



# Latin American Constitutional Law and Green Constitutionalism: A Path Forward

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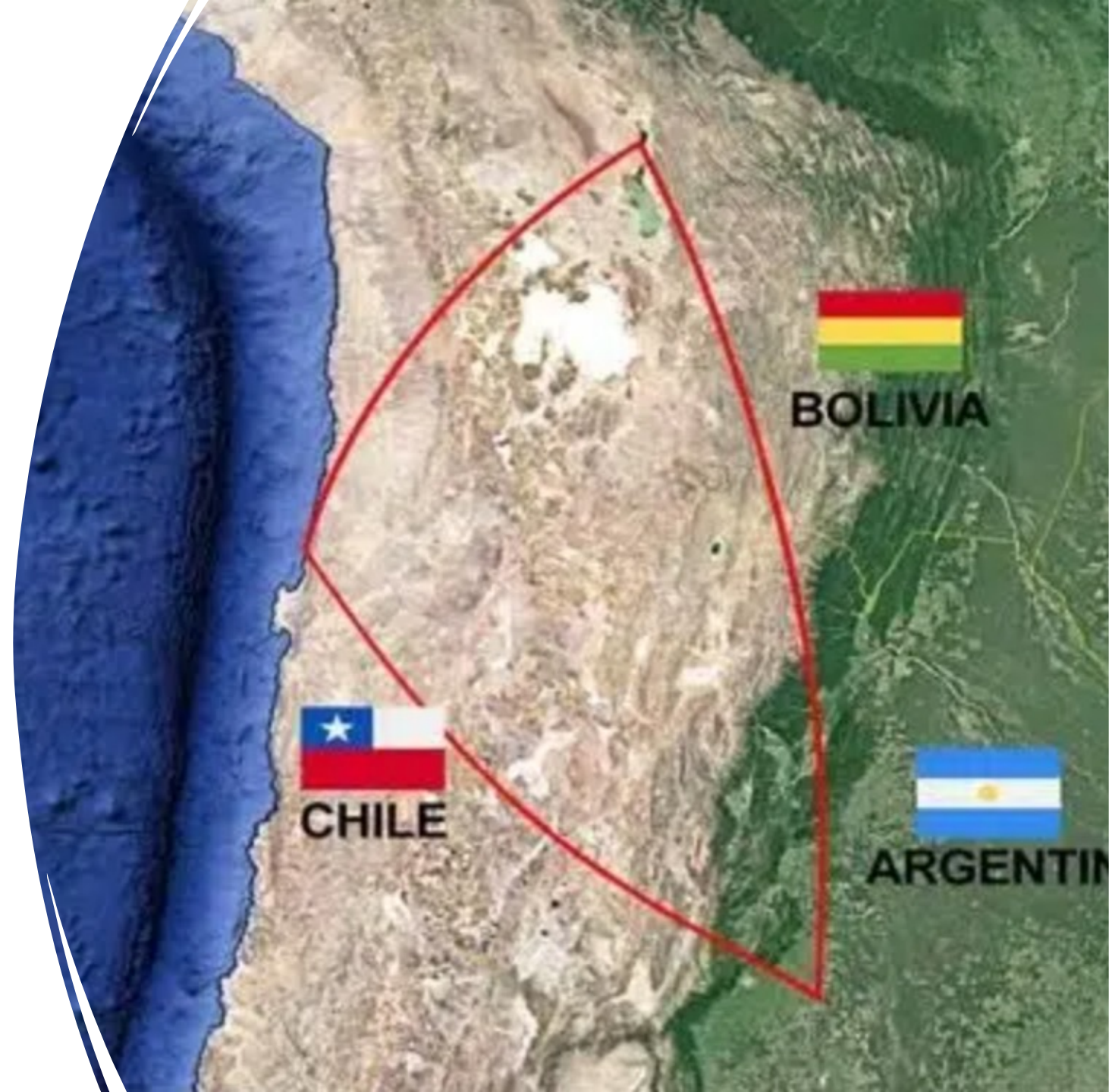
# Summary

- Green Growth, strategical minerals, and Latin America
- The Latin American Economic Constitution and the Mining Law
- The Lithium Triangle: a Tale of Two Models
- Constitutional frameworks and mining productivity: a path forward

