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ENDOGENOUS PARTICIPATION

Strengthening Prior Consultation in Extractive Economies

By TULIA G. FALLETI and THEA N. RIOFRANCOS*

INTRODUCTION

WHY do some political institutions become strong, while others remain weak? Why do institutions born out of similar conditions subsequently diverge in their levels of institutional strength? Social scientists have amply demonstrated that strong institutions are essential to economic and political development. By the dawn of the twentieth century, Max Weber had already argued that the development of a strong, rational, state bureaucracy was essential to capitalist development.¹ More recently, political scientists and economists alike have highlighted the importance of strong political institutions for economic development and conflict resolution.² In political science, scholars have developed theories of why and how institutions originate and change,³ but much less attention has been paid to the questions of why and how they strengthen.⁴

In this article, we offer an explanation for institutional strength based on the study of participatory institutions, or what Graham Smith calls

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¹Weber 1978 [1922].

²E.g., Haggard 1990; North 1990; Acemoglu and Robinson 2012.

³E.g., Knight 1992; Steinmo, Thelen, and Longstreth 1992; Thelen 2004.

⁴For an exception, see Brinks, Levitsky, and Murillo 2017.

“democratic innovations”—institutions “specifically designed to increase and deepen citizen participation in the political decision-making process.”⁵ We define participatory institutions as formal, state-sanctioned institutions explicitly created to augment citizen involvement in decision making over public goods or social services. These institutions provide citizens with a normal politics means of interacting with the state, and are potentially more substantive than is sporadic electoral participation at the ballot box, and less disruptive than social protest. Examples of participatory institutions include participatory budgeting, local health councils, water committees, local oversight committees, and prior consultations. We focus our empirical analysis on the latter.

Over the past thirty years, Latin American countries have led the world in the creation of participatory institutions. But while some of these institutions have acquired strength, enabling citizens’ meaningful participation in the decision-making process over the distribution of public goods or social services, others have remained weak—merely window dressing or parchment institutions. Why have participatory institutions with very similar institutional designs followed such different trajectories? What are the implications of these differing trajectories for the scholarship on institutional development more broadly?

The existing literature on participatory institutions in the developing world identifies several local-level variables and conditions to account for the institutional strength of participatory innovations, including the importance of synergy in state-society relations, a high degree of fiscal decentralization, weak local political opposition, capable local leadership, the technocratic agency of policymakers, and a high level of local political support.⁶ These invaluable studies provide subnational comparisons of participatory institutions, both within and across countries, to explain their varying degrees of success and institutional strengthening.

We scale up and analyze the national-level dynamics that lead to the creation of participatory institutions (highlighting the role of social mobilization) and to their subsequent strengthening (focusing on the importance of political incorporation). We propose this theoretical and methodological scaling-up for three reasons. First, national-level so-

⁵ Smith 2009, 1.

⁶ On state-society relations: Abers 2000; Baiocchi, Heller, and Silva 2011; Fulmer, Godoy, and Neff 2008; Heller 2001; Jaskoski 2014; McNulty 2011; and Wampler 2008; on decentralization and local opposition: Goldfrank 2011; on leadership: Baiocchi, Heller, and Silva 2011; McNulty 2011; and Van Cott 2008; and on level of local support: Van Cott 2008 and Wampler 2008.

cial mobilization in the adoption of participatory institutions is highly consequential for subsequent institutional strength. Second, the process of political incorporation of those mobilized actors at the national level leads to variation in participatory institutions' strength. Third, by shifting the focus from the local to the national level, we identify important and systematic differences in the regulation and implementation of participatory institutions across countries that are relevant to their strengthening.⁷

We propose an endogenous theory of participation. We argue that participatory institutions' strength (defined along the dimensions of legitimacy, efficacy, and enforcement) is dependent on two processes. The first is the process of social mobilization that brings about the institution. Participatory institutions brought about by social mobilization are more likely to develop into strong institutions than are participatory institutions imposed from above or by diffusion of best practices. We argue that social mobilization is endogenous to the process of participatory institutions' strengthening. Second, for the newly created institution to strengthen there must be a process of political incorporation of the mobilized social actors during the early stages of regulation and implementation. We show that while social mobilization is a necessary condition of institutional strength, it is not sufficient.

Our endogenous theory of participation emphasizes the importance of grassroots social movements at the initial adoption phase and of political incorporation, via political parties or state institutions, in the subsequent process of institutional development. After demonstrating similar processes of institutional adoption via social mobilization, our case studies illustrate two divergent causal pathways: one of political incorporation and institutional strengthening (Bolivia), the other of political exclusion and institutional weakening (Ecuador).

We focus our empirical study on the participatory institution of prior consultation (*consulta previa*), which is the collective right of indigenous communities whose lands or environment could be affected by resource extraction or mega-development projects to be consulted before projects begin. The International Labor Organization (ILO) recognized prior consultation in its 1989 Convention 169 on indigenous and tribal peoples, which grew out of an attempt to protect indigenous peoples' rights and territories. The convention establishes that indigenous peoples must be consulted whenever a legislative or administrative

⁷The concepts of institutional adoption, regulation, and implementation aid the analysis of state-society relations in different phases of institutionalization. In reality, these phases are often intertwined.

measure could directly affect them or their environment. Of particular concern are infrastructure or extractive projects that could negatively impact indigenous communities' access to or use of their territories.⁸ Prior consultation is therefore a forum for communication and negotiation among social actors with distinct and conflicting interests: states, corporations, and indigenous communities.⁹ In extractive economies, states and corporations seek project approval to materialize tax revenues and profits. Indigenous communities' interests are more complex, and are often split between those who value the economic benefits of extraction and those worried about environmental impact. To date, fifteen of the twenty-two countries that have ratified the convention are in Latin America. As some of these countries have intensified their dependency on extraction of nonrenewable resources, prior consultation is highly relevant. Moreover, originating as an international norm, prior consultation's institutional design is very similar across countries at the moment of ratification or adoption. But once domestic political dynamics unfold, the strength of this participatory institution varies widely across national contexts. It is this variation we seek to explain.

Our endogenous theory of participation makes three main contributions to the literatures on institutions and participatory democracy. First, we see institutional strengthening as a multiphase, sequential process in which the timing of its constitutive events, both in relation to each other and to their relevant political context, is highly consequential. Political contention between social movements and the state, for example, is necessary at the initial adoption phase of the participatory institution for it to gain institutional strength. But if political contention continues during the regulation and implementation phases of institutionalization, the interactions between social movements and states may significantly undermine institutional strength. The timing of the political incorporation of social movement actors vis-à-vis the type of state and governmental policies through which they are incorporated is also highly consequential, as our empirical analysis illustrates.

Second, we study an institution that has received practically no attention in political science, despite its importance in debates over economic development and articulation of indigenous demands. Existing accounts of prior consultation by anthropologists or legal scholars focus on specific cases, with little comparative analysis of the institutionaliza-

⁸ On ILO delegates' positions, see Rodríguez-Garavito 2011, 282–83; Rodríguez-Piñero 2005, chap. 9.

⁹ For discussion of the conflictual nature of prior consultation, see Rodríguez-Garavito 2011; Riofrancos 2017.

tion of this collective right. Moreover, unlike participatory budgeting and other deliberative institutions studied in the participatory democracy literature, prior consultation directly involves the corporate sector. The fact that *consulta previa* could potentially disrupt strategic extractive projects has important implications for corporate profits, state revenues, and state-society dynamics.

Third, our empirical analysis allows the identification of a causal factor underexplored in scholarship on participatory institutions: the political incorporation of indigenous movements. Our cases show that leftist and/or indigenous parties in government are not enough for the success of participatory institutions.¹⁰ Along with Patrick Heller, we argue that an organic relationship between party and social movement bases is also necessary.¹¹ Furthermore, we isolate the incorporation of the indigenous movement as the determining factor in our cases.

We develop our theory of endogenous participation and define our main variables of interest below. We then discuss our methodology, case selection, and alternative arguments. We undertake a comparative study of two most-similar cases, Bolivia and Ecuador, where prior consultation was adopted through similar processes but subsequently diverged in institutional strength. In the conclusion, we summarize our findings and highlight the methodological and substantive implications of our endogenous theory of participation for the study of participatory institutions and institutional strengthening.

