

When participation is not enough: explaining factors for (not) changing Indigenous land claims recognition policy in Brazil and Canada

Quando a participação não é suficiente: explicando fatores para a (não) mudança das políticas de reconhecimento de terras indígenas no Brasil e no Canadá

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Recebido em 08 e aprovado em 22 de outubro de 2022

Abstract: the paper compares Indigenous participation in Indigenous land claims recognition policy review processes in Brazil and Canada. Firstly, we deal with the 2016's 1st National Public Policy Conference on Indigenous Policy. Secondly, we analysed the Canadian Task Force to review the Land Claims Policy of the country in 1985. Whereas the first participatory institution did not have any significant impact regarding Indigenous proposals to change the referred policy, the Canadian one had a modest success. Our main goal was to understand the reasons behind the variation on the observed capacity of policy change through participatory channels. We listed as potential explaining factors, beyond the institutional ones, the federalist arrangement in each country, the executive agenda and the collective agency of Indigenous peoples. We interviewed 16 public officials and carried out documental research in both countries. We concluded that, among other factors, the Ruralist Caucus is the political actor with veto powers capable of blocking Indigenous claims in the Brazilian case; in Canada, on the other hand, Indigenous issues have bipartisan consensus, which makes proposals for policy change less contentious and more feasible.

Keywords: participation; Indigenous peoples; comparative research; Brazil; Canada

Resumo: o artigo compara a participação indígena em processos de revisão de políticas de reconhecimento de reivindicações de terras indígenas no Brasil e no Canadá. Em primeiro lugar, tratamos da 1^a Conferência Nacional de Política Indigenista de 2016. Em segundo lugar, analisamos a Força Tarefa Canadense para revisar a Política de Reivindicações de Terras do país em 1985. Enquanto a primeira instituição participativa não teve nenhum impacto significativo nas propostas indígenas para mudar a referida política, a canadense teve um sucesso modesto. Nosso principal objetivo foi entender as razões por trás da variação na capacidade observada de mudança de políticas por meio de canais participativos. Elencamos como possíveis fatores explicativos, além dos institucionais, o arranjo federalista em cada país, a agenda executiva e a agência coletiva dos povos indígenas. Entrevistamos 16 funcionários públicos e realizamos pesquisa documental em ambos os países. Concluímos que, entre outros fatores, a bancada rural-

ista é o ator político com poder de veto capaz de bloquear as reivindicações indígenas no caso brasileiro; no Canadá, por outro lado, as questões indígenas têm consenso bipartidário, o que torna as propostas de mudança de políticas menos controversas e mais viáveis.

Palavras-chaves: participação; Pessoas indígenas; pesquisa comparativa; Brasil; Canadá

Introduction

In 1985 in Canada and in 2016 in Brazil, political processes that included Indigenous groups in attempts to influence major aspects of national Indigenous land claims policies took place.

After five months of consulting with Aboriginal groups, provincial governments and federal agents across Canada, the 1985 Task Force to Review Comprehensive Land Claims Policy (henceforth TF) delivered the Coolican Report, later published as a booklet titled *Living Treaties, Lasting Agreements* (CANADA, 1985). This report significantly impacted the 1973 Land Claims Policy and largely incorporated Aboriginal concerns regarding aspects such as titling, cultural rights, self-governing and fishing and hunting rights. In sum, the report transformed the previous policy into a comprehensive process that extended far beyond a mere real estate transaction between the Canadian government and Aboriginal groups.

The 2016 *Primeira Conferência Nacional de Política Indigenista* (First National Public Policy Conference on Indigenous Policy, henceforth NPPCIP) in Brazil was the latest development among federal initiatives to repair the damaged relations with Brazilian Native groups, in the context of the turmoil of the Brazilian politics started in 2013². The Conference aimed to include numerous Indigenous groups in the discussion on Brazilian Indigenous policy, including proposals to the land claims recognition policy, comprising several local stages and one final national meeting. However, the proposals were never considered by the Brazilian state.

Brazil and Canada experienced major constitutional changes that secured Aboriginal rights in the 1980s. Moreover, both countries showed an increasing organizational capacity of the Native groups since the 1970's. Finally, they have an

impressive record of participatory experiments in the recent decades. However, they have achieved different outcomes regarding changing the country's Native land claims policies. How was that possible? This result is puzzling and therefore, the question we address in this paper is: which factors explain the varied levels of success related to incorporating Indigenous proposals in the Native land claims policy design?

There is a lack of studies accounting for Indigenous participation in policy design. Surveying the most recent literature in the political science field uncovers investigations concerning the role of Indigenous groups in building political parties in the Andean countries (YASHAR, 2005); factors explaining why some Native groups accomplish comprehensive land claims agreements more-or-less rapidly (ALCANTARA; 2013); the cooperative pattern of interaction between Indigenous groups and municipalities (ALCANTARA;NELLES, 2016); the emergence of negotiating land claims policies in Commonwealth countries (SCHOLTZ, 2006); and the importance of land claims agreements for the quality of life of Canadian Aboriginal groups (SALÉE, 2006; PAPILLON, 2008). Regardless the quality of those researches, however, there is still "*too little Indigenous political science*" (BERG-NORDLIE et al, 2015, p.3), meaning that "*the discipline of political science does not take Indigenous politics seriously*" (BRUYNEEL, 2014:1)³.

On the other hand, the recent debate on the participation of Natives has strongly focused on "Free, Prior and Informed Consent (FPIC), especially after main international banks adopted this policy as a requirement for funding any infrastructure initiative that could potentially harm Indigenous populations (RODRIGUEZ-GARAVITO, 2010). However, none of those studies concerns the participation of Native groups in political decisions via formal channels designed for their inclusion in major policy processes.

This study attempts to fill this gap by focusing on the involvement of Native groups in the reviewing of policies carried out by the nation-states that have been designed to materialize the official acknowledgment of a land as traditionally occupied by Indigenous groups. In which ways do the Indigenous participate, if at all? If Native groups have actively been a part of the process, has this participation affected the outcome?

