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## The Deconstruction and Reproduction of Mistrust

An Exploratory Study on the  
Contested Negotiation of  
Pluralist Justice Systems in the  
Andean Region

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# The Deconstruction and Reproduction of Mistrust. An Exploratory Study on the Contested Negotiation of Pluralist Justice Systems in the Andean Region

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**Abstract.** Over the last three decades, countries across the Andean region have moved toward legal recognition of indigenous justice systems. This turn toward legal pluralism, however, has been and continues to be heavily contested. The working paper explores a theoretical perspective that aims at analyzing and making sense of this contentious process by assessing the interplay between conflict and (mis)trust. Based on a review of the existing scholarship on legal pluralism and indigenous justice in the Andean region, with a particular focus on the cases of Bolivia and Ecuador, it is argued that manifest conflict over the contested recognition of indigenous justice can be considered as helpful and even necessary for the deconstruction of mistrust of indigenous justice. Still, such conflict can also help reproduce and even reinforce mistrust, depending on the ways in which conflict is dealt with politically and socially. The exploratory paper suggests four propositions that specify the complex and contingent relationship between conflict and (mis)trust in the contested negotiation of pluralist justice systems in the Andean region.

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**Keywords.** trust, mistrust, indigenous justice, legal pluralism, Latin America

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## Introduction<sup>1</sup>

Across Latin America, including in the Andean region, trust in the state-based system of justice has traditionally been and indeed still is decidedly low. In this context, particularly in rural areas, institutions and practices of indigenous and/or community justice are frequently perceived as offering more legitimate, accessible, and effective ways of dealing with

disputes and criminal offences in the respective local setting. Over the last three decades, countries across the Andean region have moved toward legal recognition of these alternative justice systems, de jure establishing a pluralist legal order, the de facto existence of which had continued throughout the colonial and postcolonial era. Nevertheless, this move has been far from uncontroversial, and continues to be contested. In fact, much like the “ordinary” justice system, indigenous and community-based forms of doing justice are also highly mistrusted—admittedly this is less pronounced among those who are actually subjected to these forms of justice, but such mistrust certainly prevails among those (urban) segments of society that do not share the respective norms and traditions (and mostly have no experience at all with indigenous forms of justice). The process of constructing pluralist justice systems, therefore, has been and continues to be very much contested.

In this paper, I explore a theoretical perspective that aims at analyzing and making sense of this contentious process by assessing the interplay between conflict and (mis)trust. More specifically, I present a set of propositions based on preliminary evidence about the ways in which conflicts over competing conceptions and systems of justice, on the one hand, and complex dynamics of trusting and mistrusting

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1 Previous versions of this paper were presented at the international workshop “Criminal Justice in Light of Trust in/by Conflict” organized by the ConTrust Working Group “Coercion and Sanctions” at Goethe University Frankfurt (9–10 June 2022) and a panel discussion on “Derecho, conflict y confianza: Estudios comparados sobre pluralismo jurídico” at Universidad Andina Simón Bolívar, Quito, Ecuador (12 September 2022). The author would like to thank all the participants and Agustín Grijalva, Adriana Rodríguez, and Marco Navas in particular for their very stimulating comments and suggestions. The additional feedback received from one anonymous reviewer and Chiara Destri is gratefully acknowledged. Moreover, the paper has greatly benefited from the research assistance provided by Franziska Bujara as well as from conversations with Fernando García, Raúl Llasag, and Floresmilo Simbaña. All remaining errors and misrepresentations are the responsibility of the author.



those very justice systems, on the other, interact and shape each other. A key argument is that the conflict at hand can potentially contribute to deconstructing mistrust (in indigenous justice) but can also help reproduce mistrust, depending on the ways in which conflict is dealt with politically and socially. Empirically, this exploratory paper is based on a review of the existing scholarship on legal pluralism and indigenous justice in the Andean region (Bolivia, Colombia, Ecuador, and Peru), with a focus on the cases of Bolivia and Ecuador.<sup>2</sup>

Most existing studies on legal pluralism and indigenous justice in Latin America are characterized by anthropological, sociological, and legal perspectives. In terms of their overall aims, they are descriptive (analyzing the operation of indigenous justice systems, including areas of tension with state law), normative (arguing in favor of strengthening indigenous justice systems), and/or prescriptive (outlining further steps on how to strengthen indigenous justice and/or to better coordinate indigenous and state law), with important contributions also theorizing the meaning of (global) legal pluralism (for an overview, see Sieder 2009: 53–55).<sup>3</sup> In this paper, in contrast, I focus on the political negotiations over the recognition of indigenous justice, thereby building on Donna Lee Van Cott's argument that the question of legal pluralism is "fundamentally a political issue", which (also) requires an "explicitly political analysis" focusing "both on interactions among political actors and on the broader political context in which the recognition of legal pluralism takes place" (Van Cott 2000: 209; see also Santos 2012: 47).

From a theoretical perspective, this paper—in line with a central proposition of the ConTrust initiative from which it has emerged—is inspired by the notion that conflict is not always and not necessarily a threat to trust, but that trust can in fact also "come about *through* and *because of* the experience of conflict" (Forst 2022: 2; emphasis in the original).<sup>4</sup>

In this paper, I argue that, in the case of the establishment of legal pluralism in the Andean region, manifest conflict can indeed be considered as helpful and even necessary for the deconstruction of deep-seated mistrust of indigenous justice among the non-indigenous population and elites. That said, this positive causal effect of conflict on trust is far from deterministic or unconditional, but rather is only of an enabling nature. Empirically, the reproduction, or even reinforcement, of mistrust is in fact the more common outcome in the cases at hand. Further preliminary propositions, therefore, suggest key conditions and dynamics that shape the politics of (mis)trust involved in the contentious negotiation of legal pluralism in ways that prevent conflict from actually deconstructing mistrust.

## Political and judicial trust: Conceptual reflections and a brief overview of the state of research

Following Offe (1999: 47), trust can be defined as the expectation that others, "through their action or inaction", will contribute to the well-being of, or at least will not inflict damage upon, an individual or group (see also Freitag and Traunmüller 2009: 782–783). Regarding these "others", which can include specific individuals, other people in general, social groups or organizations, as well as institutions, the scholarship on trust usually distinguishes between two different types of trust: political trust, i.e., citizens' trust in political institutions, which is also referred to as institutional or vertical trust; and social trust, i.e., citizens' or social groups' trust in fellow citizens, members of one's own social groups or of other social groups, which is also known as horizontal trust and takes the form of particularized or general, bonding or bridging trust (for an overview, see the contributions in Uslaner 2018a).