ENDOGENOUS THEORY OF PARTICIPATION: INSTITUTIONAL STRENGTHENING OF PRIOR CONSULTATION

Our endogenous theory of participation builds upon and interrelates two bodies of literature that have remained largely separate: historical institutionalism and participatory democracy. Regarding historical institutionalism, we develop the idea that the effects of participatory institutions must be understood in relation to the process that brings them into being, and we provide empirical evidence that substantiates this claim.¹² We also take up the challenge of studying institutions of varying degrees of strength in recently democratized or transitional contexts.¹³ Moreover, we adapt a classic institutionalist conceptualiza-

¹⁰ On the role of leftist parties in participatory institutions, see Baiocchi 2005, among others. For an analysis of the role of indigenous parties' and innovating mayors in deepening local democratic innovations, see Van Cott 2008.

¹¹ Heller 2001.

¹² Thelen and Mahoney 2015, 26–7.

¹³ Levitsky and Murillo 2009, 123–24.

tion of labor movement incorporation to analyze indigenous movement incorporation, and temporally extend previous findings regarding indigenous mobilization in Bolivia and Ecuador.¹⁴ Applying the comparative sequential method, we identify the causal sequences of events under which prior consultation crystallizes into a legitimate, efficacious, and enforceable institution, or, alternatively, becomes stuck on a path of weak institutionalization.¹⁵ Regarding participatory democracy, we build upon recent literature on participatory institutions that identifies two causal pathways to institutional adoption, with important consequences for subsequent strengthening.

We define *institutional strength*, our dependent variable, as the degree to which institutions (in our case, prior consultation) are legitimate, efficacious, and enforced. Regarding legitimacy and efficacy, we draw on Ana Arjona's recent research on local institutions in contexts of civil war. In Arjona's conceptualization, high-quality institutions are both legitimate and effective, meaning "that most members of the community believe that their institutions are rightful" or fair (an indicator of legitimacy) and "obey the rules" (an indicator of institutional efficacy).¹⁶ Local institutions are legitimate when people in the community approve of the rules in place to resolve conflicts, and they are efficacious when people follow those rules to resolve conflicts.¹⁷

Our third dimension of institutional strength, enforcement, is related to the likelihood of punishment for not following the rules.¹⁸ Because prior consultation is ratified and implemented by the state, we operationalize enforcement as the degree to which the institution is enacted by the state, which should also ensure that all parties comply with the resulting agreements. Enforcement is not solely a function of the state's institutional capacities, but also of its willingness to apply the law and enact the institution.¹⁹

Our definition of institutional strength—entailing high levels of legitimacy, efficacy, and enforcement—brings together insights from various traditions of institutionalism in sociology, economics, and political science that are seldom combined. From the sociological tradition, we take the idea that individuals' internalization of routines or practices perceived as legitimate are at the core of institutional strength.²⁰ Legit-

¹⁴ Collier and Collier 1991; Lucero 2008; Van Cott 2005; Van Cott 2008; Yashar 2005.

¹⁵ Falleti and Mahoney 2015.

¹⁶ Arjona 2015, 183.

¹⁷ Arjona 2016, 130.

¹⁸ For a more extensive definition of enforcement, see Levitsky and Murillo 2009, 117, and fn. 1.

¹⁹ Our operationalization of enforcement excludes state "forbearance" (Holland 2016).

²⁰ E.g., Bourdieu 1984 (in particular, chap. 8), albeit not strictly "institutionalist."

imacy is what keeps an institution in place and enforced once the political interests or coalitions that existed at the moment of its creation are no longer there. From the economics tradition, we borrow the idea that institutions solve conflicts and generate stability by limiting the range of options actors confront.²¹ Efficacious institutions are those that are obeyed by social actors because they provide not only cognitive maps, but also practical shortcuts for social action. Moreover, rational actors can weigh the costs of compliance versus those of violations of institutional norms, and act accordingly. From political science's historical institutionalist tradition, we borrow the idea that a key source of institutional strength is the alignment between the interests of the political coalitions bringing about the institution, on the one hand, and the institution's goals and distributional effects, on the other.²² Due to positive feedback mechanisms, institutions continue to be enforced (and sometimes gradually evolve) after the political coalitions or circumstances in which they originate change. As long as the institution proves legitimate and efficacious, it could continue to be enforced and strengthened even as the originating coalition ages or collapses. In our view, these three dimensions of institutional strength are mutually reinforcing: legitimacy facilitates efficacy, and both of these dimensions ease enforcement. As our empirical case studies demonstrate, this eclectic and comprehensive conceptualization of institutional strength provides analytical leverage for the study of institutional genesis and development.

Below, we highlight the conditions of strengthening in a subset of political institutions largely ignored in the institutionalism literature. We argue that between the stage of adoption of a participatory institution and its institutional strengthening, there is a fundamental intervening process: the political incorporation of the mobilized actors that brought about the institution. Our comparative analysis shows that without political incorporation of the mobilized actors during the stages of regulation and implementation, participatory institutions remain weak. In the case of prior consultation, indigenous movements are the key actors bringing about the demand for its adoption by the state. Beginning in the 1990s, they demanded the ratification of ILO Convention 169, as the corporatist citizenship regime was in crisis in Latin America and, largely due to the implementation of neoliberal reforms, indigenous identities were politicized.²³

²¹ E.g., North 1990.

²² E.g., Pierson 2016.

²³ Indigenous peoples had been politically mobilized previously, but beginning in the early 1990s the scale of indigenous political organization was translocal, even national, and indigenous political parties formed. For an exhaustive analysis of indigenous mobilization during this period, see Yashar 2005.

Ruth Berins Collier and David Collier's comparative historical analysis of the incorporation of the labor movement in eight Latin American countries offers a template to theorize indigenous movement incorporation in the region. We define *indigenous political incorporation* as the sustained and at least partially successful attempt by the state to legitimate and shape an institutionalized indigenous movement.²⁴ As in the case of labor incorporation during the process of indigenous political incorporation, the state plays an innovative role in constructing new institutions of state-indigenous relations and new approaches to articulating the indigenous movement with the party system. Examples of new institutions of state-indigenous relations that evince a process of indigenous political incorporation include prior consultation, indigenous territorial autonomies, the recognition of indigenous languages, indigenous control of bilingual education and development agencies, legal pluralism that recognizes indigenous justice, the recognition of *ayllu* (in the Andes region of South America) or other forms of indigenous communal governance, and the definition of the state as plurinational so as to include the right of self-determination of originary peoples and tribes. In terms of new approaches to articulating the indigenous movement to the party system, examples of indigenous political incorporation include the principle of descriptive representation in the selection of political party candidates to national-level representative positions, and the creation of legislative seats reserved for representatives of ethnic groups.²⁵

Furthermore, methodological innovations in the historical institutionalism literature permit us to distinguish between reactive and self-reinforcing sequences of events. In reactive sequences, early events are followed by backlashes and reversals of direction and a reaction/counter-reaction dynamic between tightly linked events. By contrast, in self-reinforcing sequences, events move consistently in a particular direction and track an outcome over time, such that it becomes increasingly difficult to reverse direction or return to the original starting point.²⁶ The pathway to strong participatory institutions is characterized by a reactive sequence of social mobilization and contentious state-society relations during the adoption phase, and a self-reinforcing sequence during the regulation and implementation phases. Whether the sequence re-

²⁴ Adapted from Collier and Collier 1991, 5, 161–68. See also Bowen 2011, 461–63.

²⁵ This is to say, legally and institutionally, incorporation entails more political transformations than does the process of inclusion (understood as “the presence in decision making of members of historically excluded groups”; see Htun 2016, 4).

²⁶ Mahoney 2000, 512, 526–27.

mains reactive or becomes self-reinforcing depends on whether or not mobilized groups are politically incorporated.

We also build on the literature on participatory democracy, which has identified two causal pathways to the adoption of participatory institutions. First, participatory institutions may result from bottom-up mobilization and demands. In Porto Alegre, Brazil, for instance, participatory budgeting was initially a social movement proposal. It was adopted by the municipal government through a process of contentious interactions between neighborhood associations and the local administration as part of a broader set of institutional reforms centered on the democratization of the state, social justice, and economic redistribution.²⁷ Second, participatory institutions can be imposed from above, absent a demand from civil society, as was largely the case in Peru and Mexico, or result from diffusion of participatory budgeting as a best practice. In this latter path, studies show that participatory institutions do not fundamentally alter state-society relations and remain weakly institutionalized.²⁸

Our endogenous theory of participation advances two hypotheses:

—H1. Mobilized social actors are a necessary, but insufficient, condition for the subsequent institutional strength of participatory institutions.²⁹

—H2. For the participatory institution to gain institutional strength, social movements must be politically incorporated and thus become participants in the process of regulating and implementing the institution.

Figure 1 summarizes our main argument with regard to these two hypotheses and situates our case studies.

