

BEYOND CONSTITUTIONAL JURISPRUDENCE: SOCIAL MOVEMENTS AND SYNERGY FOR THE RIGHTS OF NATURE

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ABSTRACT

The current study focuses on the jurisprudence of the Constitutional Court of Ecuador regarding the rights of nature, developed from 2019 to 2022. The standards established during the examined period emerged from a collaborative effort between ecological, indigenous, and animal rights social movements, alongside various Constitutional Court justices with expertise in these areas, stemming from both academic backgrounds and social activism. This study examines the involvement of various advocacy groups through the *amicus curiae* mechanism. This analysis aims to clarify the collaborative dynamics and deliberative context surrounding constitutional decisions. The results demonstrate how the different social movements engaged in collective action, leveraging a conducive environment that facilitated their interaction with the justices in advancing constitutional rights.

RESUMEN

El presente artículo se enfoca en la jurisprudencia de la Corte Constitucional del Ecuador sobre los derechos de la naturaleza, desarrollada desde 2019 hasta 2022. Se parte del entendimiento de que los estándares emitidos en el periodo analizado surgieron a través de una sinergia entre los movimientos sociales ecologistas, indígenas y animalistas, y varios jueces de la Corte Constitucional que estaban familiarizados con estos temas tanto desde la academia como desde el activismo social. Con base en lo anterior, se analizan las militancias que participaron mediante la figura del *amicus curiae* para comprender esta sinergia y el contexto deliberativo de las decisiones constitucionales. Como resultado, se describe cómo los diferentes movimientos sociales participaron a través de la acción colectiva, aprovechando un contexto favorable que facilitó este encuentro con los magistrados en el desarrollo de los derechos constitucionales.

KEY WORDS: Rights of nature, *amicus curiae*, social movements, democratic deliberation, judicial decisions.

PALABRAS CLAVE: Derechos de la naturaleza, *amicus curiae*, movimientos sociales, deliberación democrática, decisiones judiciales.

JEL CODE: N460, N56

RECEIVED: 11/10/2023

ACCEPTED: 26/12/2023

DOI: 10.26807/rfj.vi14.486

INTRODUCTION

The jurisprudence concerning the rights of nature in Ecuador has undergone significant development since 2019, aligning with a recent restructuring of the Constitutional Court. This phenomenon is not accidental; rather, it is the result of a synergy between ecological, indigenous, and animal rights social movements, alongside support from several Constitutional Court justices who were already well-versed in these issues from both academic study and social activism. Furthermore, social movements demonstrate a form of activism wherein autonomy, both individual and collective, is a fundamental characteristic that allows them to diverge from the organizational formalism of traditional left-wing structures. The methodology employed in this research is grounded in the sociology of law, which challenges the positivist approach that views norms as an end in themselves, thus distancing itself from legal formalism. The study aims to explore comprehensive ways of understanding the law through the analysis of social transformations and via multiple case studies.

This study also analyzes advocacy actions as they manifest in jurisprudence. It examines participation in legal processes, such as through the *amicus curiae* mechanism, and includes in-depth interviews with four students from the master's program in the rights of nature and intercultural justice at the Universidad Andina Simón Bolívar (UASB)¹ and with two students from the advanced course in intercultural community technical studies in human rights and nature, facilitated by the Andean Program of Human Rights² at UASB. Additionally, to comprehend the dynamics of this synergy, interviews were conducted with two former justices of the Constitutional Court who played prominent roles in several rulings. The findings demonstrate that the activism of advocacy groups can establish connections within a deliberative setting, which can be understood as dialogical activism by the Constitutional Court.

¹ This master's program was launched in 2020 at UASB, Ecuador campus, as part of an international project involving seven universities funded by Erasmus-EU—the OPTIN Project.

² The advanced course was given in collaboration with Acción Ecológica, thanks to an international project funded by the EU.

1. Environmental social movements

Research on social movements in Latin America began in 1970s. These movements can be characterized as organic-conscious and programmatically structured or organic-spontaneous, emphasizing immediate demands or other forms of resistance or social disobedience (Contreras and Vásquez, 2006, p. xx). John Rawls, discussing the civil disobedience associated with the youth movements of the 1960s and 1970s, identifies them as: “an action dictated by conscience, but of a political nature [...] Directed and justified by political principles; that is, by the principles of justice” (as cited in Scheuerman, 2019, p. 81).

