (xiv).

<sup>2</sup> I have chosen not to assess changes in socio-economic conditions, as it would take years to see the results of this type of change. By contrast, constitutional reforms could have an immediate impact on political participation and

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the exercise of new rights. In addition, according to a World Bank study “the greater political purchase garnered by the Indians has not translated into an improvement of their lot” economically speaking (World Bank, 2004).

<sup>3</sup> A full analysis of these conditions is beyond the scope of this paper; it is an appropriate area for further study.

<sup>4</sup> Other scholars have written about the links between indigenous rights, constitutional reform, multiculturalism, citizenship, and democracy in Latin America. In her book on the development of Ecuador’s national indigenous movement, Melina Selverston-Scher argues that marginalized populations who mobilize for cultural respect and citizenship rights support the development of more participatory and legitimate democracies, while at the same time confronting the discourse of rhetorically uni-national states with the reality of their multiethnic populations (2001).

<sup>5</sup> This was in part because of drastic social inequalities. States which purport to be built on the value of equal citizenship for all struggle for legitimacy in the face of worsening economic inequalities and a lack of the rule of law (see Chalmers et al., 1997).

<sup>6</sup> Traditionally, democratic consolidation is defined as the institutionalization and internalization of democratic rules and values (see Diamond et al., 1997).

<sup>7</sup> These theorists generally argue that the constitutional recognition of cultural and ethnic diversity and multiple forms of citizenship will have a positive impact on democratic participation and legitimacy. Cultural recognition promotes unity and strength because citizens “have a say in the formation and governing of the association [and] see their own cultural ways publicly acknowledged and affirmed in the basic institutions of their society” (Tully, 1995: 198). In addition, governments will not be considered legitimate until they rest on the consent – i.e., the sovereignty – of all the people, including those traditionally marginalized.

<sup>8</sup> Rodolfo Stavenhagen (2002) argues that these new constitutions challenge the definition of the nation-state. The indigenous claim to self-determination contests the state’s traditional hegemonic authority over its citizens. These claims also clash with the state’s historical rhetoric of uni-national identity, because they are based on distinct cultural identities. Finally, indigenous peoples claim rights as collectivities; the liberal state is based on the rights of individuals. Indigenous rights are thus a “least-likely case” for constitutional recognition and subsequent institutional change.

<sup>9</sup> See Maybury-Lewis, 2002; Postero and Zamosc, 2004; Selverston-Scher, 2001.

<sup>10</sup> Both scholars also acknowledge the possibility that even when implemented, these reforms may not strengthen democracy or improve indigenous peoples’ lot. Decentralization policies designed to enfranchise citizens may in fact strengthen local elites (Assies, 1998: 17). Also, “multi-ethnic states are not...necessarily democratic” (Sieder, 2002: 6) – they may result in balkanization – and greater political integration may have costs for indigenous communities.

<sup>11</sup> Pogany attempts to assess the progress of constitutional transformation in post-Communist states. However, his argument is based mainly on his own judgments and includes no systematic method by which the relative progression towards constitutional transformation may be measured across cases.

<sup>12</sup> The constitution includes transitory dispositions to aid the implementation process, particularly with regards to land titling. It also guarantees political representation for indigenous peoples at all levels of government and the special protection of indigenous intellectual property (Van Cott, 2003).

<sup>13</sup> Any mention of legitimacy is relevant only to Fujimori’s desire to legitimate his *autogolpe* (self-coup), an inherently anti-democratic action.

<sup>14</sup> Van Cott describes these as administrative-territorial units in which indigenous peoples exercise autonomy and self-determination while remaining part of the state (2000: 273-4).

<sup>15</sup> Van Cott uses “recognition of ethnic rights,” because she includes a discussion of peoples of African descent, which is beyond the scope of this paper. Also, I think that “realization” – rather than “recognition” – more accurately describes progress towards the true fulfillment of the promises of these reforms. Van Cott supplements these with a discussion of inequality and violence against indigenous peoples, which I have chosen to eliminate. Violence is most relevant to the Colombian case; see footnote 1 for an explanation of why I do not discuss inequality.