The nature of the relevant indigenous movement (H1) and of the relevant political party and the state (H2) matters. In both of our case studies, strong indigenous movements were the product of (1) trans-local ties that linked territorially dispersed and ethnically differentiated indigenous communities in regional and national federations and, (2) concrete threats to territorial autonomy, whether state-led land col-

²⁷ Baiocchi and Ganuza 2015.

²⁸ Among others, see Baiocchi and Ganuza 2015; Goldfrank 2011; Hevia de la Jara and Isunza Vera 2012, 80; McNulty 2011; Zarembek, Isunza Vera, and Gurza Lavealle 2017.

²⁹ We refer here to mobilized social actors that, at a minimum, must acquire national relevance. For instance, in our cases, institutional strengthening was feasible only when the indigenous movement was nationally coordinated and appealed to the central government with its demands. In contrast, we believe there is no maximum or upper limit of social mobilization for institutional creation and strengthening. In political regimes with at least a modicum of accountability, if nationally organized, coordinated, and mobilized social actors are politically incorporated, their claims should find institutional political or policy channels.

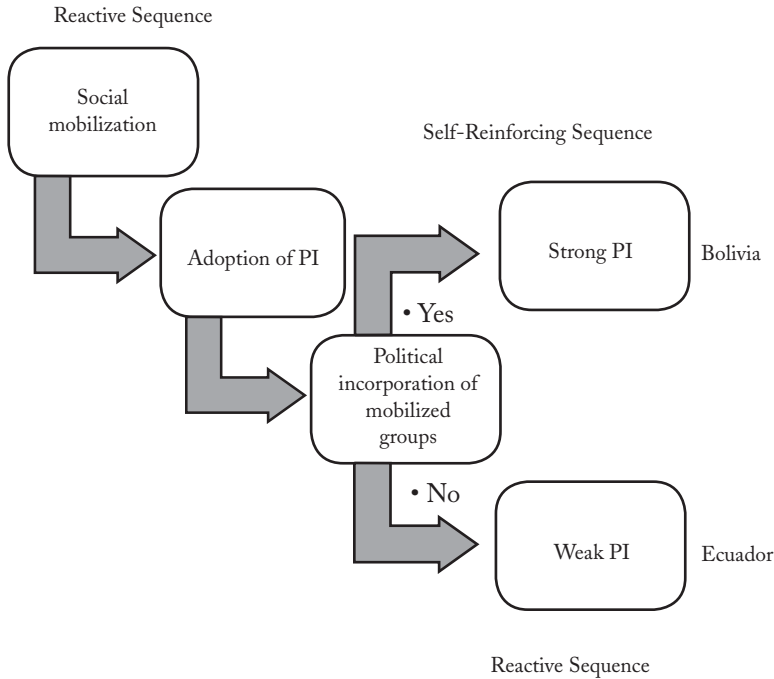


FIGURE 1
THE PROCESS OF CREATION AND INSTITUTIONAL
STRENGTHENING OF PARTICIPATORY INSTITUTIONS

onization or extractive activities.³⁰ Coordinated indigenous movements responding to clear grievances were a necessary condition for the state’s adoption of prior consultation. Our empirical cases show that post-adoption, the type of political party and the type of state matter for the process of indigenous political incorporation, and thus for the institutional strength of prior consultation. Where indigenous movements developed or were included in encompassing political parties that comprised a broad cross-class (labor, peasant, and middle class) and interethnic (indigenous and mestizo [mixed indigenous and European-descendent populations]) coalition, their ability to win elections and occupy state power was enhanced.³¹ This kind of party development occurred in Bolivia, but not in Ecuador. Additionally, the type of state that those movements and their political parties confront is also consequential to the institutional strength of prior consultation. The

³⁰ Brysk 2000; Colloredo-Mansfeld 2009; Lucero 2003; Lucero 2008; Yashar 2005.

³¹ Anria 2013; Madrid 2012; Rice 2011.

strength of this institution requires not only regulatory capacity, but also the political will to intervene in the economy and to mediate interactions between indigenous communities and corporations. This orientation is much more likely in the context of a progressive state than in a neoliberal one.³² In Ecuador, the apex of indigenous coordination and mobilization occurred in the late 1990s in the context of the neoliberal state, which meant that such incorporation was piecemeal and the indigenous movement remained substantively excluded from government and policy-making. In Bolivia, in sharp contrast, the political ascent of the indigenous movement coincided with other political and electoral challenges to the neoliberal state, such that indigenous demands were incorporated into the state (including in new legislation and in the 2009 Constitution) and, with regard to prior consultation, implemented in the subsequent progressive state.³³

METHODOLOGY, CASE SELECTION, AND ALTERNATIVE EXPLANATIONS

The accumulated findings of the scholarship on participatory institutions impart an important methodological lesson. Research designs that randomize the participatory institution suffer from an important shortcoming. In studies employing laboratory, survey, or field experiments, participatory institutions—ranging from village development committees funded by international development aid, to monitoring, and to descriptive representation institutions, such as gender or ethnic quotas—are randomly imposed in subnational localities and their effects studied at the village, household, or individual level.³⁴ These studies isolate the participatory institution (or treatment) as the cause of the observed differences among units of analysis. But by parachuting a participatory institution as a treatment exogenously applied to a randomized population, experimental studies discard the most important causes that account for the participatory institutions' political effects: their political origins and process of institutionalization. Experimental

³²The *progresista* (progressive) states are those ruling on the political left since the inception of the twenty-first century. These governments have emphasized the role of the state in the economy and promoted economic redistribution. See, among others, Bringel and Falero 2016.

³³We thank Oscar Vega Camacho for his related comment on the temporality of indigenous inclusion.

³⁴See, for instance, Beath, Christia, and Enikolopov 2013; Björkman and Svensson 2009; Casey, Glennerster, and Miguel 2012; Chattopadhyay and Duflo 2004; Fearon, Humphreys, and Weinstein 2009; Grossman and Baldassarri 2012; and Humphreys, Sánchez de la Sierra, and van der Windt 2012.

research designs may shed light on the effects of participatory institutions that are imposed from the top down, but they cannot account for the effects of institutions that emerge as the result of social mobilization. We suspect this is the reason why treatment effects in these studies are generally small or statistically insignificant.

We favor a historical institutional theoretical approach and a comparative sequential methodology to study participatory institutions' creation and strength. Our research design entails the in-depth comparison of two most-similar cases to control for alternative causal explanations. Many similarities make Bolivia and Ecuador excellent cases for comparison. They are similar in population size (ten and fifteen million people, respectively). They are upper-middle-income economies highly dependent on commodity exports, especially hydrocarbons, which renders prior consultation strategically important.³⁵ In both countries, indigenous peoples account for large portions of their populations.³⁶ Their indigenous movements, historically based in the highlands and more recently in the Amazon and lowlands, were highly organized by the 1990s.³⁷ Both countries had weakly institutionalized party systems in the 1990s, leveling the a priori chances of party-led indigenous political incorporation.³⁸ And historically, relevant to the issue of institutional enforcement, both have had low levels of state capacity.

Moreover, during the mid-2000s, social movements brought left-wing presidents to power. Presidents Evo Morales (Bolivia) and Rafael Correa (Ecuador) emphasized the importance of popular participation in their political campaigns and presided over sweeping constitutional reforms. As Maristella Svampa writes, Bolivia and Ecuador are “the two countries where the anti-neoliberal social movements of the late 20th and early 21st century were accompanied not only by the emergence of new governments (progressive or popular), but also by constituent processes explicitly aimed at rethinking or reestablishing the social pact.”³⁹ The new constitutions of Bolivia (2009) and Ecuador (2008) are the vanguard in their recognition of plurinationality, collective rights, and the rights of nature. They also articulate an innovative conception of development called “living well,” defined as “access

³⁵ In 2011, commodities represented 86 percent of the total exports of Bolivia and Ecuador, and hydrocarbons over 50 percent of their exports (Campello and Zucco 2014, Appendix B, 5).

³⁶ About 40 percent of the population self-identifies as indigenous in Bolivia and 7 percent does in Ecuador (Htun 2016, 26). But when mestizos are considered in Ecuador, this percentage has been estimated to increase to 30 or 38 percent (Layton and Patrinos 2006, 32; Yashar 2005, 21).

³⁷ Yashar 2005, chapt. 4 and 5.

³⁸ Mainwaring and Scully 1995.

³⁹ Svampa 2017, 13.

and enjoyment of material goods and the effective, subjective, intellectual, and spiritual realization, in harmony with nature and in community with human beings.”⁴⁰ They “summarize the region’s best efforts in favor of indigenous rights.”⁴¹ The collective right to prior consultation is embedded in this new jurisprudence.