Conventional wisdom has it that these two overarching types of trust represent fairly different phenomena and are only loosely related. The interesting thing about judicial trust, or trust in law,<sup>5</sup> however, is that scholars suggest that it is "one of the few areas that depends equally on political and social trust" (Uslaner 2018b: 11). On the one hand, as with vertical trust in other political institutions, citizens' trust in the justice system is shaped by their "direct and indirect experiences" with the respective actors and institutions, most notably of the police and the courts (Bradford et al. 2018: 642). On the other hand, as with social trust, research suggests that people trust justice institutions "when and to the extent that they believe those institutions share group membership with themselves and/or represent social groups to which they feel they belong" (Bradford et al. 2018: 643). "People", Bradford et al. observe, trust justice

tion, see the project website at <https://contrust.uni-frankfurt.de>.

5 In this paper, I follow Bradford et al., who explicitly refrain from talking about "trust in the law" because the law "is not a trustee; it has no agency or independent volition" (Bradford et al. 2018: 636; emphasis in the original).

2 While the phenomenon at hand is certainly not restricted to the Andean region, the countries in this region are "most advanced in recognizing the authority of informal legal systems" (Van Cott 2006: 251) and, therefore, also have the most experience when it comes to the surrounding controversies and processes of negotiation. Within this region, Bolivia and Ecuador are the two countries "that experienced the most profound constitutional transformations in the course of political mobilizations led by indigenous and other movements" (Santos 2012: 15), which culminated in the proclamation of plurinational states (see Wolff 2012).

3 See, for instance, García (2002) and Kuppe (2010), the edited volumes by Santos and Exeni (2012) and Santos and Grijalva (2012), as well as the series of books coordinated by Brandt (e.g., Brandt 2013; Brandt and Franco 2007; Vintimilla 2012; Vintimilla et al. 2007). There is, of course, a much broader debate about (global) legal pluralism but this goes beyond the confines of this paper (for overviews, see Berman 2020; Kötter and Schuppert 2009).

4 "ConTrust: Trust in Conflict – Political Life under Conditions of Uncertainty" is a joint research initiative of Goethe University Frankfurt and the Peace Research Institute Frankfurt (PRIF), which is generously funded by the Hessian Ministry of Higher Education, Research and the Arts (HMWK). For more informa-

institutions “when they believe they represent, enact, and even embody values they share” (2018: 643). In fact, in their study *Trust in the Law*, Tyler and Huo (2002) find that minorities in the United States, including African Americans and Hispanics, display lower levels of trust in the court and the police “because they feel that they are treated less fairly and because they are less trusting of the authorities’ motives” (Tyler and Huo 2002: xv).<sup>6</sup> In a general sense, Bradford et al. conclude from the state of research that for trust in justice institutions to emerge and be sustained, it is important that “the narratives told by, about, and in relation to the police and courts correspond with people’s own values (2018: 642).<sup>7</sup>

This observation is central to the topic of this paper, given that indigenous justice systems are, by definition, considered by part of society an in-group phenomenon, while another part views them as something external to their life world, in other words established by an out-group. From the perspective of those that identify as members of a given indigenous community, indigenous community justice is, in part, a question of vertical political trust—but above all, it is based on particularized, or “bonding” social trust, sustained by shared values and group membership. The situation looks quite different for non-members. They can be expected to view indigenous justice as something external, exercised by authorities that belong to a different group and hold different values. In general terms, for a member of the non-indigenous urban population of a given country, attitudes toward indigenous justice are *prima facie* not a question of vertical trust at all, but primarily shaped by the horizontal relationships between the social groups involved. That said, given that the spaces in which indigenous and non-indigenous populations live are far from geographically separate,<sup>8</sup> non-members of indigenous communities might well also consider the possibility of being subject to such indigenous justice systems.

Another peculiarity characterizing trust in the judiciary specifically concerns Latin America. Based primarily on

studies on North-Western democracies, trust researchers have argued that the judiciary “holds a special place among political institutions” because “the courts are expected to be fair and nonpartisan”, while political institutions such as the legislature and the executive “are partisan, and people’s trust in government often is based upon party ties” (Uslaner 2018: 12). In a similar vein, Mark Warren distinguishes between “trust in the less political functions and branches (such as the police, public education, and the judiciary)” and “trust in the more political institutions – legislatures and politicians in particular” (Warren 2018: 78). Within democracies, Warren suggests, it is only the former—“institutions with broadly agreed public purposes”, including the “judicial system”—that merit what Warren calls public or first-order institutional trust (2018: 89).<sup>9</sup> Empirically, trust research has indeed found that trust in the “more neutral and impartial institutions of the state (the courts, police, and civil service) tends to go together and to be stronger than trust in the organizations of government in the forms of cabinet, parliaments, and political parties” (Newton et al. 2018: 40–41). The situation in Latin America is decidedly different, however.

Important variations between countries and over time notwithstanding, Latin America is generally characterized by low levels of trust in political institutions. And institutional trust in political parties, the legislature, and the courts is particularly low (Mattes and Moreno 2018: 369).<sup>10</sup> Comparative survey data across regions reveal a specific feature characterizing Latin America, this being that “Latin Americans tend to think about the courts in the same way as they think about the other *partisan* institutions and differently from the way they think about the army and police” (Mattes and Moreno 2018: 371; emphasis in the original). Other studies also confirm that, across Latin America, trust in supreme courts (Maldonado 2011) and the criminal justice system (Herrmann et al. 2011) are significantly associated with other indicators of political trust (such as trust in the president).<sup>11</sup>

Another general feature that trust research has noted with regard to Latin America concerns social, interpersonal

6 In an analysis on trust in the criminal justice system in the Americas, based on LAPOP data for 2010, Stefanie Herrmann and colleagues (2011) find that self-identification as “white” is positively associated with trust.

7 Based on a “large corpus of empirical work”, Bradford et al. conclude “that, in their dealings with legal authorities, people appear to place more emphasis on the fairness of the process than on the outcome obtained” and that the “importance of fairness in people’s relationships with legal authorities revolves around the fact that those authorities represent social groups most find important, which have been variously characterized as the nation, the state, or the community” (Bradford et al. 2018: 640).

8 As Rachel Sieder has emphasized, “paradigms of legal recognition often tend to associate and ‘fix’ indigenous people with rural forms of territoriality based on the exploitation of agriculture or natural resources, when in fact nearly 50 percent of Latin America’s indigenous people live in urban areas and many are transnational migrants” (2012: 105). Consequently, indigenous community justice has also become a relevant issue in many (peri-)urban spaces, most notably in the case of El Alto in Bolivia (Van Cott 2006: 259–262).

9 In contrast, it is more likely that political institutions will be met with distrust and will depend on second-order institutional trust, that is, trust “in rules and norms that govern the democratic conduct of conflict” (Warren 2018: 89).

