

Colombia

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Colombia is divided into thirty-two *departamentos* (departments), ten *distritos* (districts) that include the *Distrito Capital de Bogotá* (Capital district of Bogotá), around 644 *resguardos indígenas* (indigenous reserves), and 1102 *municipios* (municipalities), which compose the local level. There are also six associations of *municipios* and *distritos* referred to as *áreas metropolitanas* (metropolitan areas). The *departamento* of San Andrés, Providencia and Santa Catalina, the *Distrito Capital de Bogotá*, and the *Distritos Especiales* of Cartagena, Santa Marta, Barranquilla, Buenaventura, Riohacha, Santa Cruz de Mompo, Tumaco, Turbo, and Cali¹ have special status, as well as the *resguardos indígenas*, which constitute about 31.5 percent of the Colombian land area but only 3.3 percent of its population.² Until 1991, Colombia had also **nine** dependencies: the *intendencias* of Arauca, Casanare, Putumayo, and San Andrés, Providencia, and Santa Catalina; and the *comisarías* of Amazonas, Guaviare, Guainía, Vaupés, and Vichada. **All of them became *departamentos*.**

Two constitutions have governed territorial governance since 1950. The 1886 constitution stayed in place until 1990.³ Unlike other countries in South America, Colombia did not face a bureaucratic–authoritarian regime or a long-lasting dictatorship. However, political competition was constrained through the 1970s. After *La Violencia* (The Violence) from 1948–53 and a brief military intermezzo (1953–58), the conservative and liberal political parties concluded the National Front pact, whereby the presidency rotated between liberals and conservatives and legislative seats, governorships, and mayors were split equally between the parties (Hartlyn 1988). Open elections resumed in 1974, though the governing party continued to share appointed positions with the main opposition party until 1986 (O’Neill 1999; Penfold-Becerra 1999: 199; Skidmore, Smith, and Green 2010: 205–18). In 1991 a new constitution was passed, which set the stage for extensive decentralization (Falleti 2010: 123).

¹ One additional *Distrito Especial* was created in Barrancabermeja (Santander department) in 2019.

² Ministerio de Educación. “Listado de Resguardos Indígenas.” <www.mineducacion.gov.co/1621/articles-163147_Archivo_doc3.doc>. AfroCubaWeb. The Indigenous Native People of St Andres, Providencia, and Santa Catalina. <<http://afrocubaweb.com/news/raizales.htm>>.

³ The 1886 constitution was reformed in 1954, 1957, 1958, 1968, and 1984. The 1968 reform regulated transfers from the central government to the *departamentos*, the national territories, and the *Distrito Capital* (Law 46 of 1971 implemented in 1973; see Acosta and Bird 2005).

In the 1886 constitution, *departamentos* were divided into *provincias* and then *municipios*. A 1968 Constitutional reform put forth a legal basis for the creation of *áreas metropolitanas* (Acto Legislativo 1, 1968, Art. 63). Only *departamentos* and *municipios* had political representation (C 1886, Art. 182). Senators were directly elected with equal representation for each *departamento*. Under the 1991 constitution, *departamentos*, *distritos*, *municipios*, and *territorios indígenas* (currently *resguardos indígenas*) are recognized as territorial entities (C 1991, Art. 286).⁴ Most *resguardos indígenas* are located in the *departamentos* of Amazonas, Cauca, La Guajira, Guaviare, and Vaupés. The constitution also provides for the possibility of setting up *provincias*, which consist of *municipios* or *territorios indígenas* located within a single *departamento*, as well as new *áreas metropolitanas* (C. 1991, Art. 319), all of it pending further regulatory legislation.⁵ Among the thirty-two *departamentos* we include the former *intendencias* and *comisarías* that became *departamentos* in 1991 (C 1991, Art. 309).

The 1886 constitution concentrated political power in the national government. *Departamentos* and *municipios*, and later on *distritos* and *áreas metropolitanas*, implemented national policies (Bonilla 2014: 2; Penfold-Becerra 1999). This central control was reinforced under the National Front. Until 1991, the national government appointed the departmental governors (C 1886, Art. 196), who combined the roles of departmental executive chief and agent of the central administration (C 1886, Art. 193; Acosta and Bird 2005). However, *departamentos* had elected assemblies, controlled some revenues, and some policy responsibilities. Hence while some describe departments as “regional administrations under the control of the central government” (Acosta and Bird 2005), there was limited self-governance.⁷ Nevertheless, the strong position of the centrally appointed governor and the constraints on political competition under the National Front created a situation where the institutional depth of *departamentos* was closer to 1 than 2.^β The end-point of this period is contestable. Some indicate 1968 as a turning point when a constitutional revision compelled the central government to devolve substantial fiscal resources to the *departamentos* (Penfold-Becerra 1999: 199), while others highlight the first

⁴ Two or more *departamentos* could become administrative regions (C 1991, Art. 306), but no region has been created in the country as of 2019, despite the approval of a normative framework (i.e. the *Ley de Ordenamiento Territorial*) for it in 2011 (Bonilla 2014: 9; Restrepo 2004: 85) and a more specific Law of Regions in 2019 (Law 1962).

