

Plurinational States and Legal Pluralism: An Impossible Mission?

Guillermo Pérez Ciudad
*University of Texas at Austin**

Introduction

The plurinational model embraced by Bolivia and Ecuador stands out as paradigmatic. In both nations, a distinctive constitutional framework has been established, unparalleled globally, characterized by a profound separation of diverse nations within the state. This innovative structure provides indigenous peoples with territorial and financial autonomy, legal pluralism, and self-governance across various social and political spheres.

The primary objective of plurinational theory is to dismantle the liberal state and create a postcolonial indigenous state. According to Tockman and Cameron, some proponents of plurinationality suggest that constructing this political project “implies a radical break with liberalism” and a rejection of “the idea that the state has unique and absolute authority over its territory.”¹ This sentiment is explicitly expressed by the Bolivian constituents in the preamble of Bolivian constitution and Ecuadorian constitution: “We have left the colonial, republican, and neo-liberal State in the past. . . . We found Bolivia anew, fulfilling the mandate of our people, with the strength of our Pachamama and with gratefulness

*An early version of this article was presented at the 2024 Southern Political Science Association Conference. For their enormous feedback on the several iterations of this article, the author thanks the participants of that conference, especially the organizer, Richard Avramenko. The author also thanks Daniel Brinks, Ran Hirschl, and Zachary Elkins for their comments on early versions of this article.

to God.”² Likewise, the preamble of the Bolivian constitution and Ecuadorian constitution declares that the people of Ecuador are heirs “of the social struggles of liberation against all forms of domination and colonialism” and celebrates “the Pacha Mama, of which we are a part and which is vital to our existence.”³

Despite the radical nature of this approach, several institutional arrangements characterizing it have encountered significant legal and practical limitations. The theory of plurinationality and its realization reveal a notable breakdown and numerous contradictions. Even in what are deemed the only indigenous constitutions worldwide, limits and inconsistencies cast doubt on the feasibility of authentic plurinational projects. One institutional arrangement that vividly reflects this gap is legal pluralism. Both Bolivia and Ecuador have imposed severe constraints on indigenous justice systems, preventing a clear differentiation between legal pluralism in plurinational countries and legal pluralism in other nonplurinational states, such as Colombia.⁴

This essay aims to delve into the paradoxes surrounding the plurinational models of Bolivia and Ecuador, contending that these models may not be genuinely plurinational. Both the embodiment of plurinational theory at the constitutional level and the functioning of specific institutional arrangements, notably legal pluralism, lend support to this argument.

The essay is structured as follows. The initial section explains plurinationality and outlines some of the theoretical contradictions that elucidate and justify the various constraints observed in plurinational institutional arrangements, such as legal pluralism. It then scrutinizes how the constitutional courts in Bolivia and Ecuador have interpreted the plurinational constitutional principle. Court rulings indicate that despite the power central states have to impose constraints, plurinationality is more pronounced in Bolivia than in Ecuador. The next sections delve into legal pluralism in both countries, underscoring how constitutions, laws, and constitutional courts have imposed specific limits that contradict the plurinational theory championed by both nations. Despite differences between Bolivia and Ecuador, both nations impose comparable restrictions

on the functioning of indigenous justice systems. Thus the radical nature of the plurinational principle at the constitutional level does not necessarily translate into a more profound and radical legal pluralism. The concluding section outlines the potential implications of these reflections in the Latin American political landscape. Despite the plurinational projects facing criticism since their establishment over fifteen years ago, recent constituent processes in the region underscore their enduring political significance.

Plurinationality and Constitutional Courts

While plurinationality represents a novel concept in constitutional design, its roots go back well before recent times, for several years serving as a topic of discussion concerning culturalism in both Europe and the United States.⁵ In fact, Merino has highlighted intriguing parallels between the European and Latin American perspectives on plurinationality.⁶ The theoretical foundations of plurinational states are deeply embedded in the political and historical experiences of Latin America. However, these foundations are significantly influenced by the ideas of intellectuals associated with postcolonialism and Marxism, including figures such as Gayatri Spivak and Edward Said.⁷

There lacks consensus regarding the precise meaning of plurinationality, as highlighted by Tockman and Cameron.⁸ Nevertheless, there is a shared understanding that plurinational theory advocates for a departure from the traditional model of the modern nation-state.⁹ On the one hand, plurinationality, consistent with its name, aims to overhaul the conventional paradigm of a singular state and nation. It promotes—and celebrates, as noted by Santos¹⁰—the coexistence of multiple nations interacting equally within the same territory and postcolonial state.¹¹ On the other hand, plurinationality seeks to replace the modern state and its colonial power with a plurinational state characterized by an anti-colonialist power.¹²

Therefore, the plurinational approach sets itself apart from others, such as multiculturalism, particularly in its relationship to modern and liberal democracy. Whereas multiculturalism endeavors to acknowledge and integrate various cultures into the liberal

order, essentially leaving the structures of Western capitalism untouched, plurinationality seeks to disrupt what is referred to as colonial logics. It aims to establish new power structures that promote substantive equality among diverse cultures. In this context, each culture is expected to self-govern according to its own categories within the framework of a postcolonial and indigenous state.¹³

In Rojas's analysis of political proposals from indigenous groups in the mid-1990s, plurinationality emerges as "a civilizational and culturally distinct mode, pierced by a colonial wound."¹⁴ Furthermore, the author emphasizes that the plurinational state "does not resemble any other modern European state."¹⁵

Sánchez adds another layer to the understanding of plurinationality, framing it not only as a response to colonialism but also as a reaction to neoliberal globalization. The right to self-determination, a crucial aspect of plurinationality granting indigenous peoples the opportunity to develop their own worldviews, is deemed incompatible with liberalism, which imposes its categories as universalisms.¹⁶ According to the author, this view challenges the claimed universality of liberal principles, advocating instead for the construction of norms and principles of coexistence through collective will, free from the imposition of first-world elites.¹⁷ This rejection of liberalism is articulated through the objective of restructuring the state, entailing the new plurinational framework's significant departure from "the foundations and liberal principles [of the nation-state], its institutional system, the origin of laws, formal democracy, [and] the status of liberal citizenship, as well as citizen rights and duties."¹⁸ Sánchez argues that this approach doesn't imply an outright abandonment of liberal tenets, for these will remain accessible to citizens opting for them from among the extensive array of perspectives inherent in plurinational diversity.¹⁹

Merino acknowledges the practical difficulties associated with plurinationality and, setting aside its radical nature, notes that the critique of the universality of Western categories doesn't necessarily imply a secessionist logic among indigenous peoples. Instead, it

suggests a desire for greater participation in decision-making and the structural framework of the state.²⁰ Despite the theory's refoundational logic, Santos posits, the core of the plurinational project lies in the coexistence of various concepts of nationality and diverse nations within a single postcolonial state.²¹

This succinct exploration of diverse approaches to plurinationality highlights several inherent contradictions within the concept. The most conspicuous inconsistency arises in constructing a new political order that seeks to eradicate modern and liberal categories from its political organization while employing the same means as the project it intends to replace, such as the state or nation. This contradiction not only extends to these fundamental ideas but also encompasses concepts such as human rights, separation of powers, direct democracy, and constitutional courts. Augsburger aptly captures this tension, particularly in his analysis of Bolivia's incorporation of indigenous autonomous territories into the state's regulatory apparatus.²²

The paradox becomes more pronounced when considering that many aspects of plurinational autonomy face significant limitations imposed by the central state. It is crucial to emphasize that plurinational projects are typically championed by left-wing governments, which, while advocating for the autonomy of indigenous peoples, simultaneously aim to expand and strengthen the state's role in public life. The evidence illustrates that the homogenizing logic of highly centralized states, exemplified by countries like Bolivia and Ecuador, ultimately prevails over the diverse world-views of indigenous peoples.²³ This approach distorts the idea of a multitude of substantively equal nations coming together under the framework of a postcolonial state. It also prompts the question of whether building a plurinational state is feasible, given the state's inherent inclination, however described, to unify and homogenize in order to sustain its own sovereignty.