Yet, despite these structural and institutional similarities, which scholars identify in alternative arguments of institutional strength, prior consultation shows salient differences in Bolivia and Ecuador. For instance, Steven Levitsky and Victoria Murillo point to political regime instability, electoral volatility, social inequality, institutional borrowing, and rapid institutional design as contributing causes to institutional weakness in Latin America.⁴² But while these conditions characterized both of our national cases, prior consultation was strengthened in Bolivia but not in Ecuador. Moreover, whereas Levitsky and Murillo are most focused on the threat that elite actors—economic, military, or religious—pose to institutional enforcement and stability, we show that the relations between state and grassroots social movements can account for the enforcement of participatory institutions.⁴³

Another set of alternative explanations emerges from the literature on participatory institutions. This scholarship frequently emphasizes that synergy is a prerequisite for the strength and substantive democratic content of institutions that empower citizens to participate in policy-making. For instance, Rebecca Abers defines synergy as a type of state-society relationship in which both parties collaborate, but remain relatively autonomous.⁴⁴ This complementary relationship, she argues, “[promotes] the democratization of both” state and society.⁴⁵ Similarly, Françoise Montambeault’s study of municipal participatory institutions in Brazil and Mexico offers a typology of state-society relations that emphasizes the importance of collective (versus individual) and autonomous (versus controlled) participation on the part of citizens.⁴⁶ In contrast to this work, we believe political incorporation is different from synergy. In our view, indigenous political incorporation takes place on a continuum that may go from synergy on one end to cooptation on the

⁴⁰ *Plan Nacional de Desarrollo: “Bolivia digna, soberana, productiva y democrática para vivir bien,”* 10, cited in Pérez Castellón 2011, 66. See also Republic of Ecuador Secretaria Nacional de Planificación y Desarrollo *Plan Nacional Para el Buen Vivir, 2009–2013*, at <http://www.planificacion.gob.ec/plan-nacional-para-el-buen-vivir-2009-2013/>, accessed September 21, 2017.

⁴¹ Gargarella 2013, 182.

⁴² Levitsky and Murillo 2013, 97–100.

⁴³ Levitsky and Murillo 2009, 122.

⁴⁴ Abers 2000, 12–17.

⁴⁵ Abers 2000, 5.

⁴⁶ Montambeault 2015.

other. Any of these, or other types of political incorporation, may result in institutional strength.

We apply the method of inductive process tracing to identify the key events that constitute the processes of interest in Bolivia and Ecuador—the events leading to the adoption, regulation, and implementation of prior consultation. To control for variation across economic sectors, we focus on prior consultations in the hydrocarbons sector: natural gas in Bolivia and oil in Ecuador.⁴⁷ In both countries, the tension between an extraction-dependent model of accumulation—itsself further entrenched during the recent commodity boom (2000–14)—and the enforcement of indigenous rights makes the case of prior consultation in the hydrocarbons sector a hard test for institutional strengthening.⁴⁸ Our case studies draw on data collected from in-depth, semistructured interviews conducted with state, sectoral, and social movement actors; archival research on the adoption, regulation, and implementation of prior consultation; and secondary literature on the history of indigenous mobilization, political party incorporation, and constitutional reforms.⁴⁹

PROCESS TRACING OF PRIOR CONSULTATION IN BOLIVIA

The introduction of the right to prior consultation in Bolivia was part of a process of institutional transformation that sought to strengthen the participatory component of democracy, largely due to indigenous mobilization. Since the early 1990s, the process of institutionalizing prior consultation changed from a reactive type of sequence (1990 to 2005), to a self-reinforcing sequence (after 2006).

THE CONTENTIOUS ADOPTION OF PRIOR CONSULTATION IN BOLIVIA

From 1990 to 2005, the process of adoption of prior consultation in Bolivia was reactive, characterized by reaction/counterreaction dynamics between neoliberal administrations and indigenous organizations. Affected by neoliberal policies, lowlands indigenous groups, which had

⁴⁷ Prior consultations have not been adopted in the mining sectors. We do not include the consultation process over the construction of a highway in the Territorio Indígena y Parque Nacional Isiboro Sécuré, conflict that is ongoing and would require a separate article.

⁴⁸ For research on the commodity boom, see CEPAL 2010; Cypher 2010; and Sinnott, Nash, and de la Torre 2010. For scholarship on the tension between resource extraction and indigenous rights, see Tockman and Cameron 2014; Escobar 2010; Rodríguez-Garavito 2016; and Svampa 2016, 346–58.

⁴⁹ In Ecuador, fieldwork research was conducted in February–March 2013 and July 2014, and we draw on a longer period of fieldwork from a related project (2011–13). In Bolivia, fieldwork was conducted in March 2014.

been excluded from the corporatist pact resulting from the 1952 revolution, organized in the Confederación Indígena del Oriente, Chaco y Amazonía de Bolivia (CIBOD) and demanded the recognition of international-level indigenous rights, as well as political and economic inclusion.⁵⁰ In response to the CIBOD's 1990 March for Territory and Dignity, in 1991 President Jaime Paz Zamora ratified ILO Convention 169. While ratification of this international norm was important for the recognition of indigenous collective rights, during the 1990s, consultations with indigenous communities happened only sporadically. At the time, prior consultation was weakly institutionalized in Bolivia. For instance, there were no clear rules on when, how, or who was to carry out the consultations. Lacking a regulatory framework, consultations were guided by the ILO convention and Bolivia's 1992 Law No. 1333 on the environment, which contained only one article on prior consultation.⁵¹

Further extensions and amendments to the right of prior consultation followed the heightened social mobilization that occurred during the gas war of October 2003. As a result, President Gonzalo Sánchez de Lozada decreed that natural gas would only be exported with "consultations and debates" (Decree 27210). But protest over "Goni's" neoliberal policies continued, leading to his resignation soon thereafter. When Vice President Carlos Mesa assumed the presidency, he called a national referendum on hydrocarbons, which contained five questions relating to their exploitation and administration by the state. Overwhelmingly, Bolivians favored state ownership of hydrocarbons (92 percent) and the refounding of the national oil company Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) (87 percent). In 2005, Mesa presented a bill on hydrocarbons to congress, but the political context was less than conducive to compromise. The political right, led by the Comité Cívico de Santa Cruz in the Eastern department, demanded more departmental autonomy as a counterbalance to the rising power of the

⁵⁰ The corporatist pact following the 1952 social revolution refers to the alliance between the victorious populist leadership of the Movimiento Nacionalista Revolucionario (MNR) and part of the insurgent popular sectors organized in worker and peasant unions. The post-1952 corporatist regime promoted universal suffrage, greater labor rights, nationalization of industry, and agrarian reform. It incorporated the popular sectors of the Andes and of the Cochabamba valleys, but largely excluded those of the lowlands. The peasantry's incorporation, in fact, was incomplete and imperfect, creating the conditions for the resurgence of ethnic grievances (Rivera Cusicanqui 1990, 104,107–109; Rivera Cusicanqui 2004, 20). During the 1990s, "CIBOD demanded indigenous territory; organizational autonomy to decide the terms of political participation and development; the right to self-government; recognition of customary law and legal pluralism; and the right to cultural survival and development," among other rights (Yashar 2005, 203). Interview with Oscar Vega Camacho, La Paz, Bolivia, March 20, 2014.

⁵¹ Interview with Monica Castro, former employee of the Directorate for Environmental Management, MHE, La Paz, March 21, 2014.

indigenous movement and to safeguard its territorial and economic interests.⁵² The political left, led by Morales and the Movimiento al Socialismo (MAS) and with overwhelming support from self-identified indigenous voters and groups, demanded more state participation in the ownership and administration of natural gas.⁵³ Amidst a new wave of popular protests, Mesa resigned to avoid having to either sign or veto the new hydrocarbons law.⁵⁴ Days later, President of Congress Horlando Vaca Díez signed the law into effect.

Law No. 3058 on hydrocarbons was paramount to the institutionalization of prior consultation in Bolivia and the direct result of reactive/counterreactive dynamics between the government and the indigenous movement. As anthropologist Denise Humphreys Bebbington writes, “This law . . . represented the culmination of years of mobilization, lobbying and negotiation with executive and legislative officials, bringing indigenous lowland groups closer to their goal of effective control over their territories.”⁵⁵ One of the law’s ten titles was explicitly devoted to “the rights of the peasant indigenous and original peoples” (Title VII). The law directly invoked ILO Convention 169 and legislated that a mandatory process of consultation of indigenous communities must take place prior to the implementation of any hydrocarbons exploitation project. Not only was the process of prior consultation mandatory, but the “decisions resulting from this process of consultation ought to be respected.” (Article 115). The law also specified the ministries of hydrocarbons, sustainable development, and indigenous affairs and primary peoples as jointly responsible for implementing the consultation with funding from the presidency (Article 117).⁵⁶

It is noteworthy that neither the MAS proposal nor President Mesa’s original bill included such a lengthy section on prior consultation.⁵⁷

⁵² By indigenous movement, we mean the coordinated political action of various indigenous organizations, of which the most salient in Bolivia are CIDOB, which groups the indigenous communities of the lowlands, and Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ), which groups the indigenous communities of the highlands.