<sup>16</sup> In Venezuela, national voter registration actually decreased throughout the 1990s, while in Ecuador registration steadily increased. In Peru, registration fluctuated in the years immediately following the reforms, but increased dramatically from 78.2% in 2000 to 93.9% in 2001 (UNDP, 2004: 40-41). Voter registration is automatic in both Ecuador and Venezuela, but not in Peru. Voter turnout rates at the national level are similarly inconclusive. Venezuela saw a decrease in voter turnout during the last decade, with a slight – less than 5% – increase immediately following the 1999 reform. Ecuador’s voters turned out at relatively steady rates throughout the 1990s and since the 1998 constitutional reform. Turnout of registered voters increased considerably in Peru in 2000, up

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30% from 1995. In Ecuador and Peru, voting is compulsory, but the law is weakly enforced. This was true in Venezuela until 1993, when voting was made optional (UNDP, 2004: 40-41).

<sup>17</sup> For example, when asked how frequently indigenous peoples have their rights respected in practice, 40% of Ecuadorians answered “Always” or “Nearly always” as compared to 28% of Venezuelans and only 16% of Peruvians. In fact, over 80% of Peruvians answered “Hardly ever” or “Never” to the same question. Similarly, a larger percentage of Ecuadorians and Venezuelans have a “Very high” or “High” overall perception of the existence of legal equality in their state than do Peruvians (UNDP, 2004: 258).

<sup>18</sup> Indigenous peoples are guaranteed three seats in the National Assembly, and in states with indigenous populations, one seat is reserved in the state legislative council; the same is true for municipal councils. Further, the new constitution allows indigenous peoples to either form their own parties or compete in elections as social movement organizations (Van Cott, 2005: 192).

<sup>19</sup> The strongest indigenous party is the United Multiethnic People of Amazonas (PUAMA), which formed in 1997 during Amazonas’ transition from a territory to a state in order to protect indigenous lands from territorial divisions. In 1998, PUAMA gained one seat in the Amazonas legislative assembly. However, in 2000, the party won a seat in the National Assembly in alliance with the leftist *Patria para Todos* (PPT). At the state level, it secured a non-reserved legislative council seat and the governorship, among other gains (<http://www.cne.gov.ve/estadisticas.php>; Van Cott, 2005: 209).

<sup>20</sup> By 2000, CONIVE boasted sixty affiliates throughout the country. In preparation for the 2000 elections, more than 1,000 indigenous peoples participated in workshops on political participation and the First State Assembly of Indigenous Political Participation in Amazonas (Van Cott, 2005: 209).

<sup>21</sup> ILO 169 recognizes the right of indigenous peoples to self-determination as the foundation of their claims to nondiscrimination, cultural integrity, lands and natural resources, social welfare and development, self-government, and participation and consultation in public policy, national development, and resource extraction projects which affect them (ILO, 1989). Venezuela and Peru ratified ILO 169 in 2002 and 1994, respectively.

<sup>22</sup> Pachakutik took advantage of alliances with smaller leftist parties in order to run – and elect – more candidates at every level. Thus, its candidates were not always indigenous themselves.

<sup>23</sup> For a detailed explanation of the factors that allowed for the rise of Pachakutik as a powerful national ethnic party in Ecuador, see Van Cott, 2005: 118-119. For more information on indigenous political participation in general, see Instituto Inter-Americano de Derechos Humanos (IIDH). 2002. “Ecuador: Indicadores de Progreso, Derechos de los Pueblos Indígenas. Participación Política de los Pueblos Indígenas.” URL: [http://www.iidh.ed.cr/comunidades/diversidades/docs/div\\_enlinea/ecuador.htm](http://www.iidh.ed.cr/comunidades/diversidades/docs/div_enlinea/ecuador.htm).

<sup>24</sup> MacDonald (2002) argues that the 2001 coup attempt, led by a CONAIE-military alliance, was not an anti-democratic action. It was part of a pattern of response to the government’s exclusion of indigenous peoples from further decision-making following the constitutional reforms. Indigenous peoples’ frustration that the participatory democracy they had worked for was not materializing was part of what led to the coup.

<sup>25</sup> Various *campesino* organizations have historically been associated with indigenous peoples: the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESEP), the most internationally linked and active indigenous representative organization in the Amazon; and the Peasant Confederation of Peru (CCP), a Communist party formed in 1947 in the sierra highlands. In 1980, AIDSESEP began to ally with other parties to elect indigenous mayors and municipal councilors in indigenous-dominant Amazonian districts. By the late 1980s, it had begun registering thousands of Indians in cooperation with the government (Van Cott, 2005). In 1998, the CCP allied with various parties to elect 96 *campesino* mayors. In the same year, the Indigenous Movement of the Amazon (MIAP), the political party of AIDSESEP, won thirteen mayorships in municipal elections. In 2000, MIAP formed alliances to run for the first time at the national level, but did not gain any seats.