Thus, the dependent variable of this research is policy change. It is defined in this paper as the effective change of the parameters of a public policy to the point where a clear

adoption of new procedures and concepts is in place. In other words, we are interested in a “fundamental change” of the policy, what happens “*when a multitude of actors switch from one logic of action to another*” (STREECK; THELEN, 2005: 8). The policy review is successful if the process effectively modifies the parameters of the previous policy and unsuccessful if the process failed to do so. In this sense, policy change is a categorical and dichotomous variable.

The paper focused on a moderate number of cases, as is common in comparative politics research, since the primary concern is the exploration of the variable’s diversity and causal mechanisms (SATYRO; REIS, 2014). As this research provides a cross-national comparison (GAZIBO; JENSON, 2015), it is necessary to point out the methodological options regarding this kind of study (BAUER; GASKELL, 2002; MUNCK, 2004).

For Canada, the primary data was collected at the National and Library Archives Canada during the summer of 2017. We were able to gather 44 formal submissions (official briefs sent to the TF by all participants) and 22 minutes of the meetings that were open to public consultation⁴. Moreover, the complete transcriptions of a few meetings were available, in addition to background papers and legislation. The secondary data used were the vast array of official documents related to Canadian Indigenous policy open to public at the *Bibliothèque et Archives Nationales du Québec* in Montréal and at the Aboriginal and Northern Affairs Canada (AANDC) library in Gatineau. Complementary information was collected through websites and media records, comprising a plethora of valuable sources that helped to understand the political landscape of the early 1980’s and how the debate was addressed by the media; these sources also shed light on points not covered by the public files. Finally, we were able to interview six members of the TF at the time. They were reached through e-mail in January 2018.

For the Brazilian case, we analyzed NPPCIP’s files, which were available on the organization’s homepage⁵. As the documents were insufficient, the researcher consulted documents stored at the *Fundação Nacional do Índio* (Indigenous National Foundation, henceforth FUNAI) and the documents kept privately by participants of the NPPCIP⁶.

We were able to interview 6 high ranked public officials directly related to Brazilian Indigenous policies. Three of them were organizers of the NPPCIP. The others

were indirectly involved with the process, since they were positioned in crucial points in the chain of command at the FUNAI. These individuals provided first-hand, colorful testimonies of the process and explained obscure points that would have been difficult to understand without their inside perspectives⁷.

Literature review

Indigenous land claims: a brief history

From the south of Chile to the northern border of Canada, numerous Aboriginal groups⁸ are distributed throughout several countries, each with distinct features like language, customs, rituals, cultural activities, spiritual beliefs and political structures⁹. Historically delegitimized as relevant social actors in the Americas, Aboriginal groups recently observed a growing international consensus concerning their rights related to, among others, self-determinacy, political autonomy, political representation, hunting and fishing rights, education in their own language and having their traditionally occupied lands recognized by national governments (ILO, 1989; UN, 2008; RAMOS, 2012).

Recent scholarship on Amerindian groups discusses a “fourth wave of Indigenous mobilizations¹⁰” (TREJO, 2006), especially in Latin America, where national movements supported by strong Indigenous organizations were successful in electing the presidents of Bolivia (2006) and Ecuador (2007) (VAN COTT, 2006). On one hand, there have been significant advances in Aboriginal issues in Latin America mainly regarding constitutional provisions that aim to protect Indigenous rights¹¹. Besides, North America’s policies toward Native groups have taken interesting steps, particularly in symbolic terms, after the spark of the 2012 national movement, Idle No More¹², in Canada, and the Standing Rock standoff in the United States of America (COATES, 2015; CÉLERIER, 2014).

On the other hand, the growing consensus to implement international legislation for Indigenous rights has not translated into a strong commitment to forward these policies at the domestic level. As many scholars have noted, Aboriginal groups are usually socially vulnerable populations with high rates of extreme poverty and suicide, substance abuse and alcoholism, precarious housing and sewage systems and fewer years of formal education (PLANT, 1998; BRASIL, 2010; CANADA, 2009, 2011, 2013; CIMI, 2012;

CORNELL, 2006). Their traditionally occupied lands constantly face threats by private mining companies, property owners and the national governments themselves, which is due to the construction of huge projects such as hydro dams or roads. In such adverse scenarios, Aboriginal groups are forced to play *the autonomy game* (BLASER et al., 2010), which means that these individuals must form relationships with the national governments to achieve their goals within the framework of globalized market economies that are highly dependent on the exploitation of primary natural resources (BELLIER, 2013; KNAFLA; WESTRA, 2010; MANEIRO, 2006; MURRAY LI, 2010; OCAMPO, 2017).

After centuries of genocide that, in some sense, continues today, threats like land grabbing, forced displacement and reallocation to small reserves, destruction of the soil, water, fauna and flora due mining challenge the very existence of Native groups across the world. However, contemporary Indigenous peoples have endured and become organized into, though not limited to, social movements that strive to obtain “*the restoration of the rights denied to them by history, principally to a secure territorial land base and self-determination*” (ERUETI, 2006:547).

Among the multiplication of “rights claims” characteristic of the post-Universal Declaration of Human Rights era, one of the most pressing issues of the beginning of the 21st century is Indigenous peoples’ claims to land (OXHORN, 2012). As Chase (2002:2) states, “*the claim to cultural difference, especially in the case of Indigenous people, usually involves a demand for territorial integrity of the places that have historically provided them with a livelihood and with their identity as a group.*” Thus, for this paper, “Indigenous land claims” are considered as all claims for state recognition of land that has been traditionally occupied¹³ by a country’s Native groups. Consequently, Indigenous land claims recognition policies are the public policies developed by nation-states to concretely address such demands.

Despite separated by huge social, political, historical and geographical distances, Canada and Brazil have shown strikingly historical convergences when it comes to the way they handled indigenous issues over the centuries. Regardless the similarities of the goals of the Aboriginal policies, however, both countries have paved very different ways to concretely address those groups claims for territorial recognition.