10 On the causes (and consequences) of political (mis)trust in Latin America, see also Bargsted et al. (2017), Power and Jamison (2005), and Segovia (2008). With a focus on the Andean region: Mainwaring (2006).

11 See Corbacho et al. (2015) for detailed data on trust in the judiciary in Latin America (and in inter-regional comparison). In contrast to these findings, Mainwaring has noted for the Andean region and based on *Latinobarómetro* data from 1998 that trust in the judiciary “was generally greater than confidence in parties and Congress” (2006: 309). This observation is, however, largely driven by the case of Venezuela. If focusing on the four Andean countries Bolivia, Colombia, Ecuador, and Peru only, an average share of 23.75 percent expresses some or a lot of trust in the judiciary, as compared to 22 percent for the national assembly (Mainwaring 2006: 309, Table 10.7).

trust, which is very low when compared to other world regions (Mattes and Moreno 2018: 359). At the same time, however, particularized or “bonding” trust in family and neighbors is quite high. The “radius of social trust”, Mattes and Moreno conclude, is “tightly circumscribed” in Latin America, “whereby trust in one’s extended family (‘relatives’) is very high, but trust declines in a predictably step-wise pattern to ‘neighbors,’ ‘other people you interact with,’ and, finally, ‘most people’” (2018: 362–363).<sup>12</sup>

In the literature on Latin America, the widespread mistrust in the judiciary as well as the low interpersonal trust is usually explained by pointing to the obvious problems with the state of the judicial system and rule of law in the region, which is also reflected in the particularly high levels of violent crime, including homicide rates (see, for instance, Corbacho et al. 2015). Scholars frequently refer to Guillermo O’Donnell who suggested in the early 1990s that important parts of Latin American democracies are characterized by “brown areas”, in which “the *political* rights of polyarchy are respected”, but where the state “is unable to enforce its legality” (O’Donnell 1993: 1361; see, e.g., Hilbink and Gallagher 2019: 43; Van Cott 2006: 249). In these areas, “peasants, slum dwellers, Indians, women, etc. often are unable to receive fair treatment in the courts, or to obtain from state agencies services to which they are entitled, or to be safe from police violence, etc.” (O’Donnell 1993: 1361). Given the widely acknowledged weakness of, and highly selective access to, the judicial system and the rule of law, Van Cott argued, it is not particularly surprising that “public confidence in judicial systems is low throughout the region” (2006: 249). Even if, more recently, Latin America has seen important judicial reforms and an overall increase in the autonomy and capacity of courts in particular (Brinks 2012), the performance of judicial systems is usually not considered to have improved significantly,<sup>13</sup> and public opinion polls do not show an increase in trust in the judiciary either.<sup>14</sup>

A final word on the terminology used in this paper: In the literature on trust, the two concepts of distrust and mistrust are used in quite different ways, at times interchangeably, at times to imply decidedly different phenomena. In this paper, I use the term “mistrust”, following Matthew Carey’s reasoning that mistrust, as opposed to distrust, refers to “a

general sense of the unreliability of a person or thing [or institution, for that matter, JW]” rather than to an attitude “based on a specific past experience” (Carey 2017: 8). That being said, I am aware that this is only one way of distinguishing between mistrust and distrust (see, e.g., Lenard 2008: 318–320; Marsh and Dibben 2005: 18–22).

## The challenge of legal pluralism in the Andean region: A brief overview

Legal pluralism has characterized Latin America ever since the colonial era. Under Spanish rule, the *Ley de Indias* established a “hierarchical and racialized” system of legal pluralism (Sieder 2019: 52). In this context, precolonial legal orders were not entirely dismantled but partly “transformed and adapted to colonial power relations”. The Spanish rulers also imposed new legal and political systems upon the colonized communities, which over time, however, “were appropriated and adapted” by the indigenous population (Van Cott 2006: 252).<sup>15</sup> Formally speaking, independence mostly brought this legal coexistence to an end, as “the new nations by and large modeled themselves on the legal systems of the USA and continental Europe” (Sieder 2019: 52). Indigenous justice systems were prohibited and replaced by policies of coerced assimilation (Van Cott 2006: 252). That being said, in many rural indigenous communities, indigenous justice systems de facto survived, and a “form of indirect rule” continued to characterize relations between the (remote) central state and indigenous peoples in the rural areas of many countries (Sieder 2019: 52; see also Yashar 2005).

The term indigenous or community justice refers to a diverse range of (more or less) indigenous ways of dealing with disputes, norm violations, and criminal offences at the level of local communities (Sieder and Barrera 2017: 11–14). While this diversity is constitutive of indigenous justice, there are nevertheless certain overarching features that have been identified in the literature. According to Brandt, indigenous justice generally aims at fulfilling four key communitarian functions: to maintain or reestablish communal peace; to impose order and authority; to educate the guilty; and to resocialize and reintegrate the individuals who have been prosecuted (2013: 48).

One of the key reasons for the survival of indigenous justice systems, according to Van Cott, is precisely the fact that “they are based on commonly held indigenous values and

12 In fact, the level of trust in “relatives” is highest in Latin America (when compared to East Asia, North Africa, and sub-Saharan Africa), while the level of trust in “most people” is lowest (Mattes and Moreno 2018: 362). Consequently, in Latin America, the share of what the authors call “bonders” is highest and the share of “bridgers” lowest (Mattes and Moreno 2018: 363).

13 With a view to Bolivia, Colombia, Ecuador, Peru, and Venezuela, Mainwaring argued that “all five Andean states have often failed” when it comes to ensuring citizens’ legal rights (2006: 296), adding that “[t]he judiciary has the primary responsibility for upholding citizen rights, and it has been deficient in this responsibility, notwithstanding important innovations such as the *tutela* in Colombia and the ombudsman in Peru” (Mainwaring 2006: 298).

14 See the survey data provided by LAPOP (<https://www.vanderbilt.edu/lapop>) and the *Latinobarómetro* (<https://www.latinobarometro.org>).