There is also a noticeable tension in the endeavor of plurinational states to align citizens through "national interests" while employing postcolonial categories that accentuate ethnic, social, and political differences among citizens.²⁴ The Bolivian case

serves as a paradigmatic example. Stefanoni suggests that the extractivist, developmentalist, and centralizing policies of the Bolivian state during Evo Morales's indigenous government have transformed postcolonial discourses into mere rhetoric and empty discourse.²⁵ Drawing on numerous interviews with members of indigenous peoples, Postero indicates that this contradiction has led them to perceive Morales's indigenous agenda as a political performance with the sole objective of cementing and concentrating power.²⁶ Tockman and Cameron arrive at similar conclusions, citing Morales's persistent extractivist policies in indigenous territories.²⁷

These inconsistencies intersect with another pertinent one concerning how plurinational theory understands indigenous peoples. As Stefanoni has pointed out, the lines dividing nations are less clear than the plurinational logic suggests. The radical separation between the indigenous and nonindigenous proposed by plurinationality fails to account for multiple cultural crossovers between nations, such as the growth of evangelical churches in many indigenous communities.²⁸ This reality has crucial institutional consequences; for instance, some indigenous groups prefer to avoid indigenous justice systems and opt for central state justice because they have greater certainty about the rules governing legal procedures and the possible outcomes.²⁹

Despite attempts by political authorities of plurinational states to justify these contradictions by asserting that political processes are gradual,³⁰ their persistent failures suggest that the transformations implied by such radical political models are almost impossible to sustain in the current political context. As examined in the following section, plurinational projects become entangled in theoretical, constitutional, legal, and practical contradictions that distance them from their original intent, ultimately rendering them unsuccessful models. In fact, even indigenous theorists like Pablo Mamani Ramírez have suggested that plurinational states have failed as such and have evolved into neocolonial states where the "reforms are anti-Indian and anti-popular, despite the presence of some of its members in the government/State."³¹

Plurinationality and Constitutional Provisions

A cursory examination of certain constitutional norms in Bolivia and Ecuador offers insights into how plurinationality operates in the political systems of both nations. The preamble of the Bolivian constitution exemplifies the postcolonial orientation of the constitutional text, incorporating numerous categories and discourses derived from postcolonial theories. In the preamble's initial segment, Bolivian constituents assert, "We never knew racism until we were subjected to it during the terrible times of colonialism." They describe the genesis of the plurinational model as being "inspired by the struggles of the past, by the anti-colonial indigenous uprising, and in independence, by the popular struggles of liberation, by the indigenous, social, and labor marches," aiming to "construct a new State in memory of our martyrs." The preamble further declares, "We have left the colonial, republican, and neo-liberal State in the past. We take on the historic challenge of collectively constructing a Unified Social State of Pluri-National Communitarian law" and express gratitude for having "found Bolivia anew, fulfilling the mandate of our people, with the strength of our Pachamama and with gratefulness to God."

From the preamble of the constitutional text, one can discern a persistent tension between maintaining the unity of the state and the Bolivian nation while simultaneously promoting the self-determination of multiple indigenous peoples through a divisive rhetoric aimed at transcending the tenets of the liberal and modern state. Indeed, after all the references related to abandoning republican, colonial, and neoliberal logics, Bolivian constituents commit to maintaining "the unity and integrity of the country."

Article 2 of Bolivia's constitution is pivotal for comprehending the magnitude of this contradiction. This article asserts that "given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this

Constitution and the law.” Subsequently, in Article 8, the constitution outlines the ethical and moral principles of Bolivian society, derived from the worldviews of the indigenous peoples, encapsulated in “ama qhilla, ama llulla, ama suwa” (do not be lazy, do not be a liar or a thief), “suma qamaña” (live well), “ñandereko” (live harmoniously), “teko kavi” (good life), “ivi maraei” (land without evil), and “qhapaj ñan” (noble path or life).

References to plurinationality permeate the 411 articles of the Bolivian constitution. In fact, numerous political institutions incorporate the term *plurinational* in their names, such as the Plurinational Constitutional Court, the Plurinational Legislative Assembly, and the Plurinational Electoral Organ.

Similarly, the preamble of the Ecuadorian constitution asserts that Ecuadorians are “heirs of the social struggles for liberation against all forms of domination and colonialism.” It further states that the constitution aims to construct “a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*.”

Article 1 of the Ecuadorian constitution designates Ecuador as a “constitutional State of rights and justice, a social, democratic, sovereign, independent, unitary, intercultural, plurinational, and secular State.” As in the Bolivian scenario, contradictions between the unity of the state and the autonomy of indigenous peoples are evident in various provisions of the constitution.

Article 57 recognizes the right of indigenous peoples “to freely uphold, develop, and strengthen their identity, feeling of belonging, ancestral traditions, and forms of social organization.” It also grants them the right to conserve and develop their own forms of coexistence and social organization and to generate and exercise authority in their territories. However, Article 56 stipulates that indigenous peoples are part of the Ecuadorian state, which is unique and indivisible.

Moreover, as will be noted in the section on legal pluralism, in both Bolivia and Ecuador, the autonomy of indigenous peoples is subject not only to limits unilaterally established by the central power but also to international treaties signed by the states.

Although these limits are justifiable within the context of modern and liberal nation-states, they undeniably contradict the plurinational political approach and impose Western categories on the diverse worldviews of indigenous peoples.

Plurinationality and the Constitutional Courts

Despite plurinationality being a foundational principle in the constitutions of Bolivia and Ecuador, constitutional courts have interpreted the concept differently. The Plurinational Constitutional Court of Bolivia has embraced plurinationality as a radical refoundation of the nation-state, albeit with discernible limitations that underscore intense contradictions in the matter. In contrast, the Constitutional Court of Ecuador has significantly diluted the concept of plurinationality outlined in the constitution, creating tensions between the theoretical construction of plurinationality, constitutional norms, and the court's decisions.