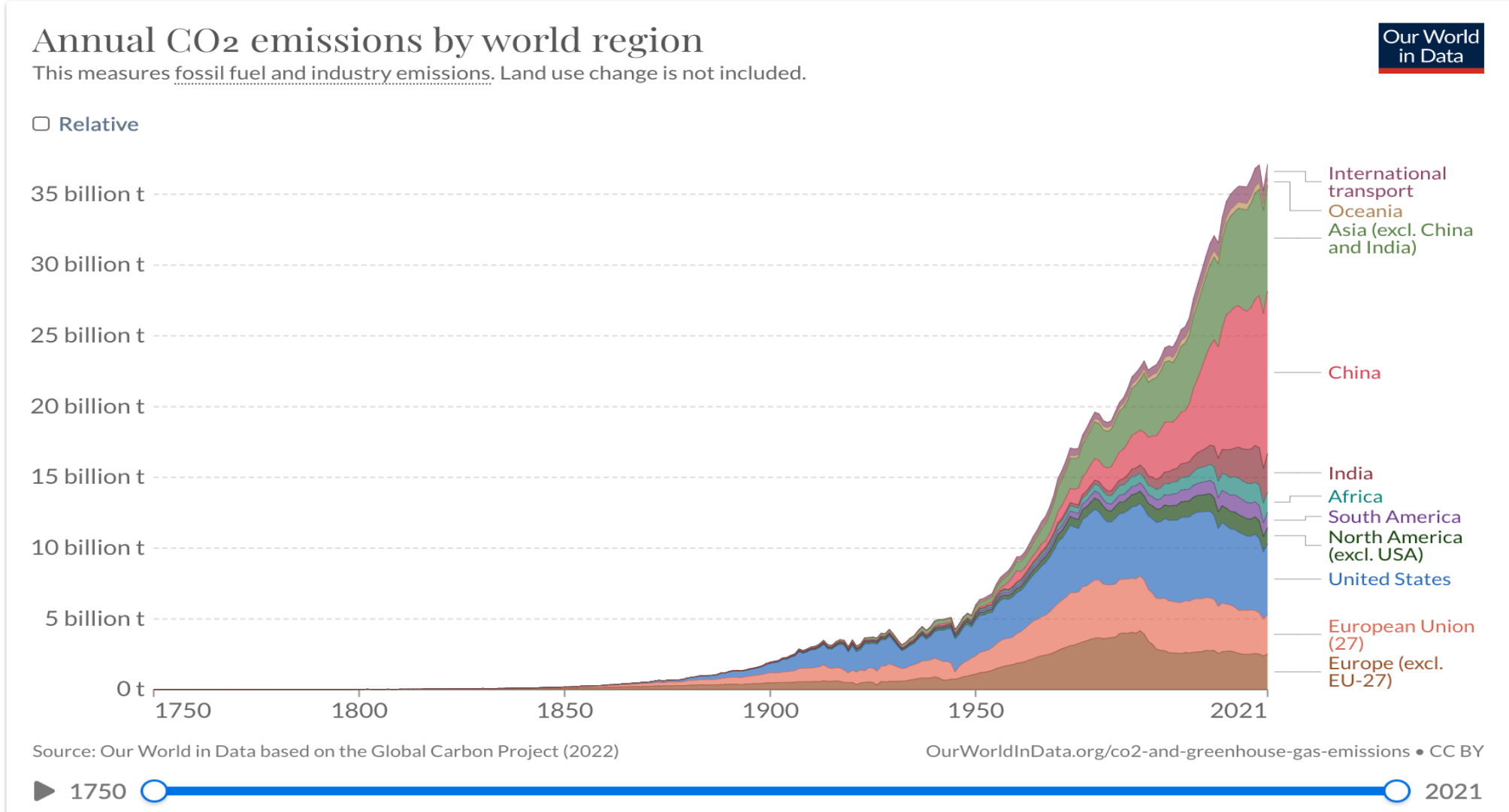


# Green Growth, strategical minerals, and Latin America

- The energy transition goals require electrifying the economy or, in other words, decarbonizing the economy.
- One critical condition for that purpose is to ensure the supply of **strategic minerals** like lithium.
- The Lithium Triangle (Argentina, Bolivia, and Chile) accounts for 55% of the world's lithium resources.
- Without Latin American mineral production, it will be hard to electrify the economy.