⁵³ Giusti-Rodríguez 2017.

⁵⁴ Interviews with Carlos Mesa, president of Bolivia from 2003–5, La Paz, March 21, 2014, and in Philadelphia, Pa., September 12, 2014.

⁵⁵ Humphreys Bebbington 2012, 59.

⁵⁶ This funding scheme changed in 2007.

⁵⁷ Mesa’s proposal mentioned that in indigenous communal lands (Tierras Comunitarias de Origen, or TCO), a process of consultation with indigenous communities would be mandatory prior to the study of environmental impact. It was a short, one-sentence paragraph within the environmental monitoring article, toward the end of the bill (Bolivia. Presidencia de la República. Proyecto de Ley de Hidrocarburos, Art. 107, 37, September 6, 2004). Similarly, the mas proposal included one sentence indicating that ILO Convention 169 would have to be complied with when hydrocarbons activities involved TCOs (Bancada Parlamentaria MAS-IPSP, Proyecto de Ley de Hidrocarburos, Art. 62, transcribed in CEJIS 2004,139).

Instead, a proposal to legislate on the consultation of indigenous communities and peoples was elaborated by the Centro de Estudios Jurídicos e Investigación Social (CEJIS), a nongovernmental organization that worked closely with the five major national indigenous organizations grouped in the Pacto de Unidad.⁵⁸ In fact, ten days after Law No. 3058 was approved, the Pacto de Unidad presented a letter to the president of congress requesting, among other changes, that the consultation process would be “binding.”⁵⁹ Although no such reform was made, the demands of the organized indigenous movement reflect its degree of political capacity and coordination just before Morales and the MAS assumed the presidency.

INDIGENOUS POLITICAL INCORPORATION AND INSTITUTIONAL STRENGTHENING OF PRIOR CONSULTATION IN BOLIVIA

After the MAS became the party in power in 2006 and until 2009, the process of institutionalization of prior consultation became self-reinforcing, as the government largely supported the demands of the indigenous movement, which constituted the core of its social base and part of its leadership.⁶⁰ The MAS is a movement party that emerged out of peasant and *cocalero* (coca growers) mobilization, and expanded in the wake of the water and gas wars of the early 2000s.⁶¹ It represented a primarily indigenous constituency but, as Santiago Anria demonstrates, the political success of the party rested on the formation of a broad coalition with multiple territorial, class, and ethnic bases.⁶² In contrast to Ecuador’s Pachakutik party, the MAS was not a strictly indigenous party, but rather incorporated and represented the demands of indigenous movements. As Raúl Madrid writes in his comparative study of ethnic parties in the Andes, the MAS facilitated indigenous political incorporation in four ways: “First, the MAS has established close ties with a vast number of indigenous organizations in the country. Second, the MAS has run numerous indigenous candidates, including for high-profile positions. Third, the MAS has made a variety of symbolic appeals

⁵⁸ The Pacto de Unidad del Movimiento Indígena Originario, Campesino, Colonizadores y sin Tierra, de las Tierras Altas y Bajas grouped the CONAMAQ, CIDOB, Confederación Nacional de Mujeres Campesinas Indígenas Originarias de Bolivia – Bartolina Sisa (CMCIOB “BS”), Confederación Sindical de Comunidades Interculturales originarios de Bolivia (CSCIB), and Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB), and represented a wide array of indigenous peoples (CEJIS 2004, 189–206).

⁵⁹ Pacto de Unidad. Proyecto de Modificatoria a la Ley No. 3058, Ley de Hidrocarburos. May 27, 2005. Consulted in the Central Archive of Bolivia’s National Congress.

⁶⁰ Anria 2013; Madrid 2012, 50–58; Schavelzon 2012.

⁶¹ Anria 2013, 23–8.

⁶² Anria 2013; see also Madrid 2012; Rice 2011, 180–88; and Van Cott 2005.

to Bolivia's indigenous population. Fourth and finally, the MAS has aggressively promoted traditional indigenous demands."⁶³ Therefore, after 2006, the indigenous movement was meaningfully represented in state institutions such as the national executive, the senate, the deputies' chamber, and the constitutional assembly. By 2011, 25 percent of Bolivia's deputies and 16 percent of its senators were indigenous—whereas in Ecuador, by 2013, only 5 percent of congressional representatives were indigenous.⁶⁴

When the constitutional assembly was in session from 2006 to 2009, the MAS controlled 137 of the 255 seats.⁶⁵ The indigenous sectors of the party successfully pushed for the adoption of radical legal innovations, including the identification of a new social subject, the “indigenous original peasant peoples and nations”; the definition of Bolivia as a plurinational state; the adoption of living well; the recognition of Mother Earth's rights; and the right of indigenous peoples and nations to prior consultation with regard to the exploitation of nonrenewable natural resources in their territories.⁶⁶ Moreover, the resulting (2009) Constitution recognizes the collective right of indigenous peoples and nations to self-government, listing their rights and responsibilities alongside those of the national and subnational governments.

Because the indigenous movement was included in the Morales government and represented in the constitutional assembly, where its demands were largely adopted, prior consultation gained institutional strength.⁶⁷ Since 2007, the Bolivian state has conducted consultations in indigenous territories on a regular basis. The hydrocarbons law and three regulatory decrees provided the legal framework that was needed for it.⁶⁸ The process of prior consultation occurs in four stages (convocation, planning, execution, and validation), each of which concludes with the signing of a document (*acta*).⁶⁹ In this process, the extractive

⁶³ Madrid 2012, 53.

⁶⁴ Htun 2016, 35.

⁶⁵ Madrid 2012, 52.

⁶⁶ Bolivian Constitution of 2009, Art. 11; Art. 30, II.15; Art. 304, I. 21; Art. 403; see also Schavelzon 2012.

⁶⁷ Indigenous organizations have split over their support of Evo Morales. By 2014, the main indigenous organizations, CIDOB and CONAMAQ, were divided between officialist and opposition factions. These divisions transpired at the local level where, in the 2015 departmental and local elections, indigenous groups supported or led the local political opposition to the MAS (see Associated Press, “Revolt from Indigenous Base Challenges Bolivia's Morales,” *Indianexpress.com*, May 21, 2015, at <http://indianexpress.com/article/world/americas/revolt-from-indigenous-base-challenges-bolivas-morales/>).

⁶⁸ Decrees 29033 and 29124 (2007) and 29574 (2008) established that consultations ought to be financed by the hydrocarbons corporations (instead of the national executive, as per the hydrocarbons law) and cannot last longer than two months (with one extra month for compliance with the terms of the consultation).

⁶⁹ Conversation with Xavier Barriga, director of environmental management, MHE, La Paz, March 20, 2014; <https://www.slideshare.net/FTIERRA2010/omar-quiroya>, accessed March 20, 2017.

company agrees to pay indigenous communities for any damage that will be caused to their environment. Between 2007 and 2017, the Ministry of Hydrocarbons and Energy (MHE) led fifty-eight consultations prior to the extraction of gas in territories of indigenous original nations and peasant communities (see Table 1 in the supplementary material).⁷⁰ The available information on these processes is incomplete, but government documents, news media, case studies, and interviews indicate they involved contracts with a handful of large corporations, including the nationalized YPFB and its subsidiaries.⁷¹ In all cases, the communities approved the extraction of natural resources; only one case was brought before the constitutional tribunal.⁷² The size of the projects, the amount of compensation that the communities receive, and the input they have on the extractive projects and required environmental licenses vary from case to case. In some cases, such as in Charaguá Norte, where the indigenous community was well organized, had trained environmental observers, and was supported by environmental or legal NGOs (such as CEJIS), meaningful discussions and input were achieved through prior consultation.⁷³

In an interesting turn of events, a framework law of prior consultation, an explicit demand of the indigenous organizations of the Pacto de Unidad, was debated in congress in 2014, but due to opposition from the mining sector, it was not approved. In addition, in 2015 a significant decline in the price of hydrocarbons led the national government to pass four regulatory decrees aimed at circumventing prior consultation.⁷⁴ President Morales asserted, “We shouldn’t be wasting so much time in the so-called consultations. This is the big weakness of our State.”⁷⁵ Despite the president’s reluctance to enforce the institution and the seemingly crippling decrees, prior consultations continued to be carried out throughout the country. Between 2014 and early 2017, at least fifteen consultations were under way (see Table 1 in the sup-

⁷⁰ Falletti and Riofrancos 2017.