On the other side, Indigenous groups in both countries also share some interesting similarities. In both contexts, Indigenous groups were massacred till the verge of extinction. Both have survived regardless betrayals, dispossession, contamination by diseases, and attempts to assimilate and “kill the Indian within the Indian”. Both have strived to collectively organize to make “credible threats” during the 60’s and 70’s decades of the twentieth century and now have large and influential national organizations that represent them at the federal level.

Importantly, at some time in their modern history, Brazil and Canada tried to include Indigenous peoples in the reviewing of the policy designed to address their claims for recognition of their traditional lands. With this common goal, they carried out participatory processes with distinct designs and arrived at different outcomes. Whereas the Brazilian NPPCIP was unable to effectively help Indigenous peoples to change Brazil’s Indigenous land claims policy, the Canadian TF obtained a modest success, but a success nevertheless.

Both political processes here under analysis were initiatives of the executive branch and, given the fact that Aboriginal policy is a federal matter in both contexts, it is reasonable to think that the institutional parameters set up by the federal agencies and their officials have had a strong impact in the explanation of their success or failure. However, only looking for a silver-bullet explaining factor can be misleading. Policy changes are usually complex political phenomena involving not only actors formally included in the policy review and design processes, but also a myriad of external factors that may play a role in its final framing. In other words, political processes engaging people in politics do not exist in a vacuum, but rather in a world populated by a myriad of groups with distinct interests and own political agenda, and it might be taken into consideration if we want to have a more complex account of the real capacity of participatory politics to change society.

Participatory institutions and policy change

There is a recent concern on the literature on participation and deliberation regarding the effectivity of institutional interfaces between governments and civil society on different aspects of governance, including increasing public policy

performance, eliciting legislative proposals or establishing the budgetary centrality of a certain issue, showing mixed conclusions (PIRES; VAZ, 2012). In this paper, we suggest that the variation in the form of inclusion of Native groups in decisions related to the Native land claims policy design is just one factor that helps to explain the policy change. The full explanation of the causes behind the success or unsuccess of the attempts to change the policy parameters lies in the need to include more variables in the analysis of the phenomena.

Petinelli's (2011; 2015) recent work on the capacity of National Public Policy Conference's (henceforth NPPC) of influence in setting public policies agendas in Brazil between 2003 and 2010 suggested that these participatory institutions are more likely to effectively shape the policy agenda when the secretary or ministry promoting the participatory process is politically relevant, involves economic actors and the issues discussed have economic impact. The author acknowledges that several factors could have influenced her findings, including the degree of institutionalization of different public policies, distinct levels of organization and resources of policy communities, the political dynamics among the participants, the degree of contentiousness of the proposals, among others. However, Petinelli failed to incorporate those variables in her explanatory model.

Similarly, Pogrebinschi's work focusing on trying to establish correlation between the proposals in NPPCs and legislative initiatives in the Brazilian Congress during the same period analyzed by Petinelli found unexpected high levels of influence of those participatory institutions in the legislative activity (POGREBINSCH; SAMUELS, 2014). The author also described the process of transforming and incorporating NPPCs proposals into legislations (POGREBINSCHI, 2013). Moreover, the author and her colleagues claim that NPPCs were instrumental in expanding the scope of the political representation of the civil society and increasing the responsivity of the Brazilian National Congress to the demands of the civil society, ultimately increasing the quality of the Brazilian democracy (POGREBINSCHI; VENTURA, 2017).

We argue that while Petinelli's and Pogrebinschi's works are useful to understand the challenges involving participatory practices in large scale and are serious attempts

to argue for the effectivity of such institutions, they fail to provide a more complex account of the factors that may come into play in the processes they analyzed. First, both authors seem to understand the synergy between NPPCs proposals and legislative initiatives or policy parameters as the evidence of a causal link between the former and the latter. Secondly, despite the acknowledgement that other factors rather than just the institutional design itself may play a role in the processes, both authors fail to include broader contextual factors in their analysis. In both works, there is no mediation between NPPCs and their “targets” – the public administration or the parliament – and therefore the explanation misses the important roles of some key political actors that may be involved in the decisions regarding the participatory processes studied. In other words, we argue that their explanatory accounts of the effectivity of participatory processes may be omitting important variables.

This paper contributes to this literature arguing that to overcome such liability, scholars on participatory and deliberative practices should take into consideration the importance of contextual factors and the political landscape at large to better understand the phenomena they want to explain. We argue that several other variables come into play when it comes to explain the prospects of changing a policy as controversial as the one designed to acknowledge Aboriginal control over a certain part of a nation-state territory.

Contemporary research in political science is incompatible with the idea of uncausality of a political phenomenon; it is not reasonable to think that a single factor can explain the variations in the outcomes of such complex processes—in this case, the policy changes concerning Native land claims. Therefore, it is important to assume that there can be different methods used to achieve the same result, which means seriously taking into consideration the possibility of the outcomes being multi-causal (REZENDE, 2011; 2015).

Thus, instead of focusing in a single factor to explain the variation in the level of success of the policy change under scrutiny, we proposed the inclusion of broader contextual factors in the equation. To make sense of the interaction of the modern Nation-states of Brazil and Canada and their Indigenous peoples through participatory channels, we proposed the consideration of four macro independent

variables: 1. Institutional design; 2. Federalism; 3. Executive agenda and; 4. Native collective agency.

To further complexify our analysis, those variables unfolded in 8 sub-variables, designed to capture nuances within each one of them: a. Participatory institutional design; b. Constitutional design; c. interest representation within parliament; d. the pattern of the relationship between Indigenous peoples and sub-national governments; e. political centrality of the issue; f. developmental strategy; g. acts of protest; h. associative density.

We now turn briefly to compare how each one of those variables and subvariables help – or help not – to account for the variation of the outcome of interest in our research. At the end of each section we present a table organizing the information provided, and finally a table summarizing the main findings of the research.

Institutional design

Institutions are a set of formal and informal rules, symbols and social practices structured to achieve collective goals. The institutional design variable comprises two different but intertwined factors: 1. The actual design of the process that aims to include Native groups in the policy's review, which seeks to understand how the components of the policy design process can help explain a certain outcome; and 2. The constitutional framework setting the parameters, within which the actors involved can structure their interactions, advance their arguments and propose policy changes.