⁵ Law 1451 (2011) allowed the creation of *provincias administrativas y de planificación* (administrative and planning provinces) made up of two or more *municipios* (Art. 16). As of 2019, five such provinces had been created, all of them in the department of Antioquia. However, their average population is under 150,000.

competitive national election in 1974 (O'Neill 1999). What is certain is that the National Front had been disintegrating in the face of increasing political opposition at the local and regional levels. The first gestures toward decentralization in the late 1960s and early 1970s were motivated by a national desire to co-opt oppositional figures into the system (Penfold-Becerra 1999). Hence we end the period of deconcentrated government around 1974, though substantial political and administrative decentralization would only take off in the 1990s.⁷

The 1991 constitution paved the way for full-fledged decentralization. The key element of the reform was the direct election of governors from 1991, even though the governor remains also an agent of the president in maintaining order and implementing general economic policies (C 1991, Arts. 303 and 296). In addition, the president can suspend or remove governors under conditions specified by law (C 1991, Art. 304). *Departamentos* remain subject to central veto but have considerably greater authority to set policy and raise and spend taxes (C 1991, Art. 287).

Bogotá is the capital of Colombia and the capital of the Cundinamarca department. It has a special statute and, since 1991, representation in the parliament (Pening Gaviria 2003: 124). Bogotá was granted special status as *Distrito Especial* (special district) in 1954 (Decree 3640, 1954), but it had a deconcentrated, general-purpose, administration different from all other municipalities since 1926 (Law 72, 1926; Mayorga et al., 2011). Before the 1988 election, the president appointed the *alcalde* (mayor), who responded directly to the central government (Acosta and Bird 2005). There was, however, a directly elected council with limited policy responsibilities. After the adoption of the 1991 constitution, and according to a 1993 decree (Decree 1421, Art. 7), the *Distrito Capital de Bogotá* obtained the same political, fiscal, and administrative authority as the *departamentos*, with a directly elected mayor since 1986 law (Acto Legislativo 1) and 1988 elections. Like departmental governors, the mayor can be removed by the president under conditions determined by law (C 1991, Art. 323).

The *Distritos Especiales* of Cartagena and Santa Marta were created in 1987 and 1989, respectively, and were granted the same status and authority as the *Distrito Especial de Bogotá* (Acto Legislativo 1, 1987; Acto Legislativo 3, 1989), a provision that was upheld by the 1991 constitution. Additional such districts were later created in Barranquilla (1993), Buenaventura (2007), Riohacha (2015), Santa Cruz de Mompox (2017), and Tumaco, Turbo, and Cali (2018). The mayor of Cartagena was appointed by the president in 1987 and directly elected since 1988. The municipal council of Cartagena, which became a *concejo distrital*, is directly elected. All other districts have always had a

directly elected district mayor and council. Like the mayor of Bogotá, district mayors can be removed by the president under conditions determined by law (C 1991, Art. 323).

The 1968 Constitutional reform which allowed for the creation of *áreas metropolitanas* required further legislation to regulate their actual creation, which was only issued in 1979 (Decree 3104). The Área Metropolitana del Valle de Aburrá (organized around the city of Medellín) was created in 1980 and began to operate in 1981; the Barranquilla and Bucaramanga *áreas* were also established in 1981. Three additional metropolitan areas were subsequently created: the Centro Occidente area (with Pereira as its core city) and the Cúcuta area in 1991, followed by Valledupar in 2005 (Estupiñán 2013).⁶ From the moment of their creation, *áreas metropolitanas* have been non-deconcentrated, general purpose administrations subject to central government veto. From 1981 to 1987 their executive authority, the metropolitan mayor, was a presidential appointee but *áreas metropolitanas* had competences over a number of policy areas. Since 1988, the mayor has been directly elected but still subject to removal by the president under conditions determined by law (C 1991, Art. 323).

Also in 1991, a *departamento* was created to incorporate the archipelago of San Andrés, Providencia, and Santa Catalina. The former *intendencia* has a large Raizal Protestant Afro-Caribbean population who speak Creole. The *departamento* is governed by the same rules as the other *departamentos*—with slightly greater central control (C 1991, Art. 310).

The 1991 constitution also allows for the creation of *territorios autónomos indígenas* (indigenous autonomous territories). These territories may extend across more than one *departamento*, and are carved out by the national government in consultation with the indigenous communities (C 1991, Art. 329; *Departamento Nacional de Planeación*). *Territorios indígenas* are to be structured by the guidelines set in the *Ley Orgánica de Ordenamiento Territorial* (Law 1454 Territorial Organization Law; C 1991, Art. 329), which was finally enacted in June 2011, and by Decree 1953 (2014).

The existing *resguardos indígenas* (indigenous reserves), instituted by Simón Bolívar in 1820, obtained special status in the 1991 constitution, and for most purposes exercise the authority that the constitution assigns to the *territorios indígenas* (Bonilla 2014: 9). Legally, *resguardos indígenas* are not governmental units but lands.⁷ They are the collective property of indigenous

⁶ The 1991 Constitution also allowed for the creation of a metropolitan area around the *Distrito Capital* of Bogotá (C 1991, Art. 325), but this provision has not been implemented as of 2019.

⁷ “Territorio Indígena y Gobernanza.”

<<http://www.territorioindigenaygobernanza.com>>. In 2018, however, a presidential decree declared *territorios indígenas* located outside municipal jurisdictions in the

communities (Decree 2164 of 1995, Art. 21; Rudqvist 2002: 31). When the indigenous territory spans more than one *departamento*, indigenous councils need to coordinate with the governors of affected *departamentos* (C 1991, Art. 329). Between 1991 and 2013, *resguardos* had no control over their finances; central transfers were administered by the *municipio* to which they belong (or *departamento*, if they were not part of a *municipio*), and *municipios* (or *departamentos*) and *resguardos* had to write contracts that dedicated this money exclusively to investments in the indigenous community (Decree 1809 of 1993, Art. 2; Law 60 of 1993, Art. 25). In 2014, Decree 1953 granted *resguardos* the option to administer central transfers for specific purposes (water and sanitation, education, and healthcare), but they must first obtain authorization from the national government's National Planning Department to do so, and they remain subject to central veto (Arts. 29 and 37). We therefore maintain a score of 2 for 1991-2018.