In a ruling issued March 16, 2011, the Bolivian court affirmed that owing to the plurinational nature of the state, “the foundations of the nation-state characterized by monoculturalism, and legal monism are broken, and indigenous peoples are recognized as nations, with the political capacity to define their destinies.”³² The court further emphasized that “the Bolivian Constitution breaks the state model of ‘nineteenth-century homogenizing liberalism and, consequently, breaks the Jacobin, abstract, uninational, centralist and monocultural nation that has been highly inefficient from all points of view when it comes to managing a plural society such as Bolivia.”³³

Similarly, in a judgment issued October 1, 2012, the Bolivian court asserted that “the particularity of the Bolivian case is due to its re-foundation as plurinational and communitarian with legal, economic, and linguistic pluralism.”³⁴ Furthermore, a 2013 ruling stated that “the Plurinational State is projected from the decolonization of the monocultural, homogeneous, colonial, republican, and neoliberal Nation-State.”

However, the radical nature of Bolivian plurinationality is underscored by the contradictions within the same judicial

decisions. For instance, in the ruling made March 16, 2011, the court mentioned that the break with the liberal order and the recognition of indigenous peoples as nations capable of defining their destinies must occur while respecting “the unity of the State.”³⁵ As discussed in the previous section, this approach, justified by Article 2 of the Bolivian constitution, perpetuates the same homogenizing structure and legal monism characteristic of the liberal state that plurinationality, in theory, seeks to replace.

In contrast, the Constitutional Court of Ecuador has notably constrained the scope of plurinationality, associating it more with the notions of incorporation and recognition rather than seeing it as a radical departure from the nation-state model. Some observers argue that the Ecuadorian court has consistently sought to assimilate plurinationality into liberal multiculturalism.³⁶ In a ruling dated July 30, 2014, the Ecuadorian court stated that plurinationality refers to “the coexistence of several cultural nations or ethnically distinct peoples within a great civic nation.”³⁷ According to this decision, plurinationality implies a “concept of nation that recognizes the right of people to identify their belonging, not only with a certain geographic area but also with a particular culture.” In another decision, the Ecuadorian court established that plurinationality implies “the recognition of cultural heterogeneity within a given territory and the acceptance of historically discriminated minorities.”³⁸ In a ruling issued July 28, 2021, the Ecuadorian constitutional court reiterated the idea of plurinationality as recognition of diversity and stated that plurinationality “recognizes, respects and articulates the various forms of social, political and legal organization that must coexist, without hierarchy, under a common political project which is the constitutional State.”³⁹ Through these and other rulings, the court has narrowed plurinationality in Ecuador to a matter of cultural diversity, losing its original radical character.⁴⁰

The comparison between the approaches of Bolivia’s and Ecuador’s constitutional courts regarding plurinationality highlights some significant differences in their interpretations of this constitutional principle. While plurinationality shares theoretical foundations in both countries, the Bolivian court emphasizes the logic of

refoundation and a rupture with the nation-state model, portraying plurinationality as a more profound and radical concept. In contrast, the Ecuadorian court tends to approach plurinationality from the perspective of cultural diversity and the recognition of differences between groups, presenting a less radical interpretation.⁴¹

This contrast underscores the existence of a theoretical/rhetorical plurinationality and a constitutional/practical plurinationality. Scholars like Hidalgo and Tapia have pointed out discrepancies between the demands of indigenous groups during the constituent processes in Bolivia and Ecuador.⁴² Mamani takes a more radical stance, asserting that events such as extractivism, the criminalization of indigenous struggles, and the co-optation of social leaders in Bolivia “prove that only in discourse is the country in a process of transformation.”⁴³ This author also argues that political elites in Bolivia and Ecuador have readjusted their logics to the rhetoric of the plurinational states.⁴⁴

In essence, the theory of plurinationality appears to clash with the realities of the political system, the persistent tendencies of the modern nation-state, the interests of political elites—even those ostensibly promoting plurinationality⁴⁵—and the complex dynamics of societies resisting reduction to binary categories such as indigenous/colonizers.

In both countries, the courts subordinate the principle of plurinationality to the unity of the state. This commonality results in significantly similar limits on institutional arrangements related to plurinationality, such as legal pluralism. While one might anticipate Bolivia having a more radical legal pluralism than Ecuador, the reality is not so clear-cut. The subordination of indigenous peoples to central power in both plurinational models introduces complexity, obscuring the expected positive correlation between the level of radicality of legal pluralism and the level of radicality of plurinationality.

The subsequent sections of this essay delve into the functioning of legal pluralism in Bolivia and Ecuador to enable us to better understand the dynamics and challenges associated with these institutional arrangements within the context of plurinational states.

Legal Pluralism in Bolivia

Discussions surrounding legal pluralism have been extensive, involving multiple dimensions of analysis that surpass the scope of this essay.⁴⁶ Legal pluralism, defined as the coexistence of two or more legal systems of different nations within the same state, has been thoroughly explored.⁴⁷ Influenced by plurinational contexts, Thomas emphasizes pluralism as a constant “relationship of dominance and resistance” between indigenous and state norms.⁴⁸

As highlighted earlier, legal pluralism in Bolivia cannot be perceived as a standalone institutional arrangement; rather, it is intricately linked with plurinationality. Bolivia’s constitution, through various provisions, establishes plurinationality as the legal justification for the existence of legal pluralism in Bolivia.⁴⁹ However, the connection between plurinationality and legal pluralism is more problematic than one might initially assume. Both concepts are subject to limits that contradict the initially radical nature with which Bolivia understood the relationship between indigenous peoples and the state. To deepen our understanding, this essay next explores the normative sources of legal pluralism in Bolivia, examining the diverse dimensions of this legal phenomenon and its intricate connection to plurinationality.⁵⁰

Legal Pluralism in the Bolivian Constitution

In general, three articles of the Bolivian constitution specifically address legal pluralism. Article 190 establishes that “the indigenous nations shall exercise their jurisdictional functions through their authorities and shall apply their own principles, cultural values, norms, and procedures.” However, this article also imposes limits on indigenous jurisdiction by stipulating that it must respect “the right to life, the right to defense, and other rights established in this Constitution.”

Similarly, Article 191 of the Bolivian constitution outlines certain constraints on the exercise of indigenous justice, stating that it “is based on the specific connection between the persons who are members of the respective nation or rural native indigenous people.” It further specifies that indigenous jurisdiction extends to

the personal, material, and territorial spheres. Concerning the personal sphere, Article 191 asserts that “members of the nation or rural native indigenous people are subject to this jurisdiction whether they act as plaintiffs or defendants, claimants or accusers, whether they are persons who are denounced or accused, or are appellants or respondents.” Regarding the material scope, the same provision establishes that “this jurisdiction hears rural native indigenous matters pursuant to that established in a Jurisdictional Demarcation Law.” Regarding the territorial scope, Article 191 states that the indigenous jurisdiction applies “to the relations and juridical acts that are carried out, or the effects of which are produced, within the jurisdiction of a rural native indigenous people.”

At the same time, Article 192 of the Bolivian constitution sets specific parameters for the relationship between indigenous justice systems and state authorities, affirming that “each public authority or person shall obey the decisions of the rural native indigenous jurisdiction.” It also emphasizes that “the State shall promote and strengthen rural native indigenous justice.” In addition, the provision allows indigenous authorities to “request the support of the competent bodies of the State” to enforce their decisions. Following Article 191, Article 192 of the constitution specifies that a “Jurisdictional Demarcation Law shall determine the mechanisms of coordination and cooperation between the indigenous justice systems and the ordinary jurisdiction.”