In the first case, the NPPCIP and public hearings, informal and formal meetings and formal submissions to the TF are considered institutions designed to include Indigenous peoples in the policy review and policy-making processes. The variation of the participatory institutional design considers the direction of its implementation (bottom-up *versus* top-down) and its relation to their ability to enhance deliberation among their participants. These aspects are measured by taking into consideration each institution's mandates and formal rules and the plethora of documents produced during the policy processes.

In the second instance, both national constitutions present explicit provisions related to Aboriginal rights. However, the policies vary due to constitution-making processes, the

timing of the constitution's promulgation and the scope of the rights acknowledged. Both of the constitutional documents and the historical processes that led to their implementation are analyzed in order to measure the differences between the processes.

Federalism

The federalism variable accounts for the role that subnational entities play in Brazil's and Canada's policy-making processes. The assumption is that provinces, territories and states play crucial roles in either supporting or criticizing the policy, even though the ultimate responsibility of Native issues lies within federal jurisdiction. This support or opposition to proposals to change the policies is critical to understand the variation in the dependent variable.

This variable concerns federations that span along a continuum of decentralized to centralized systems, meaning the degree of autonomy assigned to the subnational entities in each polity is considered. The formal and informal dynamics of the federations in both countries are analyzed. As the first sub variable, we suggest that the representation of landowners and mining companies within the Parliaments are different and are worth investigating. Following, we also investigate the judicial dynamics of the conflicts between the states/provinces and the federal government related to Indigenous issues as an indicator of the resistance regional governments may oppose to Native land claims policy change.

The participation of subnational bodies in the processes is measured through official records, the content of the proposals made by the representatives of each group, the official statements of prime ministers and governors and interviews with participants.

Government agenda

Native issues are the responsibility of the federal government in both Brazil and Canada and, as such, the agenda-setting power of the executive branch may play a significant role in the policy changing process. Therefore, the degree of centrality of Indigenous issues within the ruling party's political agenda is of interest for our investigation.

Secondly, each government has a strategy for economic growth that may include the exploitation of natural resources within traditional territories. Any attempt to change

an already established Native land claims policy may be perceived as a threat by economic actors and therefore spark resistance. In this sense, to understand the variation of strategy across the contexts may be useful to figure out the broader economic landscapes in both countries and how they can be used to delay or even block policy change proposals.

The differences in the functioning of Brazil's and Canada's government systems are described in order to understand the decision engineering involved in each case. The centrality of Indigenous issues within each country's government agenda is measured by examining the budget allocated to Indigenous land claims policies, policy statements, official reports and publications and interviews with participants. The developmental strategy of the governments of the day will be discussed in historical terms following official publications and other relevant sources.

Native groups' collective action capacity

The examination of the constellation of social forces around participatory institutions was one of the first contextual factors analyzed by scholars on the field. The premise was that social movements and their organizations were in critical dialogue with participatory institutions and this interaction could have impacts in both parties involved (TATAGIBA, 2011; ABERS; SERAFIM, 2014). Native groups' collective action capacity suggests that the increasing organizational capacity of Native groups plays a major role in achieving a satisfying outcome.

The existence of political organizations of Indigenous groups allowed them to participate in the process in a meaningful way, providing information and the possibility of communicating and negotiating. Organizational capacity is also necessary for mobilizing the group to use actions that are more contentious when dialogue is blocked or unsatisfactory.

Official documents, booklets and historical reports are used to measure this aspect. Quantitative and qualitative data is used to show the extent to which Indigenous groups were previously able to present themselves as "credible threats" (SCHOLTZ, 2006) to the government.

Table 1: Below presents the variables used in this research.

Independent variables (x1-4)	Dependent variable (Y)
Institutional design (x1)	Native land claims policy change (Y)
Sub variable 1: participatory institutional design	
Sub variable 2: constitutional design	
Federalism (x2)	
Sub variable 3: interest representation within parliament	
Sub variable 4: pattern of interaction between sub-federal governments and Indigenous peoples	
Government agenda (x3)	
Sub variable 5: political centrality of the issue	
Sub variable 6: economic strategy	
Indigenous collective agency (x4)	
Sub variable 7: repertory of action	
Sub variable 8: associative density	

Discussion

The protocollary and internally undermined NPPCIP and the “agile” TF

Institutional design broadly defined as the “rules of the game” structuring the range of preferences available to the political actors as well as their interactions was the first variable investigated. We considered that at least two set of rules could be important to explain the observed variation in the outcome: 1. The one related to the design of the participatory processes put in place by nation-states to include Indigenous peoples in discussions about Indigenous land claims policy and; 2. The constitutional framework regarding Indigenous rights.

The design of the participatory institutions would be the first “place” where any researcher would look for effects regarding the outcome of interest. After all, both designs, despite their similarities, had clear differences that could have had significant impacts on policy change. Whereas National Public Policy Conferences are well-studied mechanisms used by several Brazilian governments to receive input from civil society, Task Forces are usually top-down initiatives from governments with a clear mandate and timeframe to achieve policy goals.

Discussing the Brazilian case, we were able to see that even a well-established participatory mechanism can not realize its full potential to conduct Indigenous inputs into the government if the government itself acts to undermine the process. Fundamentally, the NPPCIP had no political weight and was carried out in a politically sensitive moment to the president. Moreover, its slow pace and the long time taken to its concretization was frustrating to Indigenous peoples and state agents alike. Surely, the usual “protocol” to call and materialize a National Conference was followed: there was a national commission including Indigenous leaders to design and implement the Conference; there were local and regional stages; Indigenous representatives were selected across the country to attend the National Conference stage; Indigenous peoples were able to make recommendations and claims at the NPPCIP. Everything looked like “participation as usual”. It did not work though.

The Canadian case, on the other hand, showed that even a top-down institution with limited resources and tight schedule can be successful. A truly low-profile political initiative operating under the radar being carried out by skilled and motivated agents with mixed professional backgrounds was able to promote modest changes on the policy of the day.