<sup>26</sup> Although there were indigenous representatives in regional assemblies, Fujimori dismantled these in 1993. He also increased the signature requirement to register new parties in 1995 (Van Cot, 2005: 163).

<sup>27</sup> CCP was part of the coalition that backed Toledo; Arpasi was also a CCP candidate, but on a different party’s list. Previously, indigenous peoples in Congress had not been affiliated with indigenous organizations and did not identify as representatives of explicitly indigenous interests (Van Cott, 2005: 155).

<sup>28</sup> The National Agrarian Confederation (CNA) and the Confederation of Amazonian Nationalities of Peru (CONAP) both fielded candidates in the 2002 elections in alliance with other parties. In Amazonas, MIAP inscribed the party at the provincial level and formed alliances to put fourteen mayors in office (Van Cott, 2005).

<sup>29</sup> The quota system was only instituted at the district level, where indigenous organizations had already been able to win seats. Moreover, in a party list quota system, the best indigenous candidates often end up running on the lists of

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established parties, because these parties have the greatest chance of winning. In general, the unity of the indigenous movement is jeopardized because candidates are divided among various parties (Van Cott, 2005: 167).

<sup>30</sup> Venezuela's national indigenous rights organization, CONIVE, took advantage of the support of President Chávez and other key allies in his administration to empower themselves and their agenda in the national political arena in new ways (Van Cott, 2003: 56; see also "Representation in Public Office" above).

<sup>31</sup> While indigenous peoples who have risen to high places in business and politics have challenged this idea, they remain exceptions to the rule of unequal opportunity (Avalos, 2004).

<sup>32</sup> States are often reticent to use this term – or "nations" – because of its connotations of the right to independent statehood; "Ecuador is the only country in Latin America in which indigenous organizations have made significant progress in institutionalizing the unit and idea of indigenous 'nationality'" (Lucero, 2003: 32).

<sup>33</sup> In 2000 the indigenous movement briefly allied with the military in a coup to oust President Jamil Mahuad; "Whereas once politicians claimed that they would save and civilize the Indians, in 2000 indigenous activists claimed that they could save and redefine the nation" (O'Connor, 2003: 75). Besides successfully kicking Mahuad out of office, "equally important... was the social capital obtained by CONAIE from non-Indian sectors of society" (Macdonald, 2002: 189) after the coup.

<sup>34</sup> The Velasco regime officially switched the language used to talk about Peruvian Indians when it passed the Law of Native Communities in 1974; Amazonian Indians became "natives," and Andean Indians became "peasants."

<sup>35</sup> Van Cott (2003) argues that the regional trend of constitutional recognition of indigenous rights aided the passage of the progressive Venezuelan reforms.

<sup>36</sup> For an excellent discussion of Latin American rights within an international framework, see Brysk, Alison. 2000. *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford, CA: Stanford University Press.

<sup>37</sup> Latin American states by and large have civil law systems, meaning that the legislature must pass statutory laws in order to declare what is legal or illegal (in a common law system – like the U.S. – judges have the ability to make law). Thus, even after the constitution is reformed, citizens must wait for the passage of statutory legislation in order to contest the violation of their rights in court. The constitution is only the expression of a value, and does not provide the necessary cause of action in a court of law (personal communication, Kim Smith, 12/1/05).

<sup>38</sup> Soon after the constitutional reforms, the state created the Presidential Commission for the Attention of Indigenous Peoples, whose aim is to manage, coordinate, and evaluate all public policies designed to implement the constitutional rights of indigenous peoples (Colmenares Olívar, 2003).

<sup>39</sup> Resolution No. 1795 recognizes the indigenous languages of several different ethnic groups as official and requires them to be taught, along with cultural elements, in public and private schools and universities in areas where indigenous peoples live. No. 1796 creates the National Council for Education, Cultures, and Indigenous Languages, which is responsible for implementing the oral and written use of languages in the educational system and for preserving and promoting indigenous heritage (Sánchez, 2002).

<sup>40</sup> Since the 1970s, community organizations known as *rondas campesinas* have provided security and authority among Peruvian campesinos, gradually extending their activities into development projects, local government, conflict resolution, and dealing with state authorities. In 1993, a presidential decree put the *rondas* under military control under the pretext of helping to fight the *Sendero Luminoso* (Shining Path) guerrilla forces, which increased repression by the local military and police. In addition, the judiciary began to prosecute and detain *ronda* leaders on the grounds of overstepping their authority. Thus, Fujimori's authoritarian actions were reinforced by the failure of the judiciary to effectively check executive power and enforce the constitution (Yrigoyen Fajardo, 2002: 158, 170).