These provisions underscore the contradictions mentioned earlier. Despite plurinationality implying a horizontal and equal relationship among justice systems, in reality, approaches stemming from the political project targeted for replacement end up being imposed, as evident through limitations on indigenous justice concerning the right to life and the right to defense, formulated within a liberal framework linked to the Western concept of human rights.⁵¹

Likewise, the egalitarian relationship among justice systems conflicts with the vertical and subordinate relationship between indigenous justice systems and state authorities. This issue becomes

apparent through norms giving central state authorities responsibility for promoting indigenous justice and assisting indigenous peoples in enforcing decisions made by their own authorities. This logic can lead to multiple jurisdictional conflicts between various legal systems.

In summary, the articles of the Bolivian constitution regarding legal pluralism reveal the contradiction inherent in plurinational projects between promoting the autonomy of indigenous peoples and fostering the role of central states in various aspects of social life. These problems escalate when considering the jurisdictional demarcation law and some decisions of Bolivia's plurinational constitutional court.

Legal Pluralism in the Jurisdictional Demarcation Law

The Jurisdictional Demarcation Law has faced significant criticism because of the limitations it imposes, the contradictions with the concept of plurinationality, and certain ambiguities that have led to numerous coordination problems between indigenous justice systems and state authorities.⁵² Doyle contends that the law "goes against any serious idea of legal decolonization."⁵³ Some have even criticized the law for potentially discouraging indigenous justice systems among indigenous peoples, who might, for various strategic reasons, prefer resorting to ordinary justice.⁵⁴

Article 4 of the Jurisdictional Demarcation Law outlines principles governing indigenous jurisdiction, including the assertion that "the indigenous jurisdiction has the same hierarchy as the ordinary jurisdiction" and that "no authority of one jurisdiction may interfere with another." In addition, it emphasizes that "all constitutionally recognized jurisdictions must respect the different cultural identities," ensuring the coexistence and independence of legal systems within the plurinational state with equal hierarchy.

However, immediately after these articles, the law places multiple and significant limits on indigenous justice systems. Article 8 mandates that for indigenous justice to function, personal, material, and territorial criteria must align, solidifying the standards

established in Article 191 of the Bolivian constitution. Concerning the personal criterion, Article 9 specifies that “the members of the respective indigenous nation are subject to the indigenous jurisdiction.” Regarding the territorial standard, Article 11 states that indigenous justice applies “to legal relations and events that are carried out or whose effects are produced within the jurisdiction of an indigenous people.” Both criteria have resulted in problems caused by unclear distinctions in certain grey areas.⁵⁵

Regarding the material criterion, Article 10 asserts that “indigenous jurisdiction hears matters or conflicts that historically and traditionally have been heard under their own rules, procedures, and knowledge, in accordance with their self-determination.” However, the same norm excludes multiple matters from indigenous justice, such as homicides, corruption, labor law, and property law. This criterion has faced substantial criticism, as it excludes crucial issues traditionally resolved by indigenous peoples, thereby portraying indigenous justice as a subordinate system for minor conflicts.⁵⁶ According to Doyle, indigenous authorities consider this law unconstitutional because it “places limits on the ability of Indigenous communities to manage their own justice.”⁵⁷

The law also neglects to acknowledge the divergent worldviews between ordinary, or state, justice and indigenous justice systems. Ordinary justice may judge some actions criminal but indigenous justice may not, and vice versa.⁵⁸ Furthermore, some punishments administered by indigenous justice defy the modern, liberal paradigm by imposing penalties such as torture and corporal punishment, which are incongruent with international human rights standards. These facts highlight multiple areas where reconciling Western standards with the worldview of indigenous peoples proves challenging.

Legal Pluralism in Court Decisions

Since its establishment, the Plurinational Constitutional Court of Bolivia has grappled with a constitution advocating a radical plurinationality—though not devoid of contradictions and limitations—and a jurisdictional demarcation law that poses significant obstacles

to the political agency of indigenous peoples. This inherent contradiction exposes that even in countries with indigenous governance and a substantial indigenous population, the plurinational model can encounter strong resistance.⁵⁹

This resistance emanates not solely from “colonial powers” but also from political factions championing the indigenous agenda. Evidence suggests that the government of Evo Morales, closely associated with indigenous peoples, “view[ed] indigenous autonomy as a threat to national development and ha[d] adopted a de facto position of seeking to restrict its implementation while still seeking to maintain the illusion of support for indigenous rights for international observers.”⁶⁰

The Bolivian court has defined legal pluralism and established its profound connection to plurinationality. In its decision made June 5, 2013, the court emphasized that Bolivia has a “decolonizing pluralism, which proposes the egalitarian coexistence of various legal, political, economic and cultural systems aimed at a new institutionality that is stripped of all forms of monism and cultural, legal, economic and political homogeneity.”⁶¹

Moreover, the Bolivian court positions itself as an active defender of plurinationality. In a ruling made April 27, 2012, the court asserted that the plurinational state must be constructed “with a preponderant role of the judges through their daily decision-making work.”⁶² Over the years, the court appears to strive to uphold the original spirit of plurinationality, attempting to make the limits on indigenous justice set by the constitution and law as flexible as possible. In a 2015 constitutional declaration, the court insisted that restrictions on indigenous justice must be interpreted “in the framework of seeking to maximize the right to self-determination and autonomy of indigenous nations and to minimize restrictions,” stating that a contrary stance would be “a clear affront to the spirit of the Political Constitution of the State.”⁶³

Concerning the Jurisdictional Demarcation Law, the Bolivian court has urged state authorities to interpret personal, material, and territorial criteria broadly. The court emphasized that exclusion of a matter from indigenous jurisdiction on the basis of the

material criterion is meant “to protect a legal good of national or international entity.”⁶⁴ Regarding the personal criterion, the court emphasized considering the “process of miscegenation lived in the country,” allowing a person not born in a certain culture to adopt it and be judged by indigenous jurisdiction.⁶⁵ Norms related to the territorial criterion suggest that indigenous jurisdiction should apply to legal relations and events occurring (or whose effects are produced) within the jurisdiction of an indigenous people. The court clarified that acts committed outside the physical space of an indigenous territory are those “that could affect the collective social cohesion as could happen, for example, when they are produced by an authority in the representation of the indigenous people, or there is a deviation of power concerning such representation.”⁶⁶

However, the constitutional court’s efforts to broaden the scope of legal pluralism fall short of resolving the contradictions between the constitution and legal norms and the plurinational political project. Despite the court’s making legal pluralism standards more flexible, certain limits cannot be adapted without contradicting the constitution. For instance, the material criteria of the Jurisdictional Demarcation Law explicitly exclude various areas of law from indigenous justice systems. While conflicts that meet the law’s criteria were historically and traditionally resolved by indigenous peoples, they have been excluded from their purview by the state authorities’ unilateral decisions. This doesn’t imply justifying that indigenous justice must handle crimes like rape or homicide but does underscore the tension between plurinationality and the constraints on legal pluralism.