15 This logic—or dialectic—of imposition and appropriation has continued throughout the postcolonial era. As a result, today’s indigenous justice systems (much like indigenous cultures in general) cannot be considered “autochthonous” in the strictest sense of the word but are in fact “hybrids” permanently undergoing processes of transformation (Brandt 2013: 46–47; see also Bazurco and Exeni 2012: 55–56; Grijalva 2012b: 566–567). Boaventura de Sousa Santos, therefore, rejects the notion that relations between indigenous and state justice can be understood as “relations between the traditional and the modern”, arguing that they should instead be thought of as relations “between two rival modernities” (Santos 2012: 49).

norms” and, therefore, “have greater legitimacy”, whereas “state legal systems, in addition to discriminating against the indigenous, tend to be inefficient, inaccessible, and culturally inappropriate for dispensing justice in indigenous communities” (2006: 252). In fact, existing studies suggest that the members of indigenous and/or rural communities across the Andean region tend to trust their respective systems and practices of community justice, while they mostly hold very negative opinions about the official state justice system (see Brandt 2013: 47; Van Cott 2006: 252).<sup>16</sup> Certainly, this is not to say that all members of indigenous communities always trust their respective authorities, forms, and practices of indigenous justice (see Bazurco and Exeni 2012: 131–133).<sup>17</sup> Indigenous communities cannot be considered “harmonious, homogenous, and unified collectivities”, but “typically are rent by internal conflicts” as well (Van Cott 2006: 251). For instance, existing studies have documented “the exclusion of women from community governance systems and their lack of access to justice”, which has given rise to contested “transformations of gender ideologies and justice practices within indigenous communities” promoted by organizations of indigenous women (Sieder 2019: 54; see also Grijalva 2012b: 571–572; Picq 2012; Salgado 2012; Sieder and Barrera 2017).

Since the 1970s, the Andean region has experienced the emergence, spread, and growth of indigenous movements pushing for the recognition of collective indigenous rights.<sup>18</sup> Among many other issues, this indigenous rights agenda has included the demand for recognition of indigenous justice.<sup>19</sup> As a result, from the early 1990s onward, all countries of the region saw constitutional reforms that granted indigenous and/or community justice an official legal status. As Rachel Sieder summarizes:

- 16 In their comparative study on Ecuador and Peru, for instance, Brandt and Franco find that members of rural communities in the two countries generally trust their respective institutions and practices of “community justice”, appreciate the latter’s capacity to solve conflicts, and tend to prefer community over state justice (2007: 146–149). At the same time, they do not trust the official system of state justice at all, tending to think that it only exacerbates problems and, therefore, try to avoid it as far as possible (Brandt and Franco 2007: 149–152; see also Brandt 2013: 191–193, 256–257, 289–293).
- 17 In the specific case of the Saraguros in Ecuador, for instance, Brandt and Franco observed that “many community members do not trust community justice. This is due to the fact that the leaders still only have limited experience, as until community justice was formally recognized by the Political Constitution of 1998, they had not practiced community justice” (Brandt and Franco 2007: 149). For another case (also from Ecuador) of low trust in the local indigenous justice system, see Salgado (2012: 261).
- 18 The literature on indigenous movements is broad, rich and diverse. Some representative examples in English include the comparative studies by Lucero (2008), Postero, and Zamosc (2004), Van Cott (2005), and Yashar (2005).
- 19 In light of the above, this demand for the recognition of indigenous justice can be understood as a direct response to “centuries of state *injustice* directed toward indigenous communities” (Van Cott 2006: 264).

Legal recognition of semiautonomous spheres for indigenous justice was a marked feature of constitutional reforms in the Andean region. Colombia was the first country to approve a new constitution recognizing legal pluralism in 1991, followed by Peru (1993), Bolivia (1994), Ecuador (1998), and Venezuela (1999). The most recent constitutions of Ecuador (2008) and Bolivia (2009) went further than previous formulations, declaring that henceforth these states would be based on principles of ethnic pluralism and ‘plurinationalism.’ In the Andes these new constitutional regimes specified indigenous jurisdictions and mechanisms or general principles for coordination between ordinary and indigenous law [...] (Sieder 2019: 53; see also Kuppe 2010; Sieder 2012).<sup>20</sup>

As emphasized in the introduction, this move toward recognizing indigenous justice was (and still is) highly controversial. There are many different reasons for this, some of which will be dealt with in the next section, including a lack of knowledge about what indigenous actually entails and deep-seated postcolonial and racist views among the non-indigenous population and elites. At the heart of the political and academic debate over legal pluralism in the Andean region, however, is the various conflicts or tensions that exist between indigenous/community and state-based/ordinary law. Van Cott (2006) distinguishes between three types of conflicts:

- First, there are process-related conflicts, as state law is “based on written rules and precedent”, whereas indigenous systems “are flexible and dynamic” (Van Cott 2006: 268). Key manifestations of this conflict concern the right to due process and to defense, which are core principles in liberal, state-based law but not provided for in the same way in indigenous justice systems (see Brandt and Franco 2007: 165–166; Van Cott 2000: 218–221).
- Second, there are conflicts over norms, which relate in particular to the fundamental tension between the state law’s focus on individual rights and “indigenous peoples’ emphasis on collective rights” (Van Cott 2006: 268). The overarching difference here has to do with the primary aim of indigenous justice to restore harmony to the community. A

- 20 See Van Cott (2000) for a comparative analysis of the early constitutional reforms in Colombia (1991) and Bolivia (1994) and Derpic (2009) for a comparison of Bolivia’s constitutional stipulations from 1994 and 2009. For in-depth studies on Bolivia and Ecuador, see Santos and Exeni (2012) and Santos and Grijalva (2012), respectively. These changes primarily reflected the newly acquired political power of the indigenous movements. But, as Van Cott notes, the constitutional recognition of indigenous law also reflected the belief among (at least some) policymakers “that linking existing, effective, authoritative, and legitimate informal justice institutions to the state would lend effectiveness, authority, and legitimacy to the state justice system – both through the very act of recognition and through the increased supply of justice available to society’s most marginalized and underserved groups. Informal justice institutions relieve the overburdened and resource-deficient policy and courts of cases that can be solved with fewer resources by informal authorities” (Van Cott 2006: 266).



more specific and much-debated issue is the tension between “collective indigenous rights and women’s rights” (Sieder 2012: 108).

- A third type of conflict concerns different approaches to sanctions, which, in the case of indigenous justice, “typically involve some combination of brief confinement, mild forms of corporal punishment, compulsory community labor, and indemnification of the victim or the victim’s family”. This differs from what is usual and deemed appropriate in liberal, state-based law (Van Cott 2006: 268).

Over time and between countries, negotiations over precisely how to grant constitutional recognition to indigenous justice have led to various ways of defining its scope, its limitations, as well as its relationship to ordinary, state-based justice. Given the complexity of the matter, the overall legal strategy across the region and over time has been to set out certain general principles in the constitution, which then provides for a law that is supposed to define the demarcation, coordination, and cooperation between indigenous and state justice more specifically. With the important exception of Bolivia, which will be discussed below, all attempts to agree on and formally adopt such a law so far have failed.<sup>21</sup> In the case of Colombia, where the constitution has provided for such a law since as early as 1991, the Constitutional Court has gradually assumed the role of the coordinating entity by acting as “a de facto legislator in the absence of implementing legislation” (Van Cott 2006: 269).<sup>22</sup> In light of these experiences, as well as the difficulties of designing an appropriate legal framework across the region, some scholars have concluded that the whole idea of establishing a law that somehow legally solves the problems of coordination and cooperation between state and indigenous justice might not be such a good one after all. Some have argued that the Colombian approach could be better suited to the dynamic and open-ended quest for the best way of coordinating indigenous and state justice in a truly intercultural manner

(Grijalva 2012a: 67; Santos 2012: 37–38).<sup>23</sup> Be this as it may, this paper will not address such substantive normative questions about how best to deal with the challenges of legal pluralism. Instead, the following section will review the scholarship on the contentious negotiations over the legal recognition of indigenous justice with a focus on identifying overarching dynamics related to what we might call the politics of (mis)trust.