The 1886 constitution enumerates a detailed list of policy competences of the *departamentos*, including primary education, social assistance, internal migration, industry and inward investment, colonial expansion, transport (railways, rivers, canals), forest exploitation, local government, and local police (C 1886, Art. 185). *Departamentos* did not have residual powers, but could exercise other functions devolved by congress (C 1886, Art. 188). However, until the 1990s, *departamentos* exercised very few of these policies (Acosta and Bird 2005). Assembly ordinances could be, and often were, suspended by the governor or a court pending a final decision by the central government (C 1886 Arts. 191 and 195.7). Moreover, in the 1960s, the central government set up semi-autonomous department-level agencies for social services, which undercut the primary policy competence of departmental assemblies (Falleti 2010: 124). Hence departmental policy making was heavily constrained by central government leadership. We assign a score of 1 on policy scope until 1991.^β

The 1991 constitution confirms these policy competences, and expands their economic, social, educational, and health competences. In contrast to the 1886 constitution, the territorial allocation of competences across tiers was to be specified by an organic law (C 1991, Art. 288). This law was finally approved in 2011 after nineteen failed attempts, but *departamentos* had, in varying

departamentos of Amazonas, Guainía, and Vaupés to be self-governing “special political-administrative organizations,” headed by a *consejo indígena* (indigenous board) (Decree 632, 2018, Art. 3). The first applications for government recognition as a formally constituted *consejo indígena* were submitted in 2019. “Por primera vez, tres autoridades indígenas serían reconocidas como autoridades públicas,” *El Espectador*, September 27, 2019, <https://www.elespectador.com/noticias/medio-ambiente/por-primera-vez-tres-autoridades-indigenas-serian-reconocidas-como-autoridades-publicas-articulo-883193>.

degrees, appropriated these competences long before the enabling act (Acosta and Bird 2005). Our coding is based on the constitutional provisions. Regional development remains the departments' main responsibility (C 1991, Arts. 300 and 300.3). Departments administer also tourism, transport, environment, and public service provision (C 1991, Art. 300.1.2). They can regulate sports, education, and health together with *municipios* (C 1991, Art. 300.10; Law 60 of 1993, Art. 3). The role of departments in health and education grew considerably in the 1990s when national programs and funds were decentralized (Acosta and Bird 2005; Falletti 2010; Penfold-Becerra 1999). In addition, *departamentos* supervise *municipios* (Law 60 of 1993, Art. 3), can create or abolish *municipios* (C 1991, Art. 300.6), organize local police (C 1991, Art. 300.8), and determine their own institutional organization (C 1991, Art. 300.7). Since *departamentos* have obtained substantial (mostly shared) authority in a broad range of policy fields except for immigration and citizenship, we score 3 from 1991.

The special *departamento* of San Andrés, Providencia, and Santa Catalina is subject to somewhat greater national constraints. The national parliament can limit immigration and residence, population density, and the use of soil and environment with the aim of protecting the African–Colombian communities. The national parliament legislates on these restrictions without input from the special autonomous region, and so we adjust policy scope to 2.

The *Distrito Capital de Bogotá* is governed by the *concejo distrital* (district council). The *concejo* designs the budget (Decree 1421, Art. 12.2), authorizes loans (Decree 1421, Art. 12.17), and decides its own institutional set up (Decree 1421, Art. 12.8.9). It can also decide on investment and development, regulate urbanization, cultural and recreational activities, and the environment (Decree 1421, Art. 12.5.6 and 12.7). Hence the *Distrito Capital* scores 3 on policy scope from 1991–2018.

Before 1991, *Distritos Especiales* had the same authority as the *Distrito Capital*. Between 1991 and 2002, *Distritos Especiales* had the same authority as any other municipality. The *concejo distrital* (district councils) could develop budgets (Law 136, Art. 32.10), regulate land use (C 1991, Art. 313), and, in coordination with the mayor, manage the police (C 1991, Art. 315; Law 136, Art. 32.1). Since 2002, according to the Political, Administrative, and Fiscal Statute for *Distritos Especiales*, districts acquired additional authority over cultural policy and environmental regulation (Law 768, Arts. 11 and 37). Thus, we adjust policy scope to 3.

Decree 3104 (1979) lists the policy competences of *áreas metropolitanas*, including economic planning (with a focus on infrastructure development plans and zoning and land use regulation), public service provision, and own institutional set-up (Art. 6). In 1994, Law 128 specified that the main functions

of *áreas metropolitanas* had to do with development planning and coordination, service provision, and cross-municipal public works (Art. 4), but it also allowed metropolitan *juntas* to declare jurisdiction over additional *hechos metropolitanos* (metropolitan issues) (Art. 6). Law 1625 (2013) confirmed these competences. Among the policy areas most frequently declared as “metropolitan issues” are environmental regulation, transportation, and public housing (Instituto de Estudios Urbanos 2016). According to experts, however, the actual exercise of authority by *áreas metropolitanas* has been limited and uneven (Bustamante 2014; Estupiñán 2013; Instituto de Estudios Urbanos 2016; Zapata Cortés 2017; Zuluaga 2013). Some *áreas metropolitanas* appear to be more active and operational than others. Medellín’s Zona Metropolitana del Valle de Aburrá is frequently said to be the most institutionally developed one, especially in connection to transportation and environmental regulation (Zapata Cortés 2017). Other *áreas metropolitanas* have also carried out cross-municipal transportation programs (an aspect of economic policy) and all of them have effectively designed and implemented their own institutional set-up. *Áreas metropolitanas* score 2 on policy scope throughout the 1981-2018 period.