# Green Growth, strategical minerals, and Latin America: is not only about reducing greenhouse gas emissions





# The Latin American Economic Constitution and the Mining Law

- The Economic Constitution (*Constitución Económica*) is the general framework of the economy (M. García-Pelayo).
- Since 1917, Latin America has adopted a constitutional economic system based on two groups of rules, principles, and values:
  - ✓ Economic rights, including economic freedom and private property.
  - ✓ Government functions in the economy, particularly to ensure social and economic rights (equality rights).
- The Inter-American Human Rights System reinforces the Government functions regarding economic and social rights.

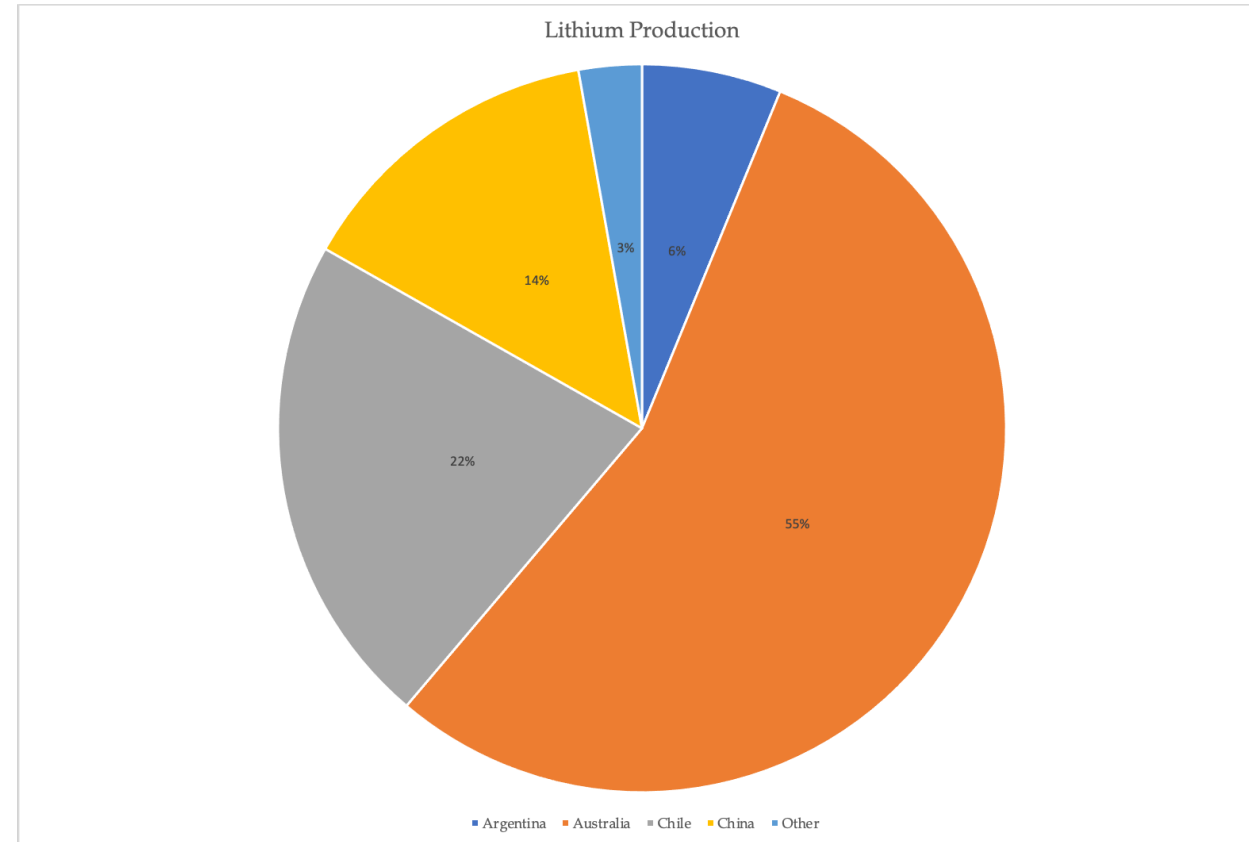
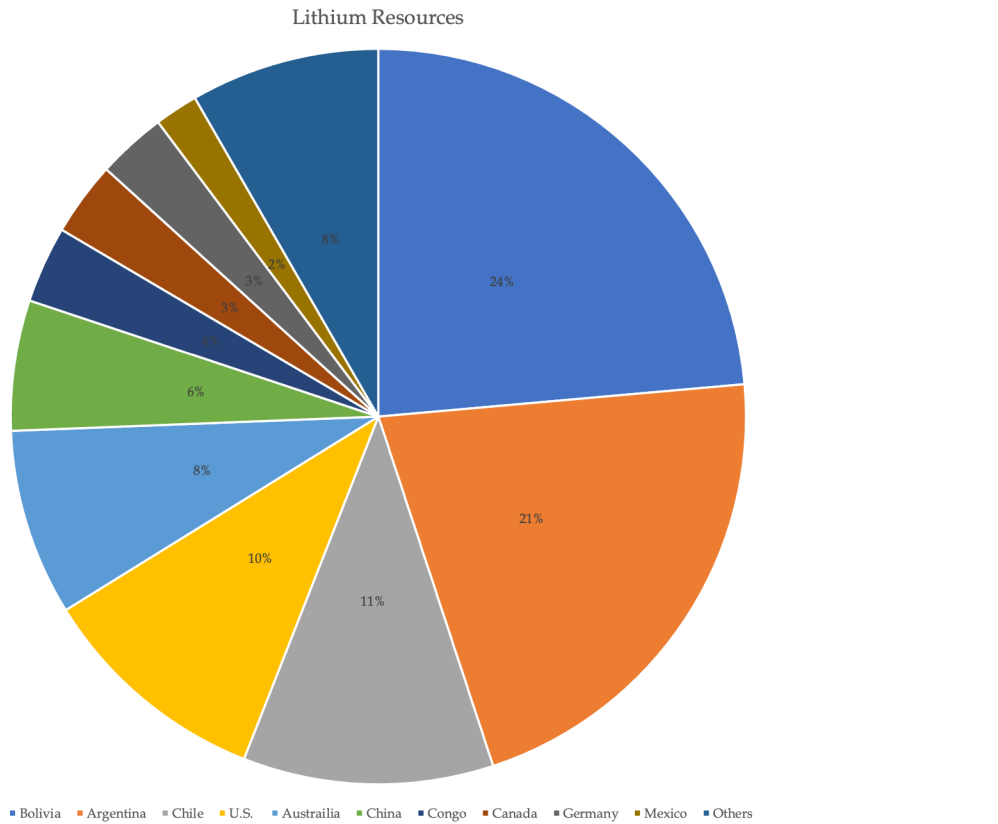