Conversely, as mentioned, certain rulings affirming the refoundational nature of plurinationality impose limits based on the Western project that plurinationality seeks to overturn, such as human rights, the right to defense, and the right to life. Although the court proposes “an intercultural interpretation of human rights,”⁶⁷ the contradiction between plurinationality and limits to legal pluralism becomes challenging to sustain. This issue gains prominence when one considers the substantial disparities between

indigenous worldviews regarding crimes and punishments and the worldview of the state authority.

Legal Pluralism in Ecuador

The Constitution of the Republic of Ecuador explicitly enshrines plurinationality as a fundamental principle in the state's organization. Nevertheless, disparities exist between the constitutional conception of plurinationality, conceived as a project aiming to dismantle the nation-state based on "post-neoliberal" and "decolonial" principles,⁶⁸ and the more moderate interpretation applied by the constitutional court. The question is whether these differences extend to the realm of legal pluralism.

Legal Pluralism in the Ecuadorean Constitution

Constitutional provisions, particularly Article 171, are the primary reference points regarding indigenous jurisdictions in Ecuador. This article delineates that "the authorities of indigenous communities, peoples, and nationalities shall exercise jurisdictional functions, based on their ancestral traditions and their own law, within their territorial scope, with guaranteed participation and decision-making by women." It further specifies that decisions of indigenous justice "shall be subject to the control of constitutionality" while simultaneously being "respected by public institutions and authorities." Article 171 also imposes limitations on indigenous jurisdiction, stipulating that "the authorities will apply their own rules and procedures for the solution of their internal conflicts when they are not contrary to the Constitution and the human rights recognized in international instruments."

As in the Bolivian case, tensions arise from the paradox of restrictions on legal pluralism inspired by the political project that plurinationality aims to overthrow.⁶⁹ However, the contradiction in the Ecuadorean case appears less profound than in Bolivia, as the constitutional court's rulings have tempered the radical nature of the plurinational project.

While Article 171 emphasizes that "the law will establish the mechanisms of coordination and cooperation between indigenous

justice and the ordinary jurisdiction,” efforts to create such a law have faced challenges in Ecuador. Unlike in Bolivia and its Jurisdictional Demarcation Law, no specific bill in Ecuador comprehensively outlines the limits of indigenous jurisdiction.⁷⁰ This legal vacuum has resulted in numerous problems, as Article 171’s ambiguity fails to provide specific criteria for interpretation. Questions persist, such as the precise meaning of “internal conflicts” and the standards defining the “territorial scope” of indigenous jurisdiction.⁷¹

The lack of specificity in Article 171 and the absence of a law or clear criteria at the time of writing this paper to delineate the parameters of indigenous justice have led to exclusive interpretation by the Constitutional Court of Ecuador.⁷² However, the court has addressed only a limited number of issues, leaving many definitions regarding indigenous justice pending and contributing to ongoing uncertainties in this area.⁷³

Legal Pluralism in Court Decisions

The most significant decision by the Constitutional Court of Ecuador on legal pluralism occurred July 30, 2014, in response to a murder within the indigenous community of La Cocha.⁷⁴ This decision’s importance is attributed not only to the considerable political turmoil it caused but also to the aspects crucial for the functioning of the indigenous justice it established, serving as a mandatory precedent for subsequent rulings. Regarding this case, the former president of Ecuador and one of the main promoters of plurinationality, Rafael Correa, stated that the indigenous justice system was “monstrous” and that the facts that motivated the case were “a degrading spectacle.”⁷⁵

Although the La Cocha ruling is not recent, it remains the most comprehensive representation of the court’s developed doctrine over the years. According to Hidalgo and Tapia, this decision “has allowed us to understand how the formalization of non-hegemonic indigenous concepts ended up being restricted in its implementation, through a primarily liberal legal discourse.”⁷⁶ In the initial sections of the ruling, the court reiterated its moderate stance on

plurinationality and interculturality. The decision affirmed that these ideas “do not constitute an antinomy to the Unitary State or democracy” but rather oppose a “homogeneous State,” signifying the acknowledgment of cultural heterogeneity within a defined territory.

The neutralization of plurinationality is linked to how legal pluralism is actualized in Ecuador. On the one hand, a multiculturalist approach aligns better with the existence of limits to indigenous justice.⁷⁷ On the other hand, it is noteworthy that the Ecuadorian court established concrete boundaries to legal pluralism later than the Bolivian court. This difference creates a contradictory situation: while the Ecuadorian court interprets plurinationality more restrictively than its Bolivian counterpart, legal pluralism in Ecuador has fewer concrete restrictions so far than in Bolivia at the constitutional and legal levels.

This issue is not a result of a renewed commitment by Ecuadorian authorities to the original spirit of plurinationality. Instead, it stems from the challenges political elites faced in reaching agreements on the framework of action for indigenous jurisdictions. There remains significant uncertainty concerning the personal, territorial, and material scopes of the judicial authorities of native peoples.⁷⁸

A major constraint on legal pluralism, as established by the La Cocha ruling, is the exclusion of indigenous jurisdiction over crimes against life. The court’s decision asserts that “the State shall guarantee, as in the rest of the national territory, that the same [crimes against life] shall be judged and punished in accordance with the laws proper to Ordinary Criminal Law.” While this limitation is not novel in the context of legal pluralism, the court’s justifications warrant analysis, as they have implications for the functioning of indigenous justice systems in Ecuador.

One key argument presented by the court relates to the state’s distinction between the legal rights protected by indigenous justice and those protected by ordinary justice. The court affirmed that in cases of death, indigenous judges “do not resolve for the affectation of the legal right to life, as an end in itself, but in function of the

affectations that this fact provokes in the life of the community.” Regarding life, the court emphasized that the state “is responsible for guaranteeing and protecting it against any possible threat.”

It is reasonable to argue that the right to life, from a Western perspective, can be safeguarded only by central-state courts. However, in contradiction to the radical nature of plurinationality, the exclusion of indigenous authorities from deciding on crimes against life is grounded on the central state’s unilateral interpretation of indigenous worldviews. Despite plurinationality presupposing equal relationships between justice systems, the constitutional court established a hierarchy through this rationale, elevating the state system as the sole appropriate one to protect life. Furthermore, it gave the Western understanding of life a higher status than the cosmovision of the indigenous peoples, since it “severely marginalizes noncriminal indigenous approaches to life and communal harmony.”⁷⁹

In addition, the argument regarding the different views of life offered by the state justice system and indigenous justice appears inconsistent. Critics argue that the court’s approach is narrow and that contrary to the decision, “the concept of individual life is not unknown in indigenous justice.”⁸⁰ According to some experts, the argument about differing appraisals of the right to life might have been used to justify having two separate rulings in the La Cocha case, one from the indigenous justice system and another from the ordinary justice system. This political strategy, they contend, seeks to prevent double jeopardy—that is, the annulment of the ordinary justice process that led to the imprisonment of those responsible for the murder, as would occur as the result of a *non bis in idem* defect.⁸¹

The influence political factors have on these decisions is unavoidable, especially when the conflict generates significant public attention. The situation becomes more complex because the court holds significant authority in determining the limits of indigenous justice. However, the restricted and unilateral interpretation in the La Cocha case concerning indigenous peoples’ worldview regarding the right to life, when set as precedent, poses the risk of extending to other rights. This scenario could lead to excluding

from indigenous justice systems various topics that may be relevant to native peoples.