The *resguardos indígenas* control their local government and their own institutional setup, which may reflect the norms of the indigenous community (Decree 2164 of 1995, Arts. 21–22). Between 1991 and 2013, *resguardos* could design and implement economic and social policies (C 1991, Art. 330), but their policy autonomy was constrained by the need to coordinate with the *departamento* (C 1991, Art. 329). Policy scope scores 1 for 1991–2013. After 2014, in addition to controlling their local government and institutional set-up, indigenous territories can opt to exercise greater policy autonomy in indigenous education and healthcare, thus warranting an increase to 3. Healthcare programs as stipulated in the decree have not yet been implemented in any indigenous territory as of 2019. Increased autonomy in education is subject to central government certification (by the Ministry of Education for preschool, elementary, secondary, and higher education, and the Family Welfare Institute for early-childhood cultural education programs) (Decree 1953, Title III). Early-childhood cultural education programs (known as *Semillas de Vida*) have started to function in some territories. The Decree also provides for increased autonomy in connection to water and sanitation while stipulating that this authority cannot be exercised until the government issues additional regulations on the subject (Decree 1953, Title V), which has not occurred as of 2019.

FISCAL AUTONOMY

Fiscal resources have historically been administered by the central government (C 1886, Title VI–IX; Bonilla 2014: 5). Throughout the period, departments

have been able to set the rate of some excise taxes, in particular liquor, and charge royalties on mineral resources, though the rules have altered over time.

A 1983 law rearranged taxation (Law 14, Arts. 52 and 61; Forero and Salazar 1991: 122). On the one hand, it ceded the national tax on vehicles and the so-called taxes *del vicio* (vice taxes), including liquor and tobacco, to departments and Bogotá, but it standardized the base and rates of all these taxes (Law 14, Arts. 49-56, Chapters V and VI; Dillinger and Webb 1999b; Iregui, Ramos, and Saavedra 2001: 10). On the other hand, it authorized municipalities, including Bogotá, to set the rate of industry and commerce taxes (a major tax) as well as property taxes (a minor tax) within a range permitted by law (Law 14, Chapters I and II). The *Distrito Capital* scores 3 from 1983–2018. Law 14 also authorized the departments to impose fees (*participaciones*) on private liquor production and sales (Art. 63), which effectively functioned as minor taxes. *Distritos Especiales* were granted the same taxing authority as Bogotá (Acto Legislativo 1, 1987; Acto Legislativo 3, 1989), so they score 3 from 1987-2018. *Áreas metropolitanas* cannot set the base or rate of any taxes.⁸

The 1991 constitution stipulates that *departamentos* can raise taxes to meet their needs (C 1991, Art. 300.4), but implementation has been restrictive. Subnational units have, at the most, the authority to implement taxes enacted by congress (Bonilla 2014: 19). *Departamentos* cannot create new taxes and the national congress sets the base and rate of most taxes.⁹ Taxing authority transferred by the national government is earmarked (Iregui, Ramos, and Saavedra 2001: 3). Excise taxes remain the main source of autonomous income for *departamentos*, and the bulk of their revenues continues to come from national transfers (Restrepo 2004: 83).

Decree 1421 of 1993 ratified the *concejo distrital* of Bogotá's authority to establish, reform, or eliminate taxes, as well as decide over exemptions (Decree 1421, Arts. 12.3 and 153). The *concejo* can set the rate of industry and commerce tax according to the overall income of the taxpayer, and of minor taxes on gasoline, construction activities, and tolls (Decree 1421, Arts. 154.2a, 156, 158, and 159; Acosta and Bird 2005; Pening Gaviria 2003).

Resguardos indígenas do not have tax authority. The *alcaldes* or *gobernadores*

⁸ Law 128 (1994) allowed for the assessment of a surcharge on property taxes and gasoline taxes to fund metropolitan areas (Art. 22). However, the property tax surcharge was set by law at 0.2%, and although the gas surcharge could be set at any rate below 20% of the sales price, the Constitutional Court ruled that the authority to set it belonged to *municipios* and *distritos*, not *áreas metropolitanas* (Ruling C-1175, 2001). The gas surcharge provision was repealed by Law 1625 (2013).

⁹ The constitutional court has repeatedly confirmed that *departamentos* and *municipios* cannot create new taxes (Rulings C-517 of 1992, C-486 of 1996, C-579 of 2001, as cited by Bonilla 2014: 19).

of the territory within which the *resguardos* lie administer central grants for the *resguardos* (Decree 1386, Art. 3), unless they have been authorized by the national government to administer their own finances in accordance with Decree 1953 of 2014.

BORROWING AUTONOMY

Until 1981 borrowing was marginal and decided on a case by case basis by the ministry of finance (Dillinger and Webb 1999b: 17). This changed when departments became self-governing. In 1981 a rule-based debt regime was conceptualized for *departamentos*, *Distrito Capital de Bogotá*, *intendencias*, *comisarías*, and *municipios* (Olivera, Pachón, and Perry 2010: 54; Law 7, Art. 1). *Departamentos* and Bogotá could borrow after approval by the *asambleas departamentales* and the governor, in the case of *departamentos*, and the *concejo distrital*, in the case of Bogotá (Law 7, Arts. 3–5 and 27). The same rules applied for *Distritos Especiales*, which were granted the same authority as Bogotá (Acto Legislativo 1, 1987; Acto Legislativo 3, 1989). *Intendencias* and *comisarías* remained under central tutelage. Foreign government bonds were prohibited (Law 7, Art. 28), but other restrictions were very light. There was, for example, no *ex ante* control on cash advances from banks (Dillinger and Webb 1999b: 17–18). By the early 1990s, this contributed to a serious debt crisis (Daughters and Harpers 2007: 248).