## Preliminary propositions on the deconstruction and reproduction of mistrust during the contested establishment of pluralist justice systems in the Andean region

### *Proposition 1: Manifest conflict is necessary for a potential deconstruction of mistrust in indigenous justice*

As many scholars emphasize, mistrust in indigenous justice among the non-indigenous population, including political elites, members of the judiciary, and legal experts, is crucially shaped by a lack of knowledge about the norms and practices of indigenous justice, which is reinforced by deep-seated colonial and racist attitudes.<sup>24</sup> A study on Ecuador, for instance, observes a persistent “profound lack of knowledge about the reality of legal pluralism across broad sectors of society” and emphasizes that the “ignorance, prejudices, and profound lack of knowledge about indigenous cultures” are key sources of anti-indigenous attitudes and views (Viaene and Fernández-Maldonado 2012: 10).<sup>25</sup> Also referring to the case of Ecuador, Raúl Llasag notes that the country’s “local and national media play a decisive role in misinforming and delegitimizing indigenous justice”, which not only reflects their “total ignorance” when it comes to indigenous justice but, underlying this, also the persistence of deeply rooted “racism and ethnocentric conceptions” (Llasag 2012: 353; see also Santos 2012: 23). A key example that is frequently referred to in this regard concerns the ways in which cases of lynching are reported and depicted by the media and in the public discourse, as if they were examples of indigenous justice systems at play (see Goldstein 2005: 394–395; Krupa 2009; Viaene and Fernández-Maldonado 2012: 23, 2018: 209).<sup>26</sup> The result, which again reflects deep-rooted “colonial attitudes and racism”, is a widespread belief “that indigenous culture and its justice system are characterized

21 On the very controversial and ultimately unsuccessful attempts to negotiate laws on coordination and cooperation in Colombia, Ecuador, and Peru, see Barrera (2012); Brandt (2016: 265–280, 2017); Grijalva and Exeni (2012: 591–601); Van Cott (2000: 215–217); Viaene and Fernández-Maldonado (2018); Vintimilla (2012). On the case of Bolivia, see below as well as Barrera (2012); Grijalva and Exeni (2012: 601–611); Rodríguez Veltzé (2011). As Van Cott summarizes, the controversies over the draft coordination laws centered on three overarching questions: “(1) Should indigenous jurisdiction be mandatory or optional? (2) Should crimes or disputes involving non-Indians or Indians from distinct cultures be handled differently or remitted to the state? (3) Should indigenous jurisdiction be defined geographically or personally? In addition, indigenous peoples’ representatives usually resist any limitation on the scope of their autonomy, such as the national constitution and ordinary laws and judicial bodies such as the constitutional or supreme court, since they view indigenous law and state law as inherently equal” (Van Cott 2006: 269).

22 On this role and key judgments of Colombia’s Constitutional Court, see Ariza (2010), Aranda (2011: 129–132), and Van Cott (2000: 217–223, 2006: 270–271).

23 For an in-depth discussion focusing on Bolivia and Ecuador, see Grijalva and Exeni (2012). Aranda (2011) compares the experiences of Colombia, Ecuador, and Peru.

24 See Grijalva (2012b: 574–576); Llasag (2012: 353); Santos (2012: 40); Van Cott (2006: 268); Viaene and Fernández-Maldonado (2012: 10, 2018: 209); Vintimilla et al. (2007: 11–12).

25 All translations from Spanish sources by the author.

26 In his analysis of lynchings in Ecuador, for instance, Krupa shows how these “are discursively portrayed as Indian-like acts that threaten normative values of political process and national state practice” (Krupa 2009: 21–22). For a similar observation concerning the ways the public/media depicts the practice of lynching in Bolivia, see Goldstein (2005: 394–395).



by barbaric customs or traditions that violate basic human rights” (Viaene and Fernández-Maldonado 2018: 209). Conversely, the lack of knowledge about how the state justice system works has also been identified as one cause of “fear and mistrust” in rural indigenous communities (Brandt and Franco 2007: 152). In general terms, Fernando García emphasizes (again with a view to Ecuador):

In contexts characterized by a lack of dialogue and belief in institutions, ordinary citizens, who are always vulnerable to media manipulation, are fearful of the challenges posed by the recognition of multi-pluriculturalism (García 2008: 483).

Bearing this in mind, then, the manifest conflict over the contested recognition of indigenous justice that has been observed throughout the Andean region over the last three decades is arguably not only helpful, but indeed necessary to enable the deconstruction of mistrust, if not the building of trust, on the horizontal axis (i.e., between social groups).<sup>27</sup> The argument is that it is only through the public controversy over the reality as well as the proper role and limitations of indigenous justice that both (traditional) elites and the general population can develop a more nuanced and informed opinion.<sup>28</sup> The transformation from the post-colonial configuration of a de facto legal pluralism, which is shaped by and based on mutual ignorance (at best), to a potential future order, in which legal pluralism is generally accepted and enables the mutually supportive “conviviality” (*convivialidad*) of indigenous and state justice (Santos 2012: 36), arguably has to go through a period of open conflict in which deep-rooted relationships and perceptions of trust and mistrust are challenged and, potentially, changed.