In sum, regardless the importance of the symbolism - Indigenous peoples being able to, for the first time in Brazilian history, discuss Indigenous land claims policy with state-agents – the NPPCIP design was not able to circumvent the challenges posed by the political context of the time the way the TF did. If the TF was not fully supported by the government of the day, at least it was not weakened or used for political goals other than including Indigenous peoples in the process of reviewing Indigenous land claims policy.

Concluding, it is hard to precise how much the failure of the NPPCIP was due to its internal flaws or to its external “enemies”. Similarly, we can not be sure of how much of the TF modest success can be attributed to its design. What we can affirm undoubtedly is that both institutional designs seemed to be vulnerable to external political forces. Decisive was the fact that the NPPCIP was actively undermined by the Federal government whereas the TF had a relatively free road ahead to be conducted without major political influences.

Constitutional timing matters

The constitutional framework proved to be a subvariable worth investigating not much because of the extent of the constitutional protection provided by each one of them, but by the timing of the constitutional provisions. The Brazilian constitution has a broad range of Indigenous rights and is considered among the most protective of Indigenous peoples in the world. To be sure, the 1988 constitutional provisions regarding Indigenous peoples were a turning point on the relationship between them and the Brazilian state. Moreover, the *Magna Carta* strongly encourages participatory processes as the NPPCIP.

Unfortunately, the existence of a progressive set of Indigenous rights in the constitution does not mean its actual application in the real world of daily politics. Indeed, many of the proposals made Indigenous peoples at the NPPCIP used a defensive language to express their concerns regarding their perceived attack to their constitutional rights. There were surely claims for policy change, but there were also claims for policy continuity based on the already existing bundle of rights.

For the Canadian case, conversely, what seemed to be decisive was the proximity of the repatriation of the Canadian constitution in 1982 and the TF. Despite the failed attempts to clarify Indigenous rights in the constitution in the Constitutional conferences in the following years, it is clear that Indigenous groups were motivated and mobilized when the TF process began. The language of rights is omnipresent at the Indigenous submissions to the TF. On the other hand, state-agents decided to change the previous Indigenous land claims recognition policy to better fit it to the new constitutional “spirit”.

Would the NPPCIP have taken place in the aftermath of the 1988, would the Brazilian Indigenous land claims policy have a different design? If the TF would have conducted its consultative process 30 years after the constitutional repatriation, would Indigenous peoples have success? One can only speculate. The matter of fact is that one can not understand the cases under study without keeping in mind that constitutional aspects did have an impact on the observed outcomes.

Table 2: summary of the values of the variable institutional design

Variable	Sub-Variables	Canada	Brazil
V1- Institutional design	Participatory Institutional Design	Agile, flexible, and operating under the political radar	Protocolary, internally undermined by the government, slow, long and ineffective
	Constitutional design	Impacted and provided incentive for policy change	There is a gap between constitutional provisions and Indigenous policy

Interest representation within parliaments: the unmediated influence of the Brazilian Ruralist caucus and the Canadian bipartisan consensus

The role of subnational entities on the processes under scrutiny was the second variable examined in our study. Our main theoretical challenge was to break down the generality of the concept into two sub-variables that would be able to capture a more nuanced and concrete picture of the relationship between states/provinces and Indigenous peoples.

Firstly, we dedicated our efforts to understand how local and regional political and economic forces are represented in the parliaments of both countries. Our assumption was that powerful actors with veto powers within a government branch could be major obstacles to policy change if they wanted.

This initial insight proved to be right. The cases could not be more different in this regard. Our interviewees were able to provide colorful testimonies on how the ruralist

caucus acts to interfere in the Indigenous land claims policy. Not only agribusiness and mining interests are overrepresented in the Brazilian parliament – the parliament design itself is among the most restrictive in the world. In other words, even a moderate number of congressmen would be enough to form a coalition to block any proposal or political initiative regarding Indigenous peoples.

Importantly, our discussion showed that our informants understand that the main problem is not exactly the political power of the ruralist caucus – despite its growing influence in the last decade, it has always been there after all – but the ability – or the lack thereof – of the president to mediate their demands. Our informants were adamant in drawing the differences between the former presidents Lula da Silva and Dilma Rousseff in this regard. Whereas the first one was a skilled negotiator, the second one was unable to balance interests properly. In sum, if we were not able to affirm that the NPPCIP itself was directly influenced by the ruralist caucus, we have shown that their political influence stretches to the highest echelons of power in Brasília and the president at the time of the participatory process was not able to mediate or mitigate its effects on the Indigenous policy.

This experience contrasts sharply with the Canadian experience. One of our informants summarized the point: there is a bipartisan consensus in Canada that “something must be done” to address Indigenous claims. Besides, the cabinet-oriented parliamentary system in Canada somehow prevents the influence of backbenchers on policy issues.

It does not mean that agribusiness and mining interests are not represented in the Canadian parliament or that they do not have any influence on Indigenous policy at all. What seems to be an accurate statement, however, is to claim that the TF benefited from the combination of a political consensus and the institutional design of the Canadian parliament to advance its agenda and deliver its final report. The absence of such a powerful political actor with unmediated political influence such as the ruralist caucus in Brazilian political landscape is certainly a factor that should be considered when it comes to understand the political dynamics of Indigenous land claims recognition policy change in Canada.

Subnational entities: conflictive versus cooperative role

Subsequently, we investigated the overall relationship between subnational entities and Indigenous peoples. We asked ourselves if both parties acted cooperatively or conflictively in the processes here analysed, with the clear assumption that the degree of contentiousness could reflect on difficulties regarding the prospects for policy change.

The challenge here was to operationalize this “degree of contentiousness” in a more empirical fashion. The anthropological literature on the topic claims that federal governments in Brazil and Canada tend to be less influenced by local and regional interests and therefore would be less interested in political conflicts with Indigenous peoples than provincial and state-level governments.

We proposed that the dynamics of the judicial conflict between subnational governments and Indigenous peoples could provide an empirical base of understanding of how this relationship plays out. We have shown that whereas the Canadian Supreme Court has decided favourably to Indigenous peoples in some landmark cases brought to trial by provincial governments, there is an enormous number of ongoing litigations at the Brazilian Supreme Court regarding Indigenous issues.