As for *áreas metropolitanas*, borrowing could be approved by their *junta metropolitana* (Decree 3104, 1979, Art. 6), but specific conditions for it were not explicitly stipulated in law. Since *áreas metropolitanas* were not formally territorial but special administrative entities, they were not subject to Law 7 (1981) which governed *departamentos* and *distritos*. Borrowing rules for state agencies other than territorial entities, laid down in legislation regulating public contracts, required *ex ante* approval from the Ministry of Finance for all loans, with special restrictions involved when borrowing rises above a certain ceiling (Decree 150, 1976, Art. 114; Decree 222, 1983, Ch. 17).¹⁰ Requirements

¹⁰ Decree 3104 allowed individual *juntas metropolitanas* to regulate contracting by their respective *áreas metropolitanas*, adding that *áreas metropolitanas* that failed to issue a contracting statute would be subject to the contracting rules that pertained to all other state entities (Art. 20). While this provision could have potentially offered a loophole for *juntas* to pass contracting statutes that bypassed the legal requirement for all state agencies to obtain *ex ante* central government approval, this does not appear to have ever been the case.^a For example, the contracting statute for the *área metropolitana* of Valle de Aburrá enables the metropolitan mayor to borrow funds from public, private, domestic, or foreign sources with prior authorization from the *junta*, but it states that all such borrowing remains subject to “all the legal norms and regulations that exist on the matter” (Acuerdo Metropolitano No. 11 de 1981, Art. 117-118).

become clearer with the passage of Law 128 (1994), which explicitly states that *áreas metropolitanas* are subject to the same contracting regime as every other government entity (Art. 25), laid out in Law 80 (1993) and Decree 2681 (1993, Arts. 10-11). From that moment on, borrowing by *áreas metropolitanas* is unambiguously subject to *ex ante* central government approval.

After several failed attempts to control regional indebtedness, President Samper pushed through the *Ley de Semáforos* in 1997 (Traffic Lights Law, Law 358). The Law set clear debt ceilings for all *departamentos* and *distritos*: an annual debt not higher than 40 percent of savings, and a total debt not higher than 80 percent of current income. These two criteria motivate a fiscal and financial monitoring system of “lights” (green, amber, or red) whereby subnational units with red light status were prohibited from borrowing, and those with amber light status were subject to prior approval by the ministry of finance (Daughters and Harpers 2007: 250; Olivera, Pachón, and Perry 2010: 29). These new provisions were accompanied by debt restructuring and benchmarks for subnational public expenditures. In 2003 a fiscal responsibility law further tightened borrowing conditions (Lora 2007: 227), including that subnational government debt cannot be used for current expenditures (Stein 1999: 379) and that prior central government approval is required for foreign debt (World Bank Qualitative Indicators). While the new provisions do not quite amount to *ex ante* central approval across the board, the real threat of the red and amber light scenario and tighter conditions warrant a decrease in score from 2 to 1 from 1997. Borrowing by *resguardos* has not been explicitly regulated and is therefore not formally prohibited, but indigenous authorities have no history of borrowing.

REPRESENTATION

Each *departamento* and the special region of *San Andrés, Providencia and Santa Catalina* have a departmental assembly and a governor (C 1886, Art. 183). The assembly has been popularly elected throughout the period (Falleti 2010; C 1991, Arts. 260 and 299).

The governor exercises executive power in the *departamento* and acts both as an agent of the central administration and as the chief of the departmental administration (C 1886, Art. 193). Governors are directly elected since 1991 (Falleti 2010: 125).

In the *Distrito Capital* the council is composed of one directly elected councilor for every 150,000 inhabitants (Decree 1421, Art. 6). In *Distritos Especiales*, district councils are made up of seven to 21 directly elected councilmembers, depending on population (C 1991, Art. 312). The mayors of the *Distrito Capital* and *Distritos Especiales* were popularly elected for the first

time in 1988 (C 1991, Art. 323; Decree 1421, Art. 36; Falletti 2010: 125). Before 1988, the executive of the *Distrito Capital* and *Distritos Especiales* were headed by a centrally appointed mayor (Decree 3640 of 1954).

Áreas metropolitanas are governed by a metropolitan mayor and a *junta metropolitana* (metropolitan board). Before 1987, mayors were appointed by the departmental governor, in turn appointed by the national government, but since 1988 they have been directly elected. The mayor of the main municipality or district acts as metropolitan mayor, which means that residents of the other member municipalities do not elect their metropolitan executive. The makeup of *juntas metropolitanas* has changed over time. From 1981 to 1994, it was made up of the metropolitan mayor, the mayor of another member municipality selected by the governor, a councilmember from the main municipality or district, and a councilmember from another member municipality (Decree 3104, 1979, Art. 5).¹¹ From 1994 to 2012, *juntas metropolitanas* were made up of the mayors of every member municipality or district, a representative of the core municipality or district's councilmembers, and a representative of councilmembers from other municipalities (Law 128, 1994, Art. 8). Law 1625 (2013) added two additional members: a nonvoting delegate of the national government and a representative of local environmental nongovernmental organizations (Art. 15). Municipal councils have always been directly elected. Thus, from 1981 to 1987, half of *junta metropolitana* members were central government appointees, while the other half were indirectly elected (Assembly =1);^b from 1987 to 1993, the majority of members were indirectly elected and one of them (the metropolitan mayor) was directly elected (Assembly = 1). Since 1994, the majority of *junta* members have been directly elected, while only a small minority of them are indirectly elected (Assembly =2).

