

Constitutional Recognition of Indigenous Peoples in New Zealand and Ecuador

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Introduction and analytical framework

This chapter provides an analytical framework for comparative analysis of constitutional recognition of Indigenous Peoples. Specifically, the chapter looks at this process in the context of New Zealand, a jurisdiction that shares a similar colonial heritage with Australia (and Ecuador, a jurisdiction at the forefront of plurinational constitutional recognition of Indigenous rights).¹ The analysis identifies an optimal approach to constitutional recognition that could provide guidance in the Australian context.

The analytical model depicted in Figure 13.1 below (*see over page*) provides a stylised classification of constitutional recognition.

The model has two dimensions: wide versus narrow recognition, and dynamic versus static recognition. Other dimensions could be added to the model, for example, equality versus diversity, but most of these dimensions are decomposable into the two already adopted. From a cost-benefit perspective this simple model is well-suited to the objective of this chapter, namely to expound the virtues of a wide *and* dynamic constitutional recognition. This is the quadrant designated as optimal in Figure 13.1.

The first dimension (wide versus narrow) is governed by the nature of rights recognised. It could be thought of as a proxy for legal pluralism. When these (largely) collective Indigenous rights are squeezed into the Western mould of individual human rights, the recognition is narrow. Under a narrow recognition, the political intention is to *assimilate* Indigenous rights under a legal paradigm dominated by colonial influences. It does not allow for a legal pluralism that accentuates the *sui generis* nature of Indigenous legal systems.

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1 For the latest developments in Ecuador, and in Latin America generally, see Eduardo Silva, 'Indigenous Peoples' Movements, Developments, and Politics in Ecuador and Bolivia', in Paul Almeida and Allen Cordero Ulate (eds), *Handbook of Social Movements across Latin America* (Springer, 2015) 131-44; Todd A Eisenstadt, Michael S Danielson, Moisés Jaime Bailón Corres, and Carlos Sorroza Polo (eds), *Latin America's Multicultural Movements: The Struggle Between Communitarianism, Autonomy, and Human Rights* (Oxford University Press, 2013).

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