In general terms, this proposition follows the sociological conflict theories of Georg Simmel or Lewis Coser in arguing that conflicts can have integrative functions. By confronting each other in conflict, the participants can develop “a notion of membership of the *whole* political community having to answer questions about how it ought to be governed”, as Rainer Forst puts it (2022: 9; emphasis in the original). Here, I emphasize the necessity of manifest conflict, as both the aforementioned integration-through-conflict theory and my more specific proposition imply that this context involves an openly articulated controversy and not merely a situation

characterized by diverging positions (as in latent conflicts).<sup>29</sup>

*Proposition 2: Manifest conflict over indigenous justice can also lead to the reproduction, if not reinforcement, of mistrust*

The argument (of the first proposition) that manifest conflict *enables* a deconstruction of mistrust implies that conflict does not, either automatically or necessarily, lead to a reduction of mistrust and the building of trust. In fact, research on the political negotiations and public debates over indigenous justice systems reveal plenty of evidence that suggests a negative impact on mutual (mis)trust (and, unfortunately, much less evidence in support of the positive effect stated above). During the 2006–2007 Constituent Assembly in Bolivia, for instance, the recognition of indigenous peoples’ rights to autonomy, including to indigenous forms of community justice, were heavily contested, which arguably reinforced, rather than reduced (mutual) mistrust (see Gamboa 2009; Romero et al. 2009; Schilling-Vacaflor 2010: 174–188). A couple of years later, when Bolivia’s Plurinational Legislative Assembly debated the law that was meant to demarcate the indigenous and state jurisdictions (*Ley de Deslinde Jurisdiccional*), the parliamentary approval was preceded by “warnings, especially from opposition members of the assembly with wide media coverage, about ‘the dangers of community justice’, which was directly and automatically associated with lynching” (Grijalva and Exeni 2012: 605).<sup>30</sup> The resulting law, which showed the “prevailing common sense in the Assembly”, reflected the “mission to ‘protect’ ordinary justice to prevent ‘future excesses’ of indigenous justice” (Grijalva and Exeni 2012: 605). As a consequence, the law “was harshly criticized because it ‘reproduces legal colonialism’ by violating the constitutionally mandated hierarchical equality of indigenous justice and ordinary justice, and excludes crimes against the integrity of children, rape, murder and homicide from the indigenous justice jurisdiction” (Viaene and Fernández-Maldonado 2018: 204; see also Santos 2012: 38; Sieder 2012: 110–111).<sup>31</sup>

Moreover, specific conflicts over cases of indigenous justice—because of the ways in which they are usually treated “in legal, political and media arenas”—have tended to reinforce colonial and racist prejudices (Viaene and Fernández-Maldonado 2018: 209). Examining a prominent and particularly contentious case of indigenous justice in Ecuador, which was adjudicated in 2010 (*La Cocha 2*), an analysis of the articles that were published in one of Ecuador’s main daily newspapers (*El Comercio*) in response to

27 As far as I can see, in the scholarship on trust, mistrust and lack of trust are usually treated as the same kind of phenomena (see, for instance, Power and Jamison 2005 on “Political Mistrust in Latin America”). Schematically speaking, however, we should assume that there is also a neutral attitude in which a given actor neither mistrusts nor trusts another person, collective entity, or institution. From a dynamic perspective, I suspect that the reduction or deconstruction of mistrust constitutes a process that differs from the process of building of trust. I briefly come back to this point in the concluding section.

28 This would imply, for instance, correcting misattributions, such as the view that lynching is an expression of indigenous justice. Furthermore, the process of officially recognizing, codifying, and thereby also clarifying the limitations of indigenous justice might also contribute to limiting such mistaken associations.

29 On the distinction between manifest and latent conflicts, see, for example, Dahrendorf (1959: 134–135).

30 With a focus on Ecuador, Raúl Llasag (2010: 15) has observed that after the first step toward legal recognition of indigenous justice was taken with the 1998 constitution, the press paid more attention to indigenous justice but still generally “delegitimizing” it, “attempting to equate it with lynchings and self-justice”.

31 It is thus very clear that the “successful” adoption of the Demarcation Law in Bolivia does not exactly indicate that mutual mistrust has been successfully overcome.

the events that gave rise to the case revealed that all of the 29 news stories and editorials dealing with indigenous justice “contained derogatory opinions and delegitimizations of indigenous justice” (Llasag Fernández 2010: 17). As Grijalva summarizes, this case shows that the formal advances when it comes to the recognition of indigenous justice in Ecuador (as well as the controversies and dialogues over how to make legal pluralism possible) have not effectively broken with the “profound and deep-rooted neocolonial and racist stereotypes in the country, which simplify and distort the image of indigenous justice, equating it to lynching, self-justice, or simply crime” (Grijalva 2012b: 561).

*Proposition 3: The impact of conflict on (mis)trust is influenced by the type of conflict, namely whether it is treated as an issue-specific conflict or as part of a broader, polarized conflict*

Looking at the first two propositions together, the key question is: Under which conditions does manifest conflict contribute to the deconstruction of mistrust, as opposed to its reproduction or even reinforcement. While comprehensively addressing this question certainly requires a much more systematic analysis, existing studies on the topic at hand, as well as the general scholarship on polarization,<sup>32</sup> suggest that the overall type of conflict is quite plausibly a crucial scope condition. More specifically, the idea is that manifest conflict over the establishment of legal orders based on normative pluralism can effectively contribute to a deconstruction of mistrust if this conflict is dealt with as an issue-specific controversy that conflicting parties try to solve. Conversely, there are more likely to be negative consequences for (mis) trust if the controversy at hand is part of a broader, polarized struggle in which multiple cleavages (including the ethnic cleavage) mutually reinforce each other, the parties perceive each other according to an “us-versus-them” logic, and the overarching (state) institutions are also seen as partisan actors or battlegrounds of the conflict.<sup>33</sup> This proposition is generally in line with an argument made by Scott Mainwaring (2006) in an attempt to explain the particularly low confidence (or institutional trust) in representative institutions in the Andean region. Mainwaring argued, inter alia, that citizens’ assessments of political institutions “are constructed through political battles and conflicts” (2006: 296). Once a given institution—here: indigenous justice—becomes the target of parties, politicians, and the media in the context of a partisan struggle, this can be expected to have negative implications for its trustworthiness as perceived by the population (Mainwaring 2006: 310). In order to illustrate this causal argument, I will briefly recapitulate experiences from Bolivia and Ecuador.

When comparing the most recent constitutional reform

processes in Bolivia (2006–2009) and Ecuador (2007–2008), it is clear in the former case that polarization was extreme and involved a profound ethnic division. As mentioned above, the question of indigenous justice was not only controversial in and of itself but also became part and parcel of a broader confrontation between two camps that were, roughly, divided along politico-ideological, socioeconomic, regional, and ethnic lines (see Gamboa 2009; Romero et al. 2009; Schilling-Vacaflor 2010: 174–188). In June 2008, for instance, the Crisis Group reported on the standoff between the Morales government and the opposition over the fate of the constitutional draft:

Political polarisation has exacerbated racist sentiment on both sides. Some in the opposition deem the new constitution itself to be racist, since it bestows the privileges of self-government, including self-justice and control of natural resources, on the country’s 36 indigenous communities. The government accuses radical supporters of the *Camba Nation* – an extremist, racist, pro-independence movement in the eastern lowlands – of fuelling the autonomy drive with anti-indigenous rhetoric (Crisis Group 2008: 10).