⁷¹ For excellent case studies of consultation processes in the hydrocarbons sector, see Bascopé Sanjinés 2010; Flemmer and Schilling-Vacaflor 2016 (on limitations of indigenous participation); Humphreys Bebbington 2012; Pellegrini and Ribera Arismendi 2012; and Schilling-Vacaflor 2012.

⁷² This was the case of the Asamblea del Pueblo Guaraní (APG) of Itika Guasu against the Argentine company, Repsol, in the fields of Margarita (Tarija), cited in Pérez Castellón 2013, 15–16.

⁷³ de la Riva Miranda 2011, 40–56.

⁷⁴ Decrees 2195, 2298, 2368, and 2366 (2015) limit the amount of time of the consultation; set the maximum compensation for environmental damages (from 0.3 percent to 1.5 percent of total investment); declare hydrocarbon pipes to be of national interest; and allow—most controversially—for extraction in national parks. Indigenous organizations mobilized against these decrees and demanded prior consultation in nationally protected areas.

⁷⁵ “No es posible que en las llamadas consultas se pierda tanto tiempo, esa es la gran debilidad que tiene nuestro Estado.” Quote from *Página Siete* (La Paz), “Nueve consultas a pueblos indígenas terminaron con la aprobación de proyectos petroleros,” July 26, 2016.

plementary material).⁷⁶ Furthermore, the compensation that gas corporations pay to communities has been invested in social development projects, such as schools, health clinics, and infrastructure for the affected communities. Indigenous organizations such as Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) and Asamblea del Pueblo Guarani (APG) continue to press for the enactment of a national prior consultation law and the extension of prior consultation to non-indigenous communities. In their eyes, the institution of prior consultation is a legitimate right of indigenous communities and all those whose environments are affected by extractive projects.⁷⁷

Despite the structural asymmetry between corporations and communities, prior consultation has provided indigenous communities in Bolivia with a normal politics means of interacting with the state and the extractive corporations. Prior consultation is therefore a substantive and recurrent institution for the participation of indigenous communities affected by the extraction of natural gas in Bolivia. It has replaced the contentiousness that characterized the relationship between state and indigenous movements throughout the 1990s and early 2000s. It has become legitimate in the eyes of the indigenous communities that demand its extension to other communities and to protected natural areas. It is efficacious because the negotiating parties follow through on the resulting agreements. And it is enforced by the state, which, with the reluctant support of high-level officials, does not allow gas extraction or, more recently, gas exploration, without prior consultation.

PROCESS TRACING OF PRIOR CONSULTATION IN ECUADOR

In Ecuador, the right to prior consultation has been more prominently caught in the friction between expansion of the extractive frontier and legal recognition of new participatory institutions. Indigenous mobilization accounted for both the initial adoption of this right and subsequent reforms.⁷⁸ But the state has limited the substance of prior consultation, rendering the institution illegitimate and ineffective. Weak enforcement has further impeded institutionalization. From 1997 to the present, the trajectory of institutionalization has evinced a reactive se-

⁷⁶ Falleti and Riofrancos 2017.

⁷⁷ Interview with Renán Paco Granier, leader CONAMAQ, La Paz, March 19, 2014.

⁷⁸ Of the many indigenous organizations in Ecuador, we focus on the national federation (the CONAIE) and its regional subfederations (especially ECUARUNARI), which are historically the most politically relevant and geographically encompassing (Lucero 2003). At its zenith, the CONAIE was considered one of the continent's strongest social movements, indigenous or otherwise (Brysk 2000; Silva 2009; Yashar 2005).

quence of contention between the state and social movements. Despite this continuity, the level of contention and the relative strength of state and movement actors have varied, resulting in three distinct phases in the process of institutionalization.

THE CONTENTIOUS ADOPTION OF PRIOR CONSULTATION IN ECUADOR

In Ecuador, the ratification of ILO Convention 169 in 1998 was a product of the political power of the indigenous movement, particularly the national federation Confederación de Nacionalidades Indígenas del Ecuador (CONAIE) and its political party Pachakutik. The movement burst onto the political scene in May 1990 with its first national uprising. It presented a sixteen-point program comprising ethnic and class demands, including the declaration of Ecuador as a plurinational state, the recognition of indigenous land rights, and a consumer price freeze.⁷⁹ In 1992, the Amazonian Kichwa organization, Organización de Pueblos Indígenas de Pastaza (OPIP), marched to Quito to demand recognition of indigenous territory.⁸⁰ In June 1994, the CONAIE, along with other indigenous groups, organized a two-week mobilization against neoliberal agricultural reform.⁸¹ That same year, the CONAIE published a political program calling for a new constitution and ratification of ILO Convention 169.⁸² In the mid-1990s, oil-related conflict in the Amazon intensified, and natural resource and territorial politics became central to the indigenous movement.⁸³ In the province of Pastaza, OPIP was embroiled in a nearly decade-long conflict with the oil company Arco-Oriente, during which it invoked ILO Convention 169 (prior to its ratification).⁸⁴

A historic demand of the indigenous movement was realized with the convocation of a constituent assembly in 1997. The assembly was a product of a legitimacy crisis in which the CONAIE and other social movements played a key role, mobilizing the massive protests that forced President Abdalá Bucaram to resign.⁸⁵ The constituent assembly presented an opportunity to push for ratification of ILO Convention 169, which gained momentum from the support of ex-President Osvaldo Hurtado, who was then assembly president, and from the work of

⁷⁹ Yashar 2005, 144–46.

⁸⁰ For OPIP's understanding of territory, see Sawyer 2004, 83–4.

⁸¹ Andolina 1994; Sawyer 2004, chap. 5.

⁸² CONAIE 1994, 17, 20.

⁸³ The eighth and ninth rounds of oil tender were held in 1995 and 2001.

⁸⁴ Fontaine 2004; Hurtado, Vargas, and Chávez 2011, 107.

⁸⁵ Andolina 2003.

Pachakutik congressional representatives.⁸⁶ The convention was ratified three weeks before the assembly finished drafting the new Constitution. The 1998 Constitution guaranteed two distinct rights to consultation: one for indigenous and Afro-Ecuadorian peoples (Article 84), and the other for all communities relating to the environment (Article 88).⁸⁷

LACK OF INDIGENOUS POLITICAL INCORPORATION IN THE ECUADORIAN STATE

In response to oil-related conflict in the Amazon, in 2002 President Gustavo Noboa signed Decree 3401, which regulated the first consultation process in Ecuador. It recognized prior consultation as a collective right of indigenous peoples and included indigenous federations as overseers of the process (articles 13, 21, 40). But it established a technocratic vision of participation: only “technically and economically viable, and legally appropriate” opinions “will be considered in decision-making” (Article 31). Between August and December 2003, 263 Kichwa communities were consulted regarding oil extraction in two blocks in the northern Amazonian province of Napo.⁸⁸ Despite a questionable process (for example, information was available in Spanish only and not in Kichwa), 236 of these communities pronounced themselves for a “conditional yes,” and the project was approved.

This period was marked by the declining capacity and legitimacy of the indigenous movement. After a meteoric trajectory from 1990 to 2000, indigenous organizations in Ecuador—especially the CONAIE and Pachakutik—suffered politically due to their participation in 2000 in the short-lived military coup that unseated President Noboa.⁸⁹ This decline was exacerbated by the groups’ initial support of President Lucío Gutiérrez (2003–5), who betrayed his campaign promises by embracing neoliberal reforms to satisfy IMF loan conditions and co-opting several indigenous leaders. The decline was reflected in electoral performance. After peaking at national and subnational levels in the 2000 elections, in contrast to Bolivia’s MAS, Pachakutik had difficulty holding onto mayoralties and expanding its constituency.⁹⁰

⁸⁶ Van Cott 1998.

⁸⁷ Article 84 guarantees that indigenous peoples “be consulted about plans and programs of exploration and exploitation of nonrenewable resources found in their lands and that can affect them environmentally or culturally; to participate in the benefits that these projects generate, as soon as possible, and receive compensation for the socio-environmental damages they cause them.” Article 88 states, “All state decisions that can affect the environment must have previously had the opinions of the community, for which it will be duly informed. The law guarantees its participation.”

⁸⁸ Hurtado, Vargas, and Chávez 2011, 112–13; García Serrano 2012, 4–5.