Resguardos Indígenas are governed by either a *cabildo* (administrative council) or traditional indigenous authorities (Decree 1088 of 1993; Decree 2164 of 1995, Art. 22).

Shared rule

LAW MAKING

Under the 1886 constitution, the senate was composed of three directly elected senators per *departamento* (C 1886, Art. 93). Legislation had to be approved by both chambers (C 1886, Art. 81; C 1991, Art. 157). *Departamentos* were the unit of representation in the senate; the senate had extensive legislative

¹¹ If an *área metropolitana* had more than five member municipalities, its *junta* has two additional members: a councilmember from another one of the member municipalities and a representative of the governor. Only the *áreas metropolitanas* of Valle de Aburrá and Cúcuta have ever had more than five members.

authority; and regional representatives constituted the majority in the senate. Since 1991, senators have been elected in one national constituency (Falleti 2010).¹² Hence the senate no longer represents regional interests.

Two senate seats are reserved for representatives of the *resguardos indígenas* (C 1991, Art. 171; De La Calle 2008) (*L1*). Although candidates for these seats must have been indigenous authorities or leaders of indigenous organizations, voting for this special constituency is not restricted to members of *resguardos*. All voters are free to choose whether to vote in the national constituency or in the indigenous constituency. Still, the indigenous constituency is intended to represent citizens who opt to identify with indigenous governance. We therefore score 0.5 for regional representation.^β No special provisions enable these senators to influence national legislation affecting their territory (*L5, L6*).

Distrito Capital de Bogotá, Distritos Especiales, Áreas Metropolitanas, San Andrés, Providencia and Santa Catalina, and Intendencias and Comisarías do not have shared rule.

EXECUTIVE CONTROL

The 1991 constitution introduced a consultative National Planning Council (*Concejo Nacional de Planeación*), which advises on the design of the National Plan of Development (*Plan Nacional de Desarrollo*). The council is dominated by local and civil society interests (C 1991, Arts. 340 and 341).

The constitution also stipulates that the *resguardos indígenas* must be consulted on the exploitation of natural resources within their territories (C 1991, Art. 330.9), and we code this as non-binding bilateral executive control until 2008. In a 2009 decision, the Constitutional Court determined that such prior consultation (*consulta previa*) processes aimed at achieving free and informed consent are mandatory for any legislative or administrative measures that may affect indigenous peoples' livelihoods, autonomy, and cultural survival. When a project or measure has the potential to cause irreparable damage to indigenous livelihoods or threaten their survival, indigenous authorities' decisions in the context of such consultations "may be considered binding" (Decision T-769). A 2011 decision further specified that consent is required in situations in which "(1) communities could face displacement as a result of the work or project, (2) toxic waste may be disposed of on indigenous lands, or (3) there is a high social, cultural, or environmental impact on the community" (Rodríguez Franco 2017: 159-160; Constitutional Court, Decision T-129 of 2011, section 9.8.2). We therefore adjust executive control score to 2

¹² Inter-Parliamentary Union. "Colombia: Senado de la República." <http://www.ipu.org/parline-e/reports/2068_B.htm>.

starting in 2009.

FISCAL CONTROL

In the 1886 constitution, only the lower chamber (*cámara de representantes*) had the authority to “establish contributions” (C 1886, Art. 102.2). Under the 1991 constitution, the senate and the chamber of representatives co-decide on taxes and budget allocation (C 1991, Art. 150.12), but the senate was no longer regionally based (C 1991, Art. 189.20). *Resguardos indígenas* do not have shared rule on fiscal matters.

BORROWING CONTROL

The national parliament approved the fiscal responsibility laws of 1997, 2000, 2003, and 2011 without subnational input. There is no system of ongoing national–regional consultation on borrowing or debt management.

CONSTITUTIONAL REFORM

Amendments to the constitution of 1886 required a two-thirds majority in both chambers (C 1886, Art. 209).

Regional authorities are no longer involved in constitutional change under the 1991 constitution. The constitution can be reformed by congress, a constituent assembly, or a popular referendum (C 1991, Art. 374), and both chambers must approve the changes (C 1991, Art. 375). Congress can also call a referendum to convene a constituent assembly (C 1991, Art. 376).

The national government is required to consult the indigenous communities in creating or changing the indigenous territorial entities (C 1991, Art. 329). Indigenous communities can initiate the process through the ministry of the interior. A 2010 decision by the Constitutional Court further established that constitutional reforms that “affect ethnic communities in a direct way” must undergo a prior consultation (*consulta previa*) process, but it does not grant them veto power (Decision T-129).