As this quote suggests, in the highly polarized struggle over the new constitution, “community justice became a polemical target for the defenders of the national tradition inherited from the colonial system” (Hammond 2011: 665). In the end, given the need for a two-thirds majority in Congress in order to convene the necessary constitutional referendum, the governing MAS party responded, inter alia, to key opposition concerns regarding the future shape and scope of indigenous justice. First, the revised constitutional draft finally accepted by Congress clarified that indigenous justice respects “the right to defense”. Second, when it comes to the scope of indigenous jurisdiction, the revised constitutional draft made it explicit that this justice system was based “on the specific connection” between those individuals belonging to a given indigenous people”. Third, the concept of a “Law of Jurisdictional Demarcation” was included (Böhrt 2009: 81–82; see also Hammond 2011: 665–670; Romero 2009: 25).<sup>34</sup> That said, in the context of persistent polarization, public concerns over indigenous justice were still used by the opposition in the campaign for the constitutional referendum. As Hammond reports, “a television advertisement from opponents showed scenes of violence and threatened that the constitution would legalize lynching” (Hammond 2011: 672).

During Ecuador’s Constituent Assembly, in contrast, the recognition of indigenous rights in general and of indigenous justice in particular attracted far less attention and provoked far less intense criticism. It would be plausible to claim that this was, at least in part, related to the fact that the political polarization between the government, including those who (at the time still) counted as its allies among the

32 See, inter alia, Carothers and O’Donohue (2019) and McCoy and Somer (2018, 2019a, 2019b).

33 Very generally speaking, the polarization literature emphasizes that, when it becomes extreme and divides societies into “us-versus-them” camps, polarization contributes to reinforcing relationships characterized by mutual distrust (see McCoy et al. 2018: 19, 23; McCoy and Somer 2019b: 234, 236, 245).

34 In an interview, Carlos Romero stated: “Cuando fuimos revisando los tópicos y delimitamos la justicia indígena a ámbitos territoriales, se dieron cuenta de que había conceptos sobrecargados. El trabajo técnico permitió absolver las preocupaciones rápidamente” (quoted in: Peñaranda 2009: 201).

indigenous movement, and the opposition centered on different topics and cleavages (see, for instance, Torres 2009: 40–46).<sup>35</sup> Crucially, Ecuador's government and Constituent Assembly were not perceived by the opposition, the traditional elites, and the opposition supporters among the population as representing an indigenous-led project that would try to impose their views and values on the non-indigenous population.<sup>36</sup>

Later, however, the question of indigenous rights became a highly contested issue between the Correa government and Ecuador's indigenous movement, the indigenous confederation CONAIE and the indigenous party Pachakutik, in particular (Wolff 2018a: 284–285).<sup>37</sup> This conflict was explicitly polarized along ethnic lines and, in temporal terms, it roughly coincided with the negotiation and drafting process of the law that was supposed to coordinate indigenous and state justice (*Ley Orgánica de Coordinación y Cooperación entre la Justicia Indígena y la Jurisdicción Ordinaria*).<sup>38</sup> In this context, then, the government and the media actively contributed to reinforcing mistrust of indigenous justice among the broader population.<sup>39</sup> The analysis of what were ultimately failed negotiations over the coordination and cooperation law by

Viaene and Fernández-Maldonado (2018) suggests that the interplay between the persistent colonial attitudes and racist views mentioned above and a political context characterized by increasing tensions between Ecuador's indigenous movement and the governing party (*Alianza País*) and President Rafael Correa, in particular, played a key role in obstructing the negotiation and drafting process:

During the coordination and cooperation law drafting process, these growing political differences within the *Movimiento Alianza País* surfaced within the executive branch and the National Assembly. María Paula Romo, member of the constituent assembly and president of the Commission (2009–2013), explained that during the constituent assembly, one of the main objections to indigenous jurisdiction, and indigenous rights in general, came from President Correa, who argued that recognizing indigenous justice on equal footing with ordinary justice would create a state within the state (Viaene and Fernández-Maldonado 2018: 212).

The above authors further quote Romo who emphasizes that, during the Constituent Assembly, there were “political counterweights to President Correa” within *Alianza País* that prevented him from forcing his view on indigenous justice into the new constitutional text, but later such counterweights no longer existed (Viaene and Fernández-Maldonado 2018: 212). Another study also identifies the “politicization” of the topic, caused by the “conflict between the government and part of the indigenous movement”, as a key problem inhibiting progress during the consultation and drafting process (Vintimilla 2012: 120; see also CDES 2011: 44–48; Grijalva 2012b: 562; Santos 2012: 44). Reinforced by the president himself and the media discourse (in the context of the *La Cocha 2* case), the debate over the draft coordination and cooperation law “provoked considerable opposition among non-indigenous political elites” (Sieder 2012: 111). In the end, the legislative process failed, at least in part because of the persistence and indeed (re)activation, of “deeply rooted visions and positions based on prejudice, stereotypes, discrimination and even racism against indigenous peoples” (Viaene and Fernández-Maldonado 2018: 210).

*Proposition 4: The impact of conflict on (mis)trust is shaped by the interplay between conflict and trust dynamics that occur simultaneously on a horizontal and a vertical axis*

Proposition 3 already suggests that, when studying the processes of political and public negotiation at hand, it is crucial to consider that conflict and (mis)trust dynamics simultaneously play out horizontally (between social groups) and vertically (between social groups and the state) and that the dynamics on the two axes interact and shape each other. More specifically, I argue, the reduction or reproduction of horizontal mistrust between indigenous and non-indigenous populations (and their representatives), as it unfolds during the negotiations over the construction of legally pluralist justice systems, is very much shaped by the vertical relationships of (mis)trust between these social

35 Certainly, this is not to say that the overall indigenous agenda connected to the notion of a “plurinational state” was not contested; it undoubtedly was (see, for instance, Simbaña 2008).

36 For brief comparative assessments on the Bolivian and the Ecuadorian constitutional processes, see Martínez (2009); Pena y Lillo (2009); Wolff (2012). For a brief overview of the Ecuadorian debate, see ILDIS and Revista La Tendencia (2008) and Torres (2009).

37 For analyses of the increasingly contentious relations between the Correa government and Ecuador's indigenous movement, see Becker (2013) and Ramírez Gallegos (2010).

38 This process of negotiation and drafting is analyzed in detail by Viaene and Fernández-Maldonado (2018); see also Barrera (2012); Grijalva and Exeni (2012: 591–601); Vintimilla (2012).