## The Latin American Economic Constitution and the Mining Law

- Following Simón Bolívar's 1829 Decree, the Latin American Constitutional Law tends to assign the property of mining deposits to the Government.
- The concession, inspired by Roman Law, is the traditional instrument to grant mining rights.
- During the 19th century, Latin American Constitutional Law considers mining activities private (Juan Bautista Alberdi in Argentina).
- Since the 20th century, Latin American Constitutional Law embraced social constitutionalism that increased Government functions over mining activities. .
- The national sovereignty principle and the 21<sup>st</sup> constitutionalism (Art. 372. Bolivian Constitution).

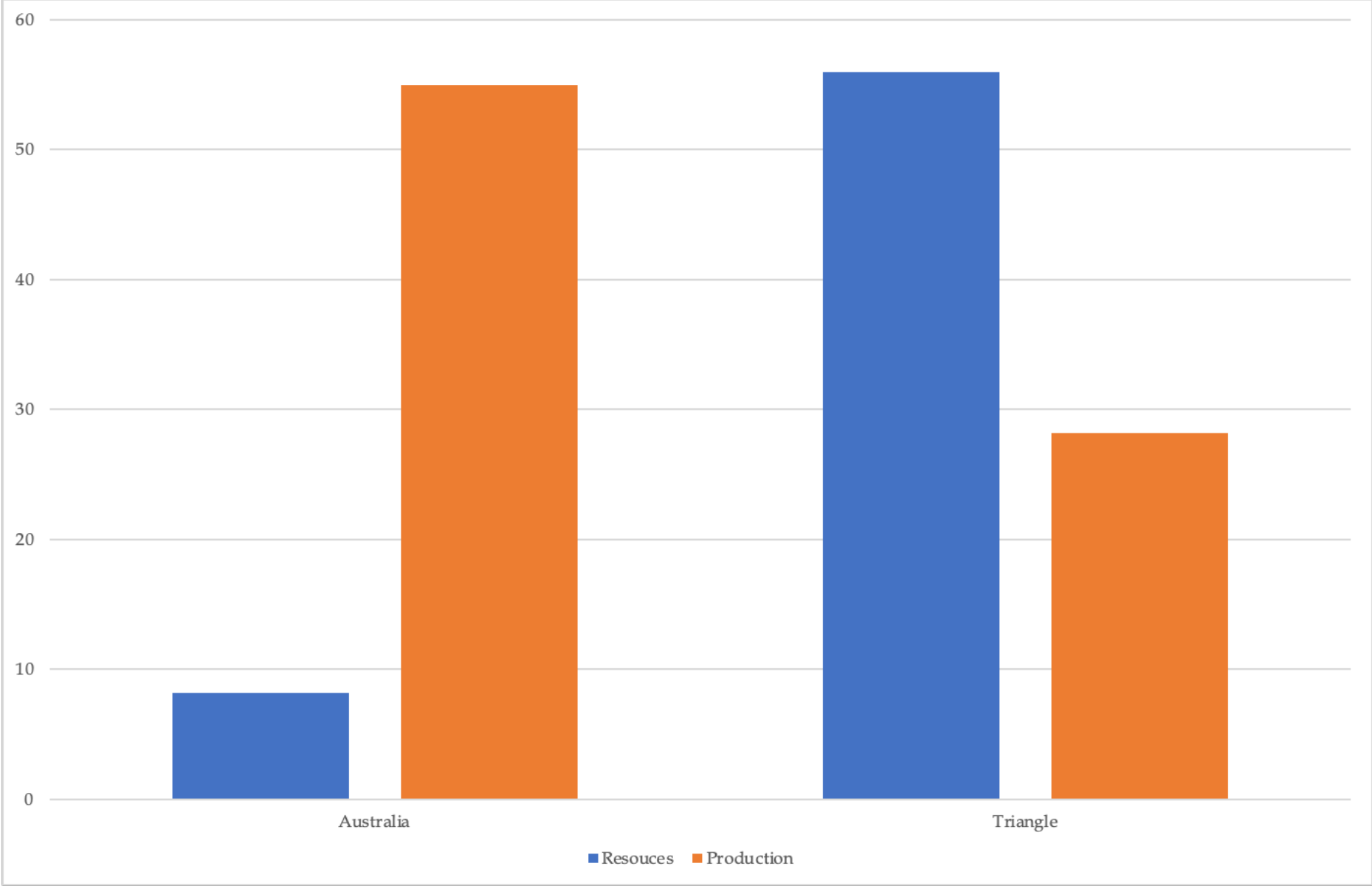
Art. 124, Argentina Constitution. Art. 298.II.4, Bolivia Constitution. Art. 19.24, Chile Constitution

# The Lithium Triangle: a Tale of Two Models



Source: U.S. Geological Survey, Mineral Commodity Summaries 2022

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# The Lithium Triangle: a Tale of Two Models

## ➤ State-led (Bolivia)

- ✓ The Government has the exclusive right to produce lithium (mining reserve).
- ✓ A state-owned enterprise (Yacimientos de Litio Bolivianos) has exclusive mining rights.
- ✓ Private investment can act as a contractor, for specific tasks (that do not involve mining rights).

## ➤ Private-led (Argentina and Chile)

- ✓ The Government grants mining rights to private inventors (concessions or special mining contracts).
- ✓ Private inventors conduct mining activities under the Government's contractual powers.





## Constitutional frameworks and mining productivity: a path forward

- The legal framework (institutions) matters.
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- The public and private sectors are not rivals but complementary partners.
  - Private economic rights should be protected, in balance with the right to regulate (the “international investment law nightmare”).
  - The Government needs something more than contractual rights: a regulatory agency.



## Constitutional frameworks and mining productivity: a path forward

- Strategic minerals could catalyze inclusive development (global value chain).