Our Brazilian informants highlighted the degree of contentiousness regarding Indigenous policy in many Brazilian states. In some of them it is even dangerous to be a FUNAI servant. Even though we were not able to better capture how this could have influenced the NPPCIP process, to understand the conflictive nature of the relationship between state-level governments and Indigenous peoples in Brazil as a potential blocking factor for policy change is not an unreasonable assumption.

In the Canadian case, provincial government representatives cooperated with the TF and were able to “moderate” its final report. To be fair, their initial response was somehow elusive and varied from the explicit willingness to be part of the process to its complete denial. However, once engaged in the consultation, the relationship turned out to be productive.

It is clear from our discussion that the operationalization of the concept of federalism needs further effort to clarify the relationship between the Brazilian state and Indigenous peoples. The information provided by our key informants regarding the influence of

powerful economic and political interests into the Indigenous policy implementation were crucial to the Brazilian case. Therefore, we can make the broader point that “subnational entities matter” when it comes to understand the prospects for policy change regarding Indigenous policy. We failed, however, to connect more explicitly the contentiousness of this relationship to the concrete case of the NPPCIP.

Table 3: summary of the values of the variable federalism

Variable	Sub-Variables	Canada	Brazil
V2- Federalism	Interest representation within parliament	Bipartisan effort and the lack of decision-making power of Parliament	Political power of the ruralist caucus unmediated by the executive branch
	Pattern of relationship between Indigenous peoples and sub-national governments	Cooperative and moderating role	Conflictive role

A two-edged sword: the political irrelevance as advantage or constraint

The executive branch of the federal government oversees designing and implementing public policies towards Indigenous peoples in both countries. Its economic and political agenda is therefore relevant to understand the political dynamics of policy change and Indigenous participation into administrative activities.

Our first assumption was that if a policy has political centrality, it is more likely to receive government attention in terms of budget and staff. Conversely, the lack of political centrality means that officials and politicians do not care about financial constraints and tend to ignore problems around the policy issue. Curiously, data available proved that the budget assigned to Indigenous issues at the time of the NPPCIP and TF were on the rise.

Our analysis showed that Indigenous policy is not politically central to federal governments in both contexts of investigation. What differs from a case to another is what this lack of political interest meant to the observed outcomes.

For the Canadian case, the lack of political interest meant that the TF operated “under the radar” and the absence of any concerted political or bureaucratic opposition to its activities. For the Brazilian case, it meant that the federal government was not interested in engaging in any attempt to effectively put in place any of the proposals Indigenous peoples made at the NPPCIP. The lack of political centrality worked as an asset to the TF, whereas helped to further undermine the political support for the NPPCIP.

The neodevelopmentalist “tractor” and the “fair balance of interests”

Equally important to understand executive propensity to support Indigenous claims for policy change channeled through participatory processes is to correctly evaluate the place Indigenous issues have within the economic agenda of the government of the day. Constitutional or treaty protections around Indigenous lands tend to be considered obstacles for economic development both by private companies and government agencies. It was therefore relevant to our discussion to comprehend how our informants connected governmental economic strategy and policy issues concerning Indigenous peoples.

Our informants for the Canadian case emphasized the fair balance of interests between Indigenous peoples, government agents and private companies as the TF goal. As we have seen, Indigenous peoples themselves differed on their perspectives concerning economic development. Economic representatives were fundamentally interested in legal certainty to deal with Indigenous lands. Finally, state agents were interested in clear Aboriginal title over traditional lands to facilitate economic activities within Indigenous lands. The TF managed to find a point of balance where all parties won.

In Brazil, our analysis showed the importance of the neodevelopmentalism as the economic axis of the PT’s governments. Here our informants were able to distinguish the degree between centrality (Lula da Silva) and hegemony (Rousseff) of economic goals. Following the testimonies, the Brazilian government under Rousseff was like a “tractor running over anything ahead” and the absence of mediation between private and

public economic interests and Indigenous political claims was a point of tension in the relationship between the parties.

Table 4: summary of the values of the variable government agenda

Variable	Sub-Variables	Canada	Brazil
V3- Government agenda	Political centrality of the issue	Lack of political centrality and budgetary constraints were not obstacles to policy change	Lack of political centrality more important than budgetary constraints
	Developmental strategy	The search for a fair balance of interests	Hegemonic neodevelopmentalism colliding against
		between government, businesses and Indigenous peoples	Indigenous policy

Indigenous protests: between the tranquility and the active demobilization

Lastly, we looked into the collective agency of native people in both countries as a potentially relevant factor to help to understand the reasons behind the variation observed in the dependent variable. We assumed that Indigenous peoples in both countries developed strategies to associate and to make their political claims heard whenever they wanted to. In this sense, we investigated the modern pattern of Indigenous association and the repertory of acts of protest carried out by Indigenous groups at the time of the NPPCIP and TF.

Our first challenge regarding Indigenous contentious and non-contentious protests was to find an empirical indicator to give us a more reliable base of comparison across cases. For the Canadian case we used Howard Ramos’s database. A similar indicator, however, did not exist to the Brazilian context and we had to construct a new database of Indigenous protests between 2009 and 2016 (Author, 2017).

There is a spread perception among anthropologists and other interested observers of Indigenous issues in Brazil that Indigenous peoples would have increased their acts

of protest across the country. Our measurement suggested that this perception may be optical illusion. On the contrary, it showed a decreasing number of activities during the period around the NPPCIP. It is in consonance with one of our informant's viewpoint who explained how the Brazilian government actively undermined Indigenous mobilization over the years.

For the Canadian case, we concluded that Indigenous protests were absent and played no role on the process. It does make sense: when Indigenous peoples and governments are engaged in participatory processes, it is unlikely that the former will cause any disruptive action that may hinder the prospects of cooperation between the parties.

Associative landscape: mixed results

The analysis of the Indigenous associative landscape showed the effective increase in the number of associations over the last decades in both countries. To support our argument, we again relied on Howard Ramos's database for the Canadian case. To the Brazilian case, we also had to build a new database.