This tension underscores the need to address contradictions between the limits of legal pluralism and plurinationality. Once the constitution establishes limits, they need to be articulated through legislation. The Ecuadorian court's significant discretion in deciding matters related to legal pluralism introduces uncertainty, particularly when various political factions exert pressure on the court. In essence, while the most theoretically consistent relationship between plurinationality and legal pluralism suggests that the latter should have no limits, the reality is different when constitutional limits are in place, as seen in Bolivia and Ecuador. In such cases, a practical solution would be to clearly define these constraints. Specific guidelines would help distribute the responsibility for decisions across state organs rather than placing it solely on the constitutional courts. This becomes especially relevant given the existing legal and judicial voids concerning the operation of indigenous justice in Ecuador.

An examination of the functioning of indigenous justice systems in Bolivia and Ecuador highlights similar limits, which encompass rights established in the constitution, international treaties, and specific human rights such as the right to life. Despite the relevance and justification for these constraints, they reveal the paradox that legal pluralism in plurinational states may not authentically embody plurinationality. At the same time, these limits carry implications for the relationship between plurinationality and the institutional frameworks that define it. The more radical interpretation of plurinationality in Bolivia, compared with Ecuador, does not necessarily translate to legal pluralism in Bolivia being more radical than in Ecuador. Paradoxically, the numerous contradictions within plurinationality not only create a disconnect between plurinational discourses and constitutional practice but also result in a discontinuity between plurinational logic and the institutional arrangements, such as legal pluralism, that constitute it.

Conclusions

As suggested throughout this essay, the plurinational models of Bolivia and Ecuador harbor internal contradictions that prove highly challenging to resolve. Some of these contradictions arise from tensions in the premises of plurinational theory, while others stem from the mismatch between plurinational rhetoric and its realization in the political reality of both countries.

The way in which the central states of Bolivia and Ecuador interact with indigenous peoples indicates that the plurinational models of both countries are not genuinely plurinational. Despite one of the crucial points of plurinational theory being the equality among different nations that self-govern, the expanding power of central states ends up imposing the states' categories on the reality of indigenous peoples. None of the bureaucratic apparatuses in these countries have managed to overcome the homogenizing and monistic logics they sought to dismantle through the plurinational project. On the contrary, the evidence suggests that governments strongly advocating plurinationality, such as those of Evo Morales and Rafael Correa, intensified centralism and extractivism in indigenous lands.⁸²

The question posed by the cases of Bolivia and Ecuador is whether it is possible to construct a truly plurinational political project. This question is relevant because despite the failures of Ecuador and Bolivia, in recent years other countries have attempted to replicate the plurinational model. Indeed, despite all its difficulties and contradictions, the plurinational agenda is viewed very positively in some sectors of Latin America. In fact, García Linera, former vice president of Bolivia and theorist of plurinationality, has repeatedly mentioned the goal of building a continental plurinationality.⁸³

A recent example of this is Chile. September 4, 2022, saw 62 percent of Chileans rejected a proposal to replace the so-called Pinochet Constitution, which has plurinationality as one of its central principles. This proposal was constructed by a constitutional convention comprising individuals with highly diverse backgrounds,

trajectories, and histories. However, an overwhelming majority of the convention's members belonged to relatively homogeneous political groups linked to the radical left.⁸⁴

A central principle of the failed proposal was plurinationality. In fact, the constitutional text was hailed as the indigenous constitution. However, the numbers show that counties with the largest indigenous populations decided to reject the proposal by even larger margins than most counties. In Alto Biobío, where 84.2 percent of the population is indigenous, the "reject" option received 70.75 percent of the vote share. In Saavedra, where the indigenous population is 79.6 percent, the "reject" option won 68.05 percent of the votes. An extreme case is Colchane, where the "reject" option won an astounding 94.7 percent of the votes.⁸⁵ Some analyses following the referendum pointed out that one of the main reasons for citizens rejecting the constitutional project was plurinationality.⁸⁶ In fact, surveys conducted among the Mapuche population—the majority indigenous group in Chile—showed broad opposition to the plurinational project.⁸⁷ Further empirical research into why indigenous peoples rejected the proposed indigenous constitutional draft in Chile would be highly valuable for comparative constitutional law and the advancement of future plurinational political projects. Similarly, examining support for plurinationality within indigenous communities in Bolivia and Ecuador, an intriguing and underexplored issue, could yield equally compelling insights.

Despite the differences between Chile, Bolivia, and Ecuador, the Chilean case clearly illustrates the tensions that can arise from the incorporation of plurinational logic into a political system. Plurinationality, understood as a means to dismantle the inherited order, comes into conflict with the nature of political institutions that articulate liberal democracies. Specifically, constructing a plurinational project through purely democratic means seems an extremely complex task. A hypothesis that requires further exploration in the future is whether plurinationality has failed precisely because it is not possible to construct it in democratic contexts.

Bolivia and Ecuador are fascinating cases to explore in comparative constitutional law. Their constitutions have interesting innovations that go beyond the issues of plurinationality, such as norms regarding the environment and nature. This essay, I hope, contributes to increasing interest in the constitutional discussions involving these countries and examining how they influence both Latin America and other countries worldwide.

Notes

1. Jason Tockman and John Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia," *Latin American Politics and Society* 56, no. 3 (2014): 49.
2. "Bolivia (Plurinational State of) 2009" (Constitution), *Constitute*, accessed November 5, 2024, https://www.constituteproject.org/constitution/Bolivia_2009. Throughout this article, I refer to multiple constitutional norms. Footnotes for each of them are not included herein, as all come from translations made by the Comparative Constitutions Project and are available to the public on the project's website (www.constituteproject.org). Footnotes are provided only for the initial constitutional provisions of Bolivia and Ecuador mentioned herein.
3. "Ecuador 2008 (Rev. 2021)" (Constitution), *Constitute*, accessed November 5, 2024, https://www.constituteproject.org/constitution/Ecuador_2021.
4. Sebastian Lopez Hidalgo and Silvana Tapia Tapia, "Legal Colonialities: The Constitutionalisation of Indigenous Justice and the Continuity of Hegemonic Judicial Discourse in Ecuador," *Revista Derecho del Estado* 52 (2022): 299–331.
5. Miguel Herrero de Miñón, "Nacionalismos y Estado plurinacional en España," *Política Exterior* 10, no. 51 (1996): 7–20; Isidoro Moreno Navarro, "Plurinacionalidad del Estado, construcción europea y mundialización," 1999.
6. Roger Merino, "Reimagining the Nation-State: Indigenous Peoples and the Making of Plurinationalism in Latin America," *Leiden Journal of International Law* 31, no. 4 (December 2018): 773–92, <https://doi.org/10.1017/S0922156518000389>.
7. Salvador Schavelzon, *El nacimiento del Estado plurinacional de Bolivia: Etnografía de una Asamblea Constituyente*, 1st ed. (La Paz, Bolivia: Plural Editores, 2012), 42.