39 This is very clearly illustrated by the abovementioned *La Cocha 2* case, which was a very controversial example of the application of indigenous justice (in the *La Cocha* community), which led to an equally controversial decision by the Constitutional Court (see Llasag 2012; Viane and Fernández-Maldonado 2012: 53–64). As Viaene and Fernández-Maldonado (2018) recount: “On 9 May [...] 2010, an indigenous justice case took place in the community of La Cocha, Cotopaxi province, or *La Cocha 2* [...]. The media spread a biased, sensationalist version, taken out of context, while the government's reaction reflected a dramatic shift in its position on indigenous peoples' rights. In public statements on radio and television, the government severely criticized this indigenous trial, calling it savage. Days later, the presidency instructed the Justice and Human Rights Ministry to cease meetings with indigenous organizations and finalize a draft bill independently and as soon as possible” (Viaene and Fernández-Maldonado 2018: 215–216). In the end, the discussion between the majority in the National Assembly and the indigenous movement, including the Pachakutik party, became so polarized that the parliament, at some point, simply stopped considering the contested draft law (Viaene and Fernández-Maldonado 2018: 217–218). At the time of writing, the National Assembly had yet to adopt the corresponding law, as required by the 2008 constitution (El Universo 2021).



groups (and their representatives) and the state or government. As the above examples suggest, reducing horizontal mistrust during and through conflict becomes difficult once the state—as represented by the government—is perceived as belonging to a party or camp in this conflict. The conflict, then, is simultaneously a horizontal and vertical conflict, characterized by mistrustful relationships on both axes.

In the case of Bolivia during the constitutional reform process, the Morales government was perceived by important parts of the opposition and the (non-indigenous) population as pushing an explicitly indigenous agenda. As a consequence, the broader *vertical* threat perception associated with the ongoing “process of change”<sup>40</sup> heightened preexisting *horizontal* concerns and prejudices about indigenous justice, which were deliberately exploited and thereby reinforced by the political opposition and the opposition-leaning media. The situation was different in the case of Ecuador. Here, indigenous justice became a broader political and polarizing issue in the context of the *vertical* conflict between the Correa government and the indigenous movement. In this context, then, the government exploited and thereby reinforced deep-seated *horizontal* mistrust in indigenous justice, which contributed to inhibiting agreement and trust-building on this axis, e.g., between the governing Alianza País party and the indigenous Pachakutik party in the National Assembly.

## Concluding thoughts

As Scott Mainwaring has argued, trust is “constructed through political battles and conflicts” (2006: 296). Mainwaring mostly referred to the negative effects of conflict—in the case of his study it is low confidence in representative institutions in the Andean region that is constructed, or reproduced, through partisan political conflict. In this paper, I have argued that, under certain circumstances, manifest conflict may also be helpful, if not necessary, to deconstruct mistrust. As suggested with regard to the ongoing conflict over the establishment of legally pluralist orders in the Andean region, it is hard to see how mistrust in indigenous justice that is based on lack of knowledge and deep-seated prejudices could plausibly be overcome without an open public controversy.

To be sure, this positive link between conflict and trust is hardly unconditional. The fact that, in the cases reviewed here, the empirical evidence suggests far more reproduction than deconstruction of mistrust, however, does not indicate that the positive conflict-trust link is necessarily a highly improbable phenomenon. Here, it is important to consider that the question of indigenous justice or legal pluralism in the Andean region is a very tough case when it comes to the challenge of trust-building. First, we are talking about a region in which trust of all kinds is decidedly low by international standards (Mainwaring 2006; Power and Jamison

2005: 61). Second, and probably related to this, the region is characterized by massive, multiple social inequalities and fragile political institutions.<sup>41</sup> Third, resistance to the recognition of legal pluralism in the region is also particularly strong and persistent because the demand of indigenous justice is an indivisible part of a much broader agenda of indigenous rights, which challenges the overall nature of the state and citizenship as well as vested interests related to land ownership and the extractivist development model.<sup>42</sup> Finally, effectively deconstructing mistrust in indigenous justice systems requires overcoming deep-seated postcolonial attitudes. As Boaventura de Sousa Santos has argued, the “dominant legal and political culture” in the countries at hand, which is fundamentally “Eurocentric and monocultural”, “conceives of indigenous justice according to a hermeneutic of suspicion” (Santos 2012: 40). This is not something that can easily be overcome simply through increasing factual knowledge but requires much more complex and complicated processes of intercultural translation and knowledge production (see Bazurco and Exeni 2012: 134–141; Santos 2012). In this sense, a final hypothesis on the conflict-trust nexus could read: While manifest conflict can, at times, be necessary to initiate the *deconstruction of mistrust*, a constructive process of dealing with this conflict is required in order to actually *build trust*.

A final note on data: In this paper, I have drawn on existing studies on the contested negotiation of legal pluralism in the Andean region. This scholarship offers manifold indications of how conflict and trust dynamics have evolved

41 Comparative trust research has concluded that “macro levels of inequality appear to offer the most promising account of social trust: rising levels of inequality systematically diminish social trust” (Mattes and Moreno 2018: 358). For the general argument and findings on the negative influence of inequality on social trust, see also Uslaner (2002).

42 See Grijalva (2012a: 68–70, 2012b: 568–570); Llasag (2012); Viaene and Fernández-Maldonado (2018: 213–214). In this context, Van Cott has argued that the reason the most significant advances in the implementation of legal pluralism have been made in Colombia is most probably also because “its indigenous population is among the smallest in proportion to its total population, presenting a more modest threat to traditional views of national identity and the interests of rural power brokers” (Van Cott 2000: 223). Furthermore, Colombia has an unusually “long history of jurisprudence” on the topic, which “is supported by a strong tradition of scholarly work on indigenous peoples among Colombian social scientists, which has generated a place of respect for indigenous cultures within Colombian society, despite their small proportion of the population” (Van Cott 2000: 224). In the case of Bolivia, in contrast, Van Cott observes “greater resistance of Bolivian elites to recognizing a territoriality for indigenous authority”, which reflects “the implications of extending this recognition to more than 60 per cent of the population” (2000: 228). In the same vein, in the case of Peru, the key business association (CON-FIEP) has argued in favor of a very restrictive interpretation of the scope of indigenous justice because of the fear “that there might be serious disadvantages for the interests of its members in areas of exploitation of the country’s natural resources” (Brandt 2017: 224).

40 For my own take on the complex and contradictory transformations that Bolivia has experienced under President Evo Morales, see Wolff (2013, 2018b, 2019).



in this context. In particular when it comes to (mis)trust, however, statements and observations, at best, refer to indirect and cursory, if not speculative, empirical evidence.<sup>43</sup> For example, while survey data covers citizens' trust in the official judiciary and there are studies that investigate trust in indigenous justice among the very indigenous communities, I could not find any data (e.g., from surveys or focus groups) on how the general population views indigenous justice—not to mention data that would enable us to trace the evolution of such perceptions or attitudes over time. To address this gap, future research would have to more systematically assess the evolution of (mis)trust of indigenous justice in order to analyze how this evolution has been shaped by the different ways in which the broader conflict over legal pluralism has been waged across the Andean region.

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