Our informants suggested that many Indigenous groups, organized around associations, were fully capable of engaging in meaningful talks and negotiations with federal governments. They presented a complex panorama of a multitude of Indigenous and non-Indigenous associations working in partnership to advance Indigenous movement political agenda. This point seems to be particularly important because while acts of protest are events which typically do not last long, associations are meant to last. In other words, there may well be a more consistent base to Indigenous mobilization in the future in both countries.

For the Brazilian case, evidence suggest that differences of organizational capacity among Indigenous groups may have had an impact in the capacity of engaging in the NPPCIP activities. For the Canadian case, our data suggest that such differences may have been neutralized by the TF design.

Table 5: summary of the values of the variable native collective agency

Variable	Sub-Variables	Canada	Brazil
V4- Native collective agency	Associative density	Plurality of organizational forms may have been neutralized	Plurality of organizational forms may have weakened Indigenous mobilization
	Repertory of action	No protests before or during the policy review process	Protests actively demobilized by the federal government.

Conclusion

Looking at the variables used in this study in a comparative fashion helps us to make sense of the data produced, collected and analysed over the years. As expected in any exploratory research, we are now able to highlight which factors seemed to have more impact than others in the dependent variable.

Several factors related to the political forces at the parliament and the economic strategy of the government at the time of the NPPCIP stand out for the Brazilian case. The unmediated force of the ruralist caucus at the Brazilian parliament in tandem with the hegemony of the neodevelopmentalist economic strategy and the politically hostile environment in the states provided the worst-case scenario for any attempt to provide Indigenous inputs to change policy through participatory institutions. Now the puzzle seems to be different from the one that animated this research: if the ruralist caucus has gained power over the last decade, and became the effective dominant political force in the Brazilian parliament after Rousseff’s impeachment, why can’t they also pass their attempted changes to Indigenous land claims recognition policy?

On the other hand, the constitutional timing, the compact institutional design of the TF and, more importantly, the bipartisan consensus at the Canadian parliament that Indigenous issues and policies must be carried out further turned out to be crucial factors to understand the TF process. It does not mean that Indigenous policy is

absent of political contentiousness in that country, but it does mean that it is not an unbreakable barrier to Indigenous peoples, government agents, politicians and civil society activists to push forward a policy agenda permeable to Indigenous inputs thorough participatory institutions.

Other facts seemed to have distinct effects depending upon the context- such as the case of the political centrality of the issue, which turned out to be an asset to the Canadian case and an obstacle for the Brazilian one. It is clear from the discussion, though, that better indicators and further research is needed to better understand the role Indigenous policies play in government agendas in elected governments. We are still in the dark when it comes to having a systematic and comprehensive assessment of the political (lack) of centrality among the countries of the American continent.

Finally, there were sub-variables with little or no effect at all at the observed variation in the outcome, such as the ones comprising the variable “native collective agency”. The result for the Brazilian case is in consonance with the data we presented, showing that there was an effective reducing of Indigenous protests since 2011. What is new was the evidence brought by some of our interviewees that the Rousseff’s government acted deliberately to undermine Indigenous capacity of protesting during the period. For the Canadian case, on the other hand, TF activities unfolded in a time where Indigenous mobilizations seemed to be constant, with no explicit influence in the participatory process at all.

Finally, the number of Indigenous political associations arouse in both countries a sign of vitality of Indigenous peoples and certainly a good indicator for citizen engagement in political activities. Only the fact that Indigenous organizations were able to participate meaningfully in such lengthy and costly participatory processes is testimony of their growing political capacity of organizing to make claims and influence politics. The fragmentation of leadership, however, apparently posed some challenges to the inclusive features of the participatory experiences under scrutiny.

A summary of all variables, sub-variables and their respective values at each one of the cases studied is presented in table 6 below.

Table 6: summary of the effects of all variables used in this study

Variable	Sub-Variables	Canada	Brazil
V1- Institutional design	Participatory Institutional Design	Agile, flexible, and operating under the political radar	Protocolary, internally undermined by the government, slow, long and ineffective
	Constitutional design	Impacted and provided incentive for policy change	There is a gap between constitutional provisions and Indigenous policy
V2- Federalism	Representation of interests within parliament	Bipartisan effort and the lack of decision-making power of Parliament	Political power of the ruralist caucus unmediated by the executive branch
	Pattern of relationship between Indigenous peoples and sub-national governments	Cooperative and moderating role	Conflictive role
V3- Government agenda	Political centrality of the issue	Lack of political centrality and budgetary constraints were not obstacles to policy change	Lack of political centrality more important than budgetary constraints
	Economic strategy	The search for a fair balance of interests between government, businesses and Indigenous peoples	Hegemonic neodevelopmentalism colliding against Indigenous policy
V4- Native collective agency	Associative density	Plurality of organizational forms may have been neutralized	Plurality of organizational forms may have weakened Indigenous mobilization
	Acts of protest	No protests before or during the policy review process	Protests actively demobilized by the federal government.

We have shown elsewhere that Brazilian political science simply ignored Indigenous peoples and their politics over the decades (AUTHOR). The net result of this lack of scholarly interest is that there are no sound theories or studies about Indigenous policy and politics in the Brazilian academic landscape and the interested researcher must rely almost solely on anthropological or law studies. In some sense, in the Brazilian political science field, everything remains to be done.

In this research we dealt with more or less successful state initiatives to include Indigenous peoples into governmental decisions. Despite the flaws of the participatory institutional design, obstacles and difficulties faced by Indigenous peoples in the processes here analysed, it is worth acknowledging that both were positive steps towards a more equal relationship between Indigenous peoples and the nation-states. Some participation is better than none.

Studies about the mechanisms designed by the Brazilian state to include Indigenous and traditional peoples in some of governmental decisions could spark renewed interest on participatory institutions among Ph.D. students. It is simply unjustifiable, from an intellectual and political point of view, that participatory institutions regarding traditional peoples have attracted so little or no scholarly attention at all. The list can continue indefinitely. In sum, the sky is the limit when it comes to using political science's theoretical and methodological tools to investigate Indigenous policy and politics.