⁸⁹ Silva 2009, 190–91.

⁹⁰ Rice 2011, 180–83.

The contentious cycle that began in April 2005, known as the rebellion of the *forajidos* (outlaws), was the first major protest since 1990 that was not led by the indigenous movement. President Rafael Correa (2007–17) was elected in 2006 riding this wave. The inauguration of a leftist president and the convening of another constituent assembly—as demanded by the CONAIE and other social movements—transformed the political context and posed a challenge for indigenous organizations.⁹¹ Although Pachakutik had initially considered sharing a ballot with Correa and the CONAIE supported him in the runoff against a conservative candidate, Correa's victory reinforced Pachakutik's electoral decline (its candidate for president garnered only 2 percent of the vote), further excluding indigenous groups from the halls of power.⁹² Simultaneously, the Correa administration pursued a resource-intensive development model, seeking investment in the new sector of large-scale mining and the untapped oil reserves of the southern Amazon. Indigenous movements resumed the project of securing the substantive enforcement of prior consultation. The result was a newly reactive sequence of state/movement relations, and a new phase in the institutionalization of prior consultation.

RENEWED CONTENTION AND WEAK INSTITUTIONALIZATION

In November 2007, one hundred thirty popularly elected delegates convened to rewrite Ecuador's Constitution.⁹³ Although the indigenous movement had demanded a new constitution and the text incorporated the Kichwa concept of *sumak kawsay* (or living well) and many new collective rights, the 2007–8 constituent assembly exacerbated the polarization between indigenous organizations and Correa's party, Alianza País.

On April 29, 2008, the Natural Resources and Biodiversity Committee presented the assembly plenary with a majority proposal (prior consultation) and a minority proposal (prior consent). The proposals were linked to support for resource extraction and opposition to an extractive model of development, respectively.⁹⁴ After debate and with executive lobbying against the consent proposal, the majority proposal for prior consultation was approved. But prior consultation remained a source

⁹¹ Chuji, Barraondo, and Dávalos 2010; Ramírez Gallegos 2010.

⁹² Becker 2010, chap. 6; Rice 2011.

⁹³ On April 15, 2007, there was a popular referendum on whether to rewrite the Constitution; 86.79 percent voted in favor. Elections were held on September 30, 2007. Alianza País won 80 out of 130 seats.

⁹⁴ Asamblea Constituyente, Acta 40, April 29, 2008. Consulted in the Archive of Ecuador's National Assembly.

of conflict: the indigenous movement and its allies mobilized to demand more substantive enforcement, provoking counterreactions from the executive.

The 2008 Ecuadorian Constitution guarantees the two distinct rights of consultation included in the 1998 Constitution, albeit with some innovations. Regarding the collective rights of indigenous and Afro-Ecuadorian peoples, Article 57 guarantees the right to “prior, free and informed consultation, within a reasonable period, about plans and programs of exploration, exploitation and commercialization of non-renewable resources that are found in their lands and that can affect them environmentally or culturally . . . If the consent of the consulted community is not obtained, the Constitution and the law will be upheld.” The second right, to environmental consultation, states that all communities must be consulted about any “state decision or authorization that can affect the environment” and will be “thoroughly and opportunely informed” (Article 398). Compared to earlier legislation, it clarifies that the “consulting subject is the State,” not the concession holder. In addition, in the case of a “majority opposition” to the project, “the decision as to whether to execute the project or not will be adopted by duly justified resolution by the relevant authority”—either the Ministry of Environment or the Ministry of Nonrenewable Resources.

However, on April 22, 2008, while the constituent assembly was still debating prior consultation, President Correa promulgated Executive Decree 1040 to regulate “mechanisms of social participation” in state decisions affecting the environment. The word “consult” appears nowhere in the decree. It prioritizes the provision of information by the state and the “promoter” of the project, and the exclusion of citizens’ opinions that fail to meet the criteria of “technical and economic viability.” It appears that Decree 1040 was an executive reaction against the more progressive language contained in the soon-to-be ratified constitution.

Despite its violation of the Constitution, Ecuadorian officials continued to rely on Decree 1040 for “social participation” processes, and defined prior consultation as an “information session” rather than an exercise of collective rights. The redefinition of consultation as the provision of information emerged in interviews with key informants and in the documentation of the social participation processes around oil activity in the northern Amazon.⁹⁵ Since these processes are required

⁹⁵ Interviews with David Cordero, coordinator of the Human Rights Center at the Catholic University of Quito and former human rights lawyer, Quito, Ecuador, August 5, 2014; and Rodrigo Varela, functionary at the Ecuadorian Office of the Ombudsman in the area of collective rights, Quito, Ecuador, August 4, 2014. Author communication with Amelia Fiske, April 24, 2014 (see also, Fernández 2011, 69; Fiske 2013).

for the approval of environmental impact assessments, companies must conduct them for each project phase. One expert characterized them as a mere formality.⁹⁶ Furthermore, since private oil companies organize them, information about the content of such processes is very limited.⁹⁷

The technocratic interpretation of prior consultation contributed to the institution's low level of legitimacy among indigenous groups and its weak institutionalization.⁹⁸ The indigenous movement and environmental groups such as Acción Ecológica saw the administration's commitment to intensifying resource extraction as a threat to new constitutional rights. In November 2010, CONAIE officially broke with the administration, stating its rejection of the extractive model of development and the "ethnocide" it causes, and of the criminalization of indigenous and environmental activists during anti-extractive protests.⁹⁹ The relationship between the state and these social movement groups remained reactive, undermining prior consultation's legitimacy and efficacy, and thus its ability to gain institutional strength.

Conflict over prior consultation reignited in the summer of 2012, when the Secretary of Hydrocarbons (SHE) and the Ministry of Environment (MAE) initiated a consultation process in advance of the 11th Round of Oil Tender, which aimed to expand oil extraction to the untapped reserves of the four southern Amazonian provinces. Contention centered on Executive Decree 1247, issued in July 2012 to regulate the consultation of indigenous communities prior to the tender of oil blocks. Notably, the decree was emitted one week before the Inter-American Court of Human Rights issued its decision in the case of *Sarayaku v. Ecuador*, ruling in favor of the Amazonian Kichwa community for the Ecuadorian state's failure to consult it prior to the Argentinian Compañía General de Combustibles exploring for oil in its territory.¹⁰⁰ The Sarayaku people had appealed to the international actor due to the state's historic lack of enforcement of prior consultation. Although this successful legal challenge centered on events prior to Correa's presidency, the trend of weak institutionalization of prior consultation continued under his administration.

⁹⁶ Interview with Cordero, August 5, 2014; Fiske 2013.

⁹⁷ Interview with Varela, August 4, 2014. In our fieldwork experience, the Ministry of Environment either did not have records of these processes or was unwilling to share them.

⁹⁸ According to the Constitution (Article 133), rights must be regulated by ordinary law (*leyes orgánicas*), not by decree. In its 2012 *Sarayaku v. Ecuador* decision, discussed below, the Inter-American Court of Human Rights ruled that Ecuador must write such a law. As of March 2017, the National Assembly had yet to do so.

⁹⁹ CONAIE 2010.

¹⁰⁰ The oil concession was granted in 1996; the Sarayaku brought their case before the court in 2003.

There are similarities between decrees 1040 and 1247, both signed by Correa. Both evince the technocratic approach to participation that has undermined the legitimacy and effectiveness of the institution. But in contrast to Decree 1040, Decree 1247 uses the constitutional language of consultation. In addition, perhaps in response to indigenous groups' grievances, there is no role for private companies in the latter decree. It regulates the pre-bidding process, prior to concession. The most important innovation in it is the requirement that consultations generate investment agreements with affected communities in areas such as health, education, and housing. According to bureaucrats and academics interviewed, these agreements are modeled on the practice of compensation agreements between oil companies and communities.¹⁰¹ The decree is explicit about the political intent: investment will "motivate the participation of communities" (Article 16).

However, enforcement of Decree 1247 was very limited: only 15 percent of the affected indigenous population was consulted.¹⁰² Additional factors undermined institutional strength. According to an MAE official involved in the consultations, communities with established decision-making practices (primarily of the Kichwa nation) came to consensus over oil extraction and investment needs.¹⁰³ But the official admitted "errors": insufficient translators, rushed consultations, and "very deficient" information. He recounted that in four [out of thirteen] oil blocks, communities rejected the projects. Throughout the process, indigenous leaders and community members criticized what they referred to as "so-called" consultations for presenting insufficient information, involving economic "blackmail" (the investment agreements), and dividing communities.¹⁰⁴ Prominent state actors accused these activists of spreading disinformation and of not representing communities.¹⁰⁵ The

¹⁰¹ Interviews with Cordero, August 5, 2014, and Varela, August 4, 2014. See also, Cisneros 2012. It is uncertain how much of this investment will materialize; the SHE twice extended the deadline for bid offers due to lack of investor interest.