<sup>41</sup> Van Cott (2003) argues that a similar assortment of factors allowed Venezuelan Indians to successfully achieve the full recognition of their rights in the 1999 constitutional reform.

<sup>42</sup> ILO 169, signed by all three countries, includes the guarantee of indigenous consultation and participation in resource development projects (for more detailed information on ILO 169, see note 18).

<sup>43</sup> In July 2005, Huarani Indians marched to Quito in protest that an agreement with an oil company was made without grassroots consultation and that the state oil company, Petrobras, had been conducting activities in a biosphere reserve without concern for the environmental impact.

<sup>44</sup> The Law of Promotion of Investments in the Amazon encourages economic development projects in the region, "offer[ing] the forest as a tax paradise in which coastal companies can invest profitably money which should have been paid to the State" (IWGIA, 1999: 103). In the Andean region, the Special Land Titling Project promotes titling land to individuals in order to split up communities. On the Coast, the Law of Land Titling of the Peasant Communities of the Coast aims to divide communal lands and sell them to third parties for the development of export crops (IWGIA, 1999).

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<sup>45</sup> Between 1996 and 2000, almost thirty-three multi-national corporations signed contracts with the Peruvian government, 19,743,894 hectares were conceded for exploitation, and twenty-eight petroleum lots were installed. Twenty-seven indigenous groups were negatively affected by these projects (Crovetto, 2000: 275).

<sup>46</sup> Interestingly enough, Colombia's is the only other constitution in the region which specifically reserves seats for indigenous peoples in legislative bodies, and Colombia's indigenous population is also only two percent (see Table 1). Van Cott hypothesizes that population size may be a factor in the state's constitutional recognition of ethnically-based autonomy regimes (2001).

<sup>47</sup> In 1995, Selverston wrote that "The fact that an indigenous candidate can win an election in a rural area or in the Amazon demonstrates that indigenous people have, in fact, established a political space for themselves in Ecuadorian society" (150).

<sup>48</sup> By 2004, Zamosc wrote of CONAIE that "no other Indian organization has demonstrated the power to paralyze a country again and again" (134).

<sup>49</sup> The movement's view that Ecuador's indigenous peoples still have a long way to go was clearly articulated by CONAIE president Luis Macas' statement that the mandate of the newly appointed Palacio government is "to summon the people so that the organized people can, in turn, organize a new democratic system" (Latin American Weekly Report, 2005).

<sup>50</sup> Shining Path and the Tupac Amaru Revolutionary Movement caused massacres, intimidation, general violence, and psychological stress, which severely damaged indigenous communities (Dean, 2002: 205).

<sup>51</sup> In 2001, indigenous delegates from the Central Amazon went to Lima to bring attention to issues of mining, logging, land titling, and violence in the region; the President responded by creating a commission to make policy recommendations on these issues (García and Lucero, 2004). Indigenous peoples have also taken advantage of the "boomerang effect," in which weak domestic actors link to a transnational advocacy network which then pressures the state from without, "boomeranging" domestic actors' concerns back against the state (Keck and Sikkink, 1998). Although this effect "was long constrained by the national context of political violence and repression" (García and Lucero, 2004: 171), it began to have an impact in the late 1990s.

<sup>52</sup> In the international legal arena, self-identification as indigenous is key to taking advantage of indigenous rights norms. To this end, COPPIP declared at its second National Congress that "It is our inalienable right to retake this [indigenous] identity, and to use it as an internationally recognized juridical status" (quoted in Greene, 2005). Thus, Greene argues, the global surge of indigenous activism is clearly having an effect in Peru, particularly after the fall of Fujimori.

<sup>53</sup> The new proposal defines the nation as pluricultural and pluriethnic, makes indigenous languages official and indigenous lands inalienable, provides for consultation over natural resource extraction, recognizes the right to internal autonomy and legal authority, and guarantees that ten percent of the Congress be elected by a special national district of indigenous peoples and afro-Peruvian populations (Aguirre, 2002).

<sup>54</sup> There is an extensive literature on the internationalization of the indigenous rights movement and the elaboration of an international rights regime in international law (see note 37; see also Anaya, 1996; Brysk, 1996; Dean and Levi, 2003; and Niezen, 2003). There is also an extensive literature on transnational advocacy networks and their power to effect change across state borders, particularly with regard to the spread of human rights norms (see Keck and Sikkink, 1998; Risse, Ropp, and Sikkink, 1999). The Peruvian case suggests an interesting area of study at the intersection of these two bodies of literature.

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