8. Tockman and Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia," 49.
9. Franziska Englert and Jonathan Schaub-Englert, "A Fruitless Attempt towards Plurinationality and Decolonization? Perplexities in the Creation of Indigenous Territorial Autonomies in Bolivia," *VRÜ Verfassung Und Recht in Übersee* 52, no. 1 (June 25, 2019): 67–89, <https://doi.org/10.5771/0506-7286-2019-1-67>; Cristina Oyarzo Varela, "Plurinacionalidad en la Constitución de Bolivia: ¿Una noción capturada por el Estado?," in "Procesos constituyentes latinoamericanos," special issue, *Hybris: Revista de filosofía* 12, no. 1 (2021): 11–44.
10. Boaventura de Sousa Santos, "Cuando los excluidos tienen derecho: Justicia indígena, plurinacionalidad e interculturalidad," in *Justicia indígena, plurinacionalidad e interculturalidad en Ecuador* (Quito: Abya Yala/Fundación Rosa Luxemburg, 2012), 22.
11. Araceli BURGUETE CAL Y MAYOR, "Autonomías: La emergencia de un nuevo paradigma en las luchas por la descolonización en América Latina," in *La autonomía a debate: Autogobierno indígena y Estado plurinacional en América Latina* (Quito: FLACSO Ecuador; GTZ; Ministerio Federal de Cooperación Económica y Desarrollo: IWGIA; CIESAS; Universidad Intercultural de Chiapas, 2010), 75.
12. Álvaro Vergara, "Las formas de la plurinacionalidad," in *El desafío indígena y la democracia liberal*, ed. Eduardo Fuentes Caro (Faro UDD/Tajamar Editores, 2022), 28.
13. Consuelo Sánchez, "Autonomía y pluralismo: Estados plurinacionales y pluriétnicos," in *La autonomía a debate: Autogobierno indígena y Estado plurinacional en América Latina* (Quito: FLACSO Ecuador; GTZ; Ministerio Federal de Cooperación Económica y Desarrollo: IWGIA; CIESAS; Universidad Intercultural de Chiapas, 2010), 275; Tockman and Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia," 49.
14. Farit L. Rojas Tudela, "Dimensiones de lo plurinacional," *Revista Direito e Práxis* 8 (December 2017): 2992, <https://doi.org/10.1590/2179-8966/2017/31221>.
15. Rojas Tudela, "Dimensiones de lo plurinacional," 2992.
16. Sánchez, "Autonomía y pluralismo," 282.
17. Sánchez, 284.
18. Sánchez, 283.
19. Sánchez, 283.
20. Merino, "Reimagining the Nation-State," 790.
21. Santos, "Cuando los excluidos tienen derecho," 24.

22. Aaron Augsburger, "The Struggle for Hegemony and the Articulation of Plurinationality: Contrasting Visions of Social Change and State Transformation in Bolivia's Proceso de Cambio" (UC Santa Cruz, 2018), 65, <https://escholarship.org/uc/item/5m41477m>.
23. Tockman and Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia"; Nancy Postero, *The Indigenous State: Race, Politics, and Performance in Plurinational Bolivia* (University of California Press, 2017), 184, <https://library.oapen.org/handle/20.500.12657/31309>.
24. Merino, "Reimagining the Nation-State," 789.
25. Pablo Stefanoni, "¿Adónde nos lleva el pachamamismo?," *Tabula Rasa*, no. 15 (2011): 261–64.
26. Postero, *The Indigenous State*, 182.
27. Tockman and Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia," 63.
28. Stefanoni, "¿Adónde nos lleva el pachamamismo?"
29. Sarela Paz, "Litigantes indígenas y procesos jurídicos en Bolivia: A diez años de la ruta plurinacional," *Abya-yala: Revista sobre acesso à justiça e direitos nas Américas* 5, no. 1 (May 27, 2021): 175–208.
30. Álvaro García Linera, *Las tensiones creativas de la revolución: La quinta fase del proceso de cambio*, series Cadernos FLACSO no. 7 (Rio de Janeiro: FLACSO, 2011), 14.
31. Pablo Mamani Ramírez, "'Estado Plurinacional' autoritario del siglo XXI," *Religación. Revista de Ciencias Sociales y Humanidades* 2, no. 6 (2017): 68.
32. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Sentence No. 0258/2011.
33. Ibid.
34. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Sentence No. 1714/2012.
35. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Sentence No. 0258/2011.
36. Digno Montalván Zambrano, "El pluralismo jurídico y la interpretación intercultural en la jurisprudencia constitucional de Ecuador y Bolivia," *Ratio Juris* 14, no. 29 (December 17, 2019): 147–85, <https://doi.org/10.24142/raju.v14n29a7>; Raúl Llasag Fernández, Karina Tello Toral, and Alex Zapata Carpio, "Interpretación intercultural de la justicia indígena en la Corte Constitucional del Ecuador," *Cahiers des Amériques latines*, no. 94 (December 29, 2020): 157–74, <https://doi.org/10.4000/cal.11530>.

37. Constitutional Court of Ecuador, Constitutional Sentence No. 113-14-SEP-CC.
38. Constitutional Court of Ecuador, Constitutional Sentence No. 141-14-SEP-CC.
39. Constitutional Court of Ecuador, Constitutional Sentence No. 112-14-JH/21.
40. Llasag Fernández et al., “Interpretación intercultural de la justicia indígena en la Corte Constitucional del Ecuador.”
41. Montalván Zambrano, “El pluralismo jurídico y la interpretación intercultural en la jurisprudencia constitucional de Ecuador y Bolivia”; Juan Jose Cantillo Pushaina, “Legal Pluralism: Opportunities for Development from a Constitutional Perspective in Latin America,” *International Journal of Law and Society* 5, no. 1 (2022): 93, <https://doi.org/10.11648/j.ijls.20220501.21>
42. precisely endnote 687?
43. Mamani Ramírez, “‘Estado Plurinacional’ autoritario del siglo XXI,” 69.
44. Mamani Ramírez, 69.
45. Postero, *The Indigenous State*.
46. Kirsty Gover, “Legal Pluralism and Indigenous Legal Traditions,” in *The Oxford Handbook of Global Legal Pluralism*, ed. Paul Schiff Berman (Oxford: Oxford University Press, 2020), 847–75, <https://doi.org/10.1093/oxfordhb/9780197516744.013.7>; Kimberly Inksater, “Transformative Juricultural Pluralism: Indigenous Justice Systems in Latin America and International Human Rights,” *Journal of Legal Pluralism and Unofficial Law* 42, no. 60 (January 2010): 105–42, <https://doi.org/10.1080/07329113.2010.10756638>; Brian Z. Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global†,” in *Legal Theory and the Social Sciences* (Routledge, 2010); James M. Cooper, “Legal Pluralism and the Threat to Human Rights in the New Plurinational State of Bolivia,” *Washington University Global Studies Law Review* 17, no. 1 (2018): 1–78; Chris Thornhill et al., “Legal Pluralism? Indigenous Rights as Legal Constructs,” *University of Toronto Law Journal* 68, no. 3 (July 2018): 440–93, <https://doi.org/10.3138/utlj.2017-0062>
47. Sally Engle Merry, “Legal Pluralism,” in *The Globalization of International Law*, ed. Paul Schiff Berman, chap. 3 (Routledge, 2005).
48. Marc Simon Thomas, *The Challenges of Legal Pluralism: Local Dispute Settlement and the Indian–State Relationship in Ecuador* (London: Routledge 2016).