¹⁰² Mazabanda 2013. According to Mazabanda, consultation took place only in the thirteen blocks that were on offer to foreign companies in this first phase of tender, and not in the three blocks granted to the state-owned company Petroamazonas or in the five blocks intended to be on offer at a future date. For SHE's announcement of the tender and consultations, see <http://www.hidrocarburos.gob.ec/trece-bloques-petroleros-de-la-ronda-suroriente-saldran-a-licitacion-el-28-de-noviembre/>, accessed September 19, 2017. In total, 10,469 community members were consulted in thirty-seven public hearings and thirty-two general assemblies.

¹⁰³ Interview with an MAE bureaucrat, who requested anonymity, Quito, Ecuador, March 7, 2013.

¹⁰⁴ *Servindi* (Lima), "Nación Sapara denuncia intromisión en sus territorios de la secretaría de Hidrocarburos," August 14, 2012; CONAIE, "Indígenas amazónicos se oponen a la XI Ronda Petrolera. No vale la pena y debe suspenderse de inmediato," December 4, 2012, at http://www.biodiversidadla.org/index.php/layout/set/print/Principal/Secciones/Noticias/Ecuador_indigenas_amazonicos_se_oponen_XI_Ronda_Petrolera, accessed September 20, 2017.

¹⁰⁵ *El Universo* (Guayaquil), "Ministro Pástor afirma que sí hicieron consulta previa a licitación petrolera," December 15, 2012.

lack of agreement between social and state actors evinces the institution's lack of legitimacy. On November 28, 2012, hundreds of protesters from indigenous and allied organizations gathered in opposition to the consultation process and oil extraction and rallied outside the Marriot Hotel in Quito, where the Minister of Nonrenewable Resources inaugurated the 11th Round of Oil Tender at an industry convention.¹⁰⁶ Between 2012 and 2013, fifteen indigenous organizations and their base communities issued statements in opposition to the consultation process.¹⁰⁷ Relatedly, in November and December 2013, the SHE and MAE organized consultations for planned oil extraction in block 43 of Yasuní National Park, using Decree 1247, which provoked similar grievances on the part of indigenous and environmentalist groups.¹⁰⁸

To conclude, although the relationship between the state and social movements continues to evolve, the institutionalization of prior consultation remains reactive. In Ecuador, prior consultation is weakly institutionalized: it is illegitimate in the eyes of key social actors, ineffective, and unevenly enforced by the state.

CONCLUSION

By conjoining scholarship on participatory institutions and historical institutionalism, our study of prior consultation enriches both areas of inquiry. Regarding scholarship on participatory institutions, we demonstrate that scaling up analysis to the national political arena, and in particular to the processes of national mobilization and political incorporation of grassroots groups, accounts for these institutions' varying levels of strength. Regarding historical institutionalism, we reveal the dynamics of institutions whose purpose is to involve affected communities in the policy-making process. We show that participatory institutions only become strong when they are created by mobilized sectors that are subsequently incorporated into the state that implements and enforces these institutions.

¹⁰⁶ *Amazon Watch*, "Indigenous Protests Grow as Ecuador Auctions Amazon Oil Blocks," November 28, 2012, at <http://amazonwatch.org/news/2012/1128-indigenous-protests-grow-as-ecuador-auctions-amazon-oil-blocks>, accessed September 20, 2017.

¹⁰⁷ Report prepared by a coalition of indigenous and human rights groups for the UN's Universal Periodic Review of human rights in Ecuador, at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3996&file=CoverPage>, accessed September 20, 2017.

¹⁰⁸ *La Hora* (Quito), "Los pueblos indígenas no creen en la consulta previa," October 31, 2013, and *El Comercio* (Quito), "La sentencia en el caso Sarayaku, ¿un precedente para el Yasuní?" October 14, 2014. For official accounts, see www.consultaprevia.gob.ec, accessed June 9, 2015, and the state-owned media report *El Ciudadano*, "1817 ciudadanos participan en la Consulta Previa del Bloque 43 ITT," October 18, 2014, at <http://www.elciudadano.gob.ec/1-817-ciudadanos-participan-en-la-consulta-previa-del-bloque-43-itt/>, accessed September 20, 2017.

In Bolivia and Ecuador, prior consultation was a source of social conflict in the initial adoption phase, but the processes of institutionalization subsequently diverged. In Bolivia, against the backdrop of a neoliberal state, the MAS was formed as a social movement organization of peasants and coca growers that later developed a national strategy and forged links with indigenous movement leaders. When the party won the presidency in 2006, the indigenous movement was incorporated in the national state and participated actively in the process of regulating and implementing prior consultation. Such inclusion meant high levels of legitimacy, efficacy, and enforcement of prior consultation in the gas sector, even after the commodity boom ended.

In Ecuador, no political party was able to interface with bottom-up indigenous social movement demands. Pachakutik, the indigenous party, had short-lived electoral success and was politically marginalized by the Correa administration.¹⁰⁹ Meanwhile, Correa's party, Alianza País, was not organically or organizationally tied to the sectors mobilized in defense of prior consultation. The oppositional relationship between indigenous movements and Correa's leftist administration continued to spark conflict over the regulation and implementation of prior consultation. In Ecuador, indigenous activists rely on protest, rather than prior consultation, to express their grievances over the environmental, sociocultural, and economic effects of hydrocarbons extraction.

Our cases also strongly demonstrate that the timing of political incorporation is consequential for its effect on the strengthening of participatory institutions. In Ecuador, Pachakutik achieved maximum electoral strength in the context of the neoliberal state in the late 1990s. Its levels of capacity and support declined in the following decade. Under Correa, the Ecuadorian progressive state did not have to incorporate the indigenous movement to be politically or electorally viable. Alianza País could win without the support of Pachakutik (which was further weakened by Correa's electoral success) or the CONAIE, and did not incorporate the indigenous movement into its ruling coalition. By contrast, in Bolivia the MAS broadened its coalition and maintained its electoral strength by building a coalition with multiple territorial, class, and ethnic bases. In terms of timing, the ascension of the MAS coincided with the crisis of the neoliberal state and the crystallization of the progressive state, which could organically incorporate indigenous movement demands.

These important institutionalization differences notwithstanding,

¹⁰⁹ Madrid 2012; Rice 2011.

we must recognize that in both Andean countries, prior consultation is set against the backdrop of the geographic expansion of natural resource extraction. Both national economies changed dramatically in the 2000s. The commodity boom deepened economic dependency on the extraction of natural resources. In Bolivia, despite the economic and political pressures in favor of resource extraction, prior consultation has achieved such high degree of legitimacy among indigenous communities that it has proven very difficult for the Morales government to reverse or roll back the institution. More generally, our study shows that institutions born in grassroots mobilization and strengthened through political incorporation can endure in the face of changing preferences of powerful political actors.

Our comparative study thus demonstrates that political incorporation of the social actors who give birth to the participatory institutions is essential to institutional strengthening. The implications of our argument are both methodological and substantive in nature.

Methodologically, our article highlights the limitations of studying the effects of participatory institutions that are parachuted into new contexts. By studying the effects of externally imposed participatory institutions, randomized control trial research designs eliminate the endogenous causes that are consequential to the institutions' effects. This important oversight may indeed explain the small or statistically insignificant treatment effects that such studies report. As we argue, effective participatory institutions are the result of endogenous social mobilization. We also demonstrate the utility of a sequential analysis, which reveals that the timing of events in relation to their politically relevant context is causally consequential.

Substantively, we offer an original conceptualization and explanation of institutional strength that is portable to other contexts. In democratic or political regimes with at least a moderate level of political accountability—an important scope condition of our argument—we expect our endogenous theory of participation to apply to participatory institutions where the social actors mobilized in favor of their creation can be identified and their degree of subsequent political incorporation observed in the processes of regulation and implementation of the institution. Our expectation is that when those sectors are politically incorporated, either via state institutions or through a competitive political party system, the participatory institutions they help bring about will gain legitimacy, efficacy, and enforcement. Otherwise, the participatory institution will either die in the letter of the law—a mere parchment institution—or fuel further conflict between state and social actors. The

success of participatory institutions—their institutional strength and potential democratizing effects—is inextricable from the political incorporation of the social movement actors that pushed forward their adoption.

SUPPLEMENTARY MATERIAL

Supplementary material for this article can be found at <https://doi.org/10.1017/S004388711700020X>.

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