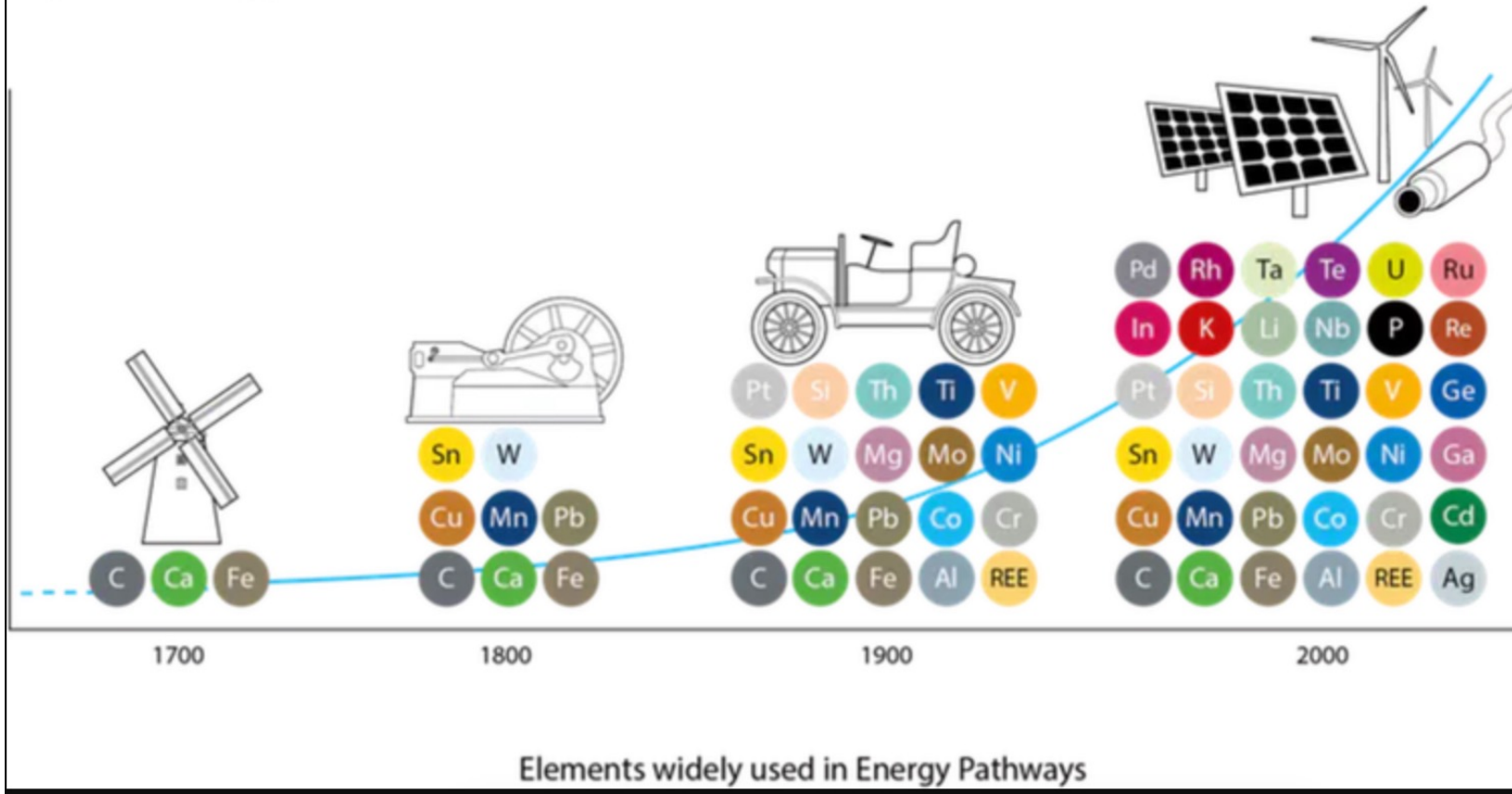
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- The nation's sovereignty over mines is not about who controls the operation. It is about how mining rents could promote sustainable and inclusive development.

- The proportionality test and the environmental control of strategic mining activities.

- What should be the role of the courts? (climate litigation)

- The perils of the Mining State and constitutional democracy.

# Ages of Energy



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