Finally, we remember Antonio Carlos de Souza Lima (2015) affirming that there wouldn't be anything more contemporary than to build up "sociologies" of the Indigenous Brazil. We should add that this paper is a modest contribution towards, perhaps, the beginning of the Political Science of the Indigenous Brazil.

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Notes

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- ² In June 2013, the violent police repression of a peaceful protest to the increase of the public transportation fare in São Paulo sparked a massive wave of solidarity across the country. Huge demonstrations took place at hundreds of Brazilian cities, ultimately channeling the widespread popular discontent with issues such as corruption, and lack of adequate infrastructure and public services towards the governments of the day (ALONSO; MISCHÉ, 2016). The interpretation of its causes and meaning is still open to debate and has given place to a heated debate in the Brazilian academia and media outlets.
- ³ The Brazilian academic landscape is no less disappointing in this regard. An investigation of 2.621 papers published between 1996 and 2017 in the seven most important Brazilian political science journals revealed

that only two of them discussed some issue related to Indigenous peoples. Recently, Londero (2015) presented her doctoral dissertation on the Indigenous participation at a State-level Indigenous policy council in Brazil. Still, we can affirm that the interest of Brazilian political scientists on Indigenous-related issues is virtually inexistent.

⁴ Unfortunately, the access to certain archives is restricted by law; thus, they could not be reviewed.

⁵ Available at: <http://www.funai.gov.br/index.php/todos-presidencia/3252-documentos-1-conferencianacional-de-politica-indigenista>.

⁶ We requested the files related to the NPPCIP through the Information Access Act. The answer, however, was unsatisfying, providing us with very limited and fragmented information. Later, in a off record confession, one FUNAI agent told us that the NPPCIP files were in possession of one of its coordinators at the time of the research and they have never been handed out to the Brazilian government.

⁷ In Brazil, the interviews were conducted between 2017 and 2018 at the FUNAI's headquarter in Brasília, at the Acampamento Terra Livre and even at one individual's house. One of the interviewees answered our questions through e-mail. Indigenous policy in Brazil is a highly contentious issue and their agents suffer with political pressures and lawsuits (and even death) threats. No wonder, then, that they are so reluctant to give interviews or manifest their political viewpoints publicly. For those reasons, Brazilian respondents requested total anonymity and any proper name or hint that would allow for their recognition was erased in the final transcripts of their interviews. I am thankful to those brave men and women who trusted me enough to share with me sensitive information and a unique perspective of the inner works of the Indigenous policy in Brazil.

⁸ As Donakowski and Esses (1996:90) argue, "Attitudes toward Natives can differ considerably as a function of the label used to identify the group." Thus, it is important to clarify our choice of words. This paper uses the terms "Indigenous peoples," "Indians," "Native groups," "Aboriginal" and "autochthones" and "First Nations" (in the Canadian case) interchangeably, considering these terms are either used by these groups in both Brazil and Canada to define themselves or are used in official publications. Section 35 of the Canadian Constitution (CANADA, 1982) states that Indigenous peoples (or First Nations), the Métis people with mixed ancestry of European settlers and Natives, and the Inuit, who are the original inhabitants of Arctic Canada, are considered Aboriginals. Considering the controversy concerning the meaning of these terms, and given the number of countries where Native groups do exist, this paper uses the definition advanced by the United Nations, which includes: 1. Self-identification as an Indigenous person, along with acceptance by the community; 2. Historical continuity with pre-colonial and pre-settler societies; 3. Strong link to territories and surrounding natural resources; 4. Political, economic and social systems and cultures, beliefs and language distinct to the settler society; 5. Minority groups within a country; 6. Aiming to keep their traditional way of life and environment (UN, 2006).

⁹ It is hard to state the precise number of Indigenous peoples around the world due the lack of confidence of many national records and the world's Native populations' growing rate. Nevertheless, a comprehensive estimation can be found in Bellier (2013:335), from which it can be inferred that there are about 370 million Indigenous peoples globally, with over 5,000 Native groups in 70 countries. In 2010, Canada had around 1,142,815 autochthones, representing approximately 3.6% of its population. Brazil had 817,000 Indigenous persons, around 0.4% of its population, in 2012.

¹⁰ Following this author, the other waves of Indigenous mobilizations happened in the 16th century after the conquest (first wave), at the end of the 18th century (second wave) and from the second half of the 19th century to the beginning of the 20th century (third wave).

¹¹ In Latin America, despite the remarkable advances in this regard, Ortega (2004:15) points out that there are some common problems in this region's legal framework for the recognition of Indigenous lands, such as: 1. The failure to develop a body of laws that could make the constitutional provisions concrete; 2. The time-consuming, overly complex or poorly conceived procedures for gaining legal recognition of Indigenous lands; 3. The imprecision of some of the concepts used in the writing of legislation; 4. The failure to adequately consult Indigenous communities; 5. The lack of a legal definition for ownership rights over many aspects of Indigenous life; and 6. The lack of an adequate definition of the management of Indigenous territories that overlap with national parks or protected areas.

¹² The Idle No More! Movement in Canada started in the winter of 2012 as a reaction of Aboriginal peoples to the broad changes proposed by the omnibus Bill C-45 to legislations governing crucial aspects of communities lives and spread all over the country during 2013 expressing the grievances of such groups towards the Canadian government (COATES, 2015). Since then, major events include the establishment of the Truth and Reconciliation Commission by Prime Minister Stephen Harper and the appointment of an Aboriginal woman to the Ministry of Justice by Prime Minister Justin Trudeau (2015).

- ¹³ It is important to clarify, from the outset, that there is a whole debate about the concepts of “land” and “territory” whose complexities would not fit into the scope of this work. For the sake of concision, we have opted for using both land and territory because the actors involved use them for their own purposes without losing sight of their symbolical and material dimensions. By the same token, we have opted for the term “traditionally occupied” in opposition to “immemorially occupied” to stress that the actual occupation and the mode of existence, production and culture are dynamic and lively rather than something frozen across the time.