Primary References: Colombia

- Colombia. (1886). “Constitución Política de la República de Colombia, 1886.” Diario Oficial No. 6758 and 6759, August 7, 1886: 801–7.
- Colombia. (1971). “Ley No. 46 del 31 de Diciembre de 1971.” Diario Oficial No. 33520, February 16, 1972.
- Colombia. (1981). “Ley No. 7 del 2 de Febrero de 1981.” February 2, 1981.
- Colombia. (1983). “Ley No. 14 del 6 de Julio de 1983, Por la Cual se Fortalecen los Fiscos de las Entidades Territoriales y se Dictan Otras Disposiciones.” Diario Oficial 36288, July 6, 1983.
- Colombia (1991). “Constitución Política de Colombia de 1991.” July 4, 1991. Published online at <http://pdba.georgetown.edu/constitutions/colombia/col91.html>.
- Colombia. (1993). “Decreto 1421 del 3 de Julio de 1993, Por el Cual se Dicta el Régimen Especial para el Distrito Capital de Santafé de Bogotá.” Diario Oficial No. 40958, July 22, 1993.
- Colombia. (1993). “Decreto 1088 del 10 de Junio de 1993. Creación de las Asociaciones de Cabildos y/o Autoridades Tradicionales Indígenas.” Diario Oficial No. 40914, June 10, 1993.
- Colombia. (1993). “Decreto No. 1809 del 13 de Septiembre de 1993.” Diario Oficial 41031, September 13, 1993.
- Colombia. (1993). “Ley No. 60 del 12 de Agosto de 1993.” Diario Oficial No. 40987, August 12, 1993.
- Colombia. (1994). “Decreto No. 1386 del 7 de Julio de 1994.” Diario Oficial 41426, July 7, 1994.
- Colombia. (1995). “Decreto No. 2164 del 7 de Diciembre de 1995.” Diario Oficial No. 42140, December 7, 1995.
- Colombia. (1997). “Ley No. 358 del 4 de Febrero de 1997.” Diario Oficial No. 42973, February 4, 1997.
- Colombia. (2011). “Ley Orgánica de Ordenamiento Territorial 1454 del 28 de Junio de 2011.” June 28, 2011. Published online at <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley145428062011.pdf>.
- Colombia. “Departamento Nacional de Planeación. Ordenamiento Territorial.” Published online at <https://www.dnp.gov.co/programas/desarrollo-territorial/Paginas/ordenamiento-y-desarrollo-territorial.aspx>.
- Colombia. Área Metropolitana del Valle de Aburrá. (1982). “Acuerdo Metropolitano No. 11 de 1981.” In *Crónica Metropolitana 1981*. Medellín: n.p.
- Colombia. (1926). “Ley 72 de 1926 (noviembre 29) Sobre facultades al

Municipio de Bogotá.” Diario Oficial No. 20360, November 29, 1926.

Colombia. (1955). “Decreto 3640 de 1954 (17 de diciembre). Por el cual se organiza el Distrito Especial de Bogotá” Diario Oficial No. 28663, January 21, 1955.

Colombia. (1968). “Acto Legislativo 1 de 1968 (diciembre 11) por el cual se reforma la Constitución Política de Colombia.” Diario Oficial No. 32673, December 17, 1968.

Colombia. (1968). “Decreto 150 de 1976 (enero 27) por el cual se dictan normas para la celebración de contratos por parte de la Nación y sus entidades descentralizadas.” Diario Oficial No. 34492, February 18, 1976.

Colombia. (1980). “Decreto 3104 de 1979 (diciembre 14) por el cual se dictan normas para la organización y funcionamiento de las áreas metropolitanas.” Diario Oficial No. 35432, January 14, 1980.

Colombia. (1983). “Decreto 222 de 1983 (febrero 02) por el cual se expiden normas sobre contratos de la Nación y sus entidades descentralizadas y se dictan otras disposiciones.” Diario Oficial No. 36189, February 9, 1983.

Colombia. (1986). “Acto Legislativo 1 de 1986 (enero 09). Por el cual se reforma la Constitución Política.” Diario Oficial No. 37304, January 9, 1986.

Colombia. (1987). “Acto Legislativo 1 de 1987 (noviembre 03). Por medio del cual se erige a la ciudad de Cartagena de Indias, capital del Departamento de Bolívar, en Distrito Turístico y Cultural, y se dictan otras disposiciones.” Diario Oficial No. 38105, November 3, 1987.

Colombia. (1989). “Acto Legislativo 3 de 1989 (diciembre 29). Por medio del cual se erige a la ciudad de Santa Marta, capital del Departamento del Magdalena, en Distrito Turístico, Cultural e Histórico.” Diario Oficial No. 39124, December 29, 1989.

Colombia. (1993). “Acto Legislativo 1 de 1993 (agosto 17). Por medio del cual se erige a la ciudad de Barranquilla, capital del Departamento del Atlántico, en Distrito Especial, Industrial y Portuario.” Diario Oficial No. 40995, August 17, 1993.

Colombia. (1993). “Ley 80 de 1993 (octubre 28) por la cual se expide el Estatuto General de Contratación de la Administración Pública.” Diario Oficial No. 41094, October 28, 1993.

Colombia. (1993). “Decreto 2681 (diciembre 29) por el cual se reglamentan parcialmente las operaciones de crédito público, las de manejo de la deuda pública, sus asimiladas y conexas y la contratación directa de las mismas.” Diario Oficial No. 41159, December 30, 1993.