49. Anna Barrera, "Turning Legal Pluralism into State-sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador," *SSRN Electronic Journal*, 2011, <https://doi.org/10.2139/ssrn.1920297>; Bartolomé Clavero, "Tribunal constitucional en Estado plurinacional: El reto constituyente de Bolivia," *Revista Española de Derecho Constitucional*, no. 94 (2012): 29–60.
50. María Hayes's dissertation on legal pluralism in Bolivia explores these issues, constitutional norms, and court rulings in depth. Her analysis provides valuable insights and has been an important reference for this work. See María Hayes, "Pluralismo jurídico en Bolivia: La coexistencia del derecho indígena y el derecho estatal en Bolivia" (PhD diss., University of Valencia, 2016).
51. Oyarzo Varela, "Plurinacionalidad en la Constitución de Bolivia"; Hidalgo and Tapia Tapia, "Legal Colonialities."
52. Hayes, "Pluralismo jurídico en Bolivia."
53. Matthew Doyle, "The Case of Piruani: Contested Justice, Legal Pluralism, and Indigeneity in Highland Bolivia," *PoLAR: Political and Legal Anthropology Review* 44, no. 1 (2021): 71, <https://doi.org/10.1111/plar.12424>
54. Paz, "Litigantes indígenas y procesos jurídicos en Bolivia," 175–208.
55. Hayes, "Pluralismo jurídico en Bolivia."
56. Montalván Zambrano, "El pluralismo jurídico y la interpretación intercultural en la jurisprudencia constitucional de Ecuador y Bolivia."
57. Doyle, "The Case of Piruani," 71.
58. Paz, "Litigantes indígenas y procesos jurídicos en Bolivia."
59. Héctor Luna Acevedo, "La legitimidad social del pluralismo jurídico en Bolivia," *Temas Sociales*, no. 39 (November 2016): 243–62.
60. Tockman and Cameron, "Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia," 48.
61. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Declaration No. 0006/2013.
62. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Sentence No. 0112/2012.
63. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Declaration No. 0104/2015.
64. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Sentence No. 0026/2013; Sentence No. 0060/2016; and Sentence No. 0364/2019.
65. *Ibid.*

66. Ibid.
67. Plurinational Constitutional Court of Bolivia, Constitutional Plurinational Declaration No. 0006/2013.
68. Sebastián López Hidalgo and Silvana Tapia Tapia, “Colonialidades legales: La constitucionalización de la justicia indígena y la continuidad del discurso judicial hegemónico en Ecuador,” *Revista Derecho del Estado*, no. 52 (April 28, 2022): 299–331, <https://doi.org/10.18601/01229893.n52.10>
69. Yoel Carrillo García and Juan Pablo Cruz Carrillo, “Algunos límites a la justicia indígena en Ecuador,” *Ratio Juris* 11, no. 23 (2016): 155–88.
70. Although no law specifies the constitutional limits to indigenous jurisdiction, a law on judicial proceedings establishes an extraordinary action for protection against the decisions of indigenous justice systems.
71. Thomas, *The Challenges of Legal Pluralism*.
72. Martín Cordovez, Rafaella Romo-Leroux Chacón, and Miguel Villegas Pérez, “Estado constitucional de derechos: los conflictos del pluralismo jurídico y el ejercicio de la justicia indígena,” *USFQ Law Review* 8, no. 1 (May 9, 2021): 119–43, <https://doi.org/10.18272/ulr.v8i1.2180>
73. Thomas, *The Challenges of Legal Pluralism*.
74. The previous sections of this essay briefly referred to this decision. See Constitutional Court of Ecuador, Constitutional Sentence No. 113-14-SEP-CC.
75. “Correa: Justicia indígena es una ‘monstruosidad,’ ” *El Diario Ecuador*, accessed November 5, 2024, <https://www.eldiario.ec/noticias-manabi-ecuador/153913-correa-justicia-indigena-es-una-monstruosidad/>
76. Hidalgo and Tapia, “Colonialidades legales.”
77. Thomas, *The Challenges of Legal Pluralism*.
78. Eduardo Díaz Ocampo and Alcides Antúnez Sánchez, “El conflicto de competencia en la justicia indígena del Ecuador,” *Temas Socio-Jurídicos* 35, no. 70 (January 1, 2016): 95–117, <https://doi.org/10.29375/01208578.2503>; Julio César Gárate Amoroso, Maria Gabriela Tixi Torres, and Mariela Isabel González Veintimilla, “La Justicia indígena desde el contexto del pluralismo jurídico en Ecuador,” *Revista Lex* 5, no. 17 (September 20, 2022): 371–84, <https://doi.org/10.33996/revistalex.v5i17.133>
79. Hidalgo and Tapia, “Colonialidades legales,” 81 (my translation).
80. Llasag Fernández et al., “Interpretación intercultural de la justicia indígena en la Corte Constitucional del Ecuador.” Llasag et al. argues that the court relied on weak anthropological reports to justify the exclusion of indigenous justice in crimes against life.

81. Llasag Fernández et al., “Interpretación intercultural de la justicia indígena en la Corte Constitucional del Ecuador.”
82. Postero, *The Indigenous State*, 184; John Polga-Hecimovich, “Reshaping the State: The Unitary Executive Presidency of Rafael Correa,” in *Assessing the Left Turn in Ecuador*, ed. Francisco Sánchez and Simón Pachano, Studies of the Americas (Cham, Germany: Springer International, 2020), 15–39, https://doi.org/10.1007/978-3-030-27625-6_2; Tockman and Cameron, “Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia.” *Studies of the Americas* (Cham: Springer International Publishing, 2020).
83. Andrés Tzeiman and Ramiro Parodi, eds., *Álvaro García Linera: Para los que vendrán: Crítica y Revolución en el siglo XXI; Selección de conferencias, artículos y entrevistas (2010–2021)* (Buenos Aires: Universidad Nacional de General Sarmiento, 2022), 632, <https://repositorio.ungs.edu.ar/handle/UNGS/949>
84. Jorge Fábrega, “Ordenamiento ideológico en la Convención Constitucional chilena,” *Revista de Ciencia Política (Santiago)* 42, no. 1 (April 2022): 127–51, <https://doi.org/10.4067/s0718-090x2022005000106>
85. Guillermo Perez, “The Illusion of Indigenous Representation,” September 29, 2022, I-CONnect: Blog of the Journal of International Law, <http://www.iconnectblog.com/i-connect-symposium-on-the-chilean-constitutional-referendum-the-illusion-of-indigenous-representation/>
86. Matías Bargsted, “¿Pesó la desinformación en el Rechazo? Una respuesta estadística,” *CIPER Chile* (blog), September 13, 2022, <https://www.ciperchile.cl/2022/09/13/peso-la-desinformacion-en-el-rechazo-una-respuesta-estadistica>
87. Aldo Mascareño et al., “Mapuche en el sur: Identidad, materialidad y expectativa,” *Puntos de Referencia* 638 (2023), https://www.cepchile.cl/wp-content/uploads/2023/01/pder638_mascareno_et-al.pdf