Colombia. (1994). “Ley 128 de 1994 (febrero 23) por la cual se expide la Ley Orgánica de las Áreas Metropolitanas.” Diario Oficial No. 41236, February

- 23, 1994.
- Colombia. (1994). “Ley 136 de 1994 (junio 2). Por la cual se dictan normas tendientes a modernizar la organización y el funcionamiento de los municipios.” Diario Oficial No. 41377, June 2, 1994.
- Colombia. (2001). “Corte Constitucional. Sentencia C- 1175.” November 8, 2001.
- Colombia. (2002). “Ley 768 de 2002 (julio 31), por la cual se adopta el Régimen Político, Administrativo y Fiscal de los Distritos Portuario e Industrial de Barranquilla, Turístico y Cultural de Cartagena de Indias y Turístico, Cultural e Histórico de Santa Marta.” Diario Oficial No. 44893, July 31, 2002.
- Colombia. (2009). “Corte Constitucional. Sentencia T-769.” October 29, 2009.
- Colombia. (2010). “Corte Constitucional. Sentencia C-702.” September 6, 2010.
- Colombia. (2011). “Corte Constitucional. Sentencia T-129.” March 3, 2011.
- Colombia. (2013). “Ley 1625 de 2013 (abril 29) por la cual se deroga la ley orgánica 128 de 1994 y se expide el régimen para las áreas metropolitanas.” Diario Oficial No. 48776, April 29, 2013.
- Colombia. (2014). “Decreto 1953 de 2014 (octubre 07). Por el cual se crea un régimen especial con el fin de poner en funcionamiento los Territorios Indígenas respecto de la administración de los sistemas propios de los pueblos indígenas hasta que el Congreso expida la ley de que trata el artículo 329 de la Constitución Política.” Diario Oficial No. 49297, October 7, 2014.
- Colombia. (2018). “Decreto 632 de 2018 (abril 11) por el cual se dictan las normas fiscales y demás necesarias para poner en funcionamiento los territorios indígenas ubicados en áreas no municipalizadas de los departamentos de Amazonas, Guainía y Vaupés.” Diario Oficial No. 50561. April 2018.

Self-rule in Colombia

		Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
						Assembly	Executive	
Departamentos	1950–1974	1	1	1	0	2	0	5
	1975–1980	2	1	1	0	2	0	6
	1981–1990	2	1	1	2	2	0	8
	1991–1996	2	3	1	2	2	2	12
	1997–2018	2	3	1	1	2	2	11
Distrito Capital de Bogotá	1950–1974	1	1	0	0	2	0	4
	1975–1980	2	1	0	0	2	0	5
	1981–1982	2	1	0	2	2	0	7
	1983–1987	2	1	3	2	2	0	10
	1988–1990	2	1	3	2	2	2	12
	1991–1996	2	3	3	2	2	2	14
Distritos Especiales*	1997–2018	2	3	3	1	2	2	13
	1987	2	1	3	2	2	0	10
	1988–1990	2	1	3	2	2	2	12
	1991–1996	2	2	3	2	2	2	13
	1997–2001	2	2	3	1	2	2	12
	2002–2018	2	3	3	1	2	2	13
Áreas metropolitanas**	1981–1987	2	2	0	1	1	0	6
	1988–1993	2	2	0	1	1	2	8
	1994–2018	2	2	0	1	2	2	9
Resguardos Indígenas	1991–2013	2	1	0	0	2	2	7
	2014–2018	2	3	0	0	2	2	9
San Andrés, Providencia, and Santa Catalina	1991–1996	2	2	1	2	2	2	11
	1997–2018	2	2	1	1	2	2	10
Intendencias and comisarías***	1950–1990	1	0	0	0	0	0	1

Note:

* Turístico y Cultural de Cartagena de Indias (1987); Turístico, Cultural e Histórico de Santa Marta (1989); Especial, Industrial y Portuario de Barranquilla (1993); Especial Portuario, Ecoturístico y Biodiverso de Buenaventura (2007); Especial, Turístico y Cultural de Riohacha (2015); Especial, Turístico, Cultural e Histórico de Santa Cruz de Mompox (2017); Portuario, Logístico, Industrial, Turístico y Comercial de Turbo (2018); Especial, Industrial, Biodiverso y Ecoturístico de Tumaco (2018); and Especial, Deportivo, Cultural, Turístico, Empresarial y de Servicios de Cali (2018).

** Valle de Aburrá (created in 1980 but began to function in 1981), Barranquilla and Bucaramanga (1981), Centro Occidente and Cúcuta (1991), and Valledupar (2005).

*** Arauca, Casanare, Putumayo, San Andrés, Providencia, and Santa Catalina, Amazonas, Guainía, Guaviare, Vaupés, Vichada.

Shared rule in Colombia

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Departamentos	1950–1990	0.5	0	0.5	0.5	0	0	0	0	0	0	0	0	3	0	4.5
	1991–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Distrito Capital de Bogotá	1950–1990	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	1991–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Distritos Especiales	1987–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Áreas metropolitanas	1981–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Resguardos Indígenas	1991–2008	0.5	0	0	0	0	0	0	1	0	0	0	0	0	2	3.5
	2009–2018	0.5	0	0	0	0	0	0	2	0	0	0	0	0	2	4.5
San Andrés, Providencia, and Santa Catalina	1991–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Intendencias and comisarías*	1950–1990	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

National legislature has: L1=regional representation; L2=regional government representation; L3=majority regional representation; L4=extensive authority; L5=bilateral regional consultation; L6=veto for individual region. Total for shared rule is either multilateral (M) or bilateral (B).

Note:

* Turístico y Cultural de Cartagena de Indias (1987); Turístico, Cultural e Histórico de Santa Marta (1989); Especial, Industrial y Portuario de Barranquilla (1993); Especial Portuario, Ecoturístico y Biodiverso de Buenaventura (2007); Especial, Turístico y Cultural de Riohacha (2015); Especial, Turístico, Cultural e Histórico de Santa Cruz de Mompox (2017)

**Arauca, Casanare, Putumayo, San Andrés, Providencia, Santa Catalina, Amazonas, Guainia, Guaviare, Vaupés, Vichada.

@version, Nov 2020 – author: Sara Niedzwiecki & Juan Diego Pietro