According to classical liberalism, civil disobedience should be solely linked to demands for civil and political rights, as economic, social, and cultural rights disrupt structural inequalities. In this way, justice can uphold these acts of disobedience as the movements’ last recourse. It is thus a question of advocating for a distributive justice that ensures public demands without undermining “civic friendship.” The limitations of this theory become evident in societies wherein structures of inequality have historical and cultural roots and where groups strive for alternative forms of justice. According to Antonio Wolkmer, this involves “a pluralism in the legal sphere of a community-participatory nature ‘from below,’ which raises questions about key issues such as ‘sources,’ ‘foundations,’ and the ‘object’ of law” (Wolkmer, 2018, p. 205). Regarding this pluralism, Wolkmer (2018) states:

Moreover, it is imperative that pluralism, as an alternative framework for the political and legal spheres, be inherently committed to the participation of multiple social identities (legitimacy of actors), the fulfillment of human needs (“material foundations”), and the democratic political process of decentralization, participation, and community oversight (strategies). Additionally, legal pluralism involves the integration of certain “formal foundations,” such as the embodiment of a “concrete ethic of alterity” and the establishment of processes related to an “emancipatory rationality.” Both elements are adept at articulating the diversity and differences present in forms of everyday life, identity, and autonomy of subaltern collectivities, thus serving as sources of alternative legitimacy. (p. 205)

In this context, the theory of new social movements, which emphasizes identity construction (Tanaka, 1995, p. 4), and the theory of “collective action” (Tarrow, 1997, p. 9), which describes the composition of contentious actions and political opportunities for collective action, are particularly relevant to the study of social movements in Latin America. Indeed, these organizational forms challenge the inaction of the rule of law by fostering shared “solidarities.” In this regard, we can define social movements, following Sidney Tarrow’s (1997) assertion, as “collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities. This definition has four empirical properties: collective challenge, common objectives, solidarity and sustained interaction” (p. 21).

The advancement of the rights of nature in Ecuador can be attributed to several factors, including relational social capital (Bourdieu, 1980, pp. 2-3), which extends across public institutions, and a “collective challenge” characterized by collective action and synergy resulting from shared histories among civil society organizations, including social movements and academia. When discussing Pierre Bourdieu’s (1980) concept of social capital, we are referring to resources associated with a durable network of relationships, whether institutional or informal, characterized by recognition and mutual acknowledgment and bound by enduring connections. The social capital of each activist will depend on the network of relationships they have been able to build and mobilize throughout their life. The collective challenge is associated with the common goals formed through the collective actions of civil society. Lastly, the collective synergy in this case arose at a specific moment to promote jurisprudence for the protection of the rights of nature.

The components and elements of social capital are rendered ineffective without a catalyst to facilitate effective interaction among all individuals within a given social network. At this point, synergy (between each component and the collective whole) assumes particular significance, as it amplifies the impact of actions undertaken by all involved parties [...]. From the perspective already outlined, synergy is nothing more than an extension of collective behavior, wherein the role of the institutional environment, involving individuals and/or social groups, is recognized. (Álvarez, 2015, p. 14)

The rise of social movements in Ecuador occurred within a complex context. First, a shift in production occurred with the exploitation of oil in the late 1960s by the US oil company Texaco, leading to an economic dependence that persists to this day. Second, democracy returned to the country after dictatorships and political and legal instability. A new constitution marked the transition in 1979, which made some innovative contributions, including the recognition of indigenous languages. Subsequent crises have also led to a concentration of popular forces in various social organizations, including environmentalism. According to Verdesoto (1986):

The economic and social changes that began in the 1960s accelerated in the following decade, particularly with the growth of oil exports. During the 1980s, the crisis reshaped the nature of these changes, prompting efforts to reconfigure the mode of accumulation and the extent of state intervention in society. Ecuadorian oil exports have limited influence in the global market. However, the internal circulation of this revenue created a heavy dependence on accumulation. (pp. 19-20)

The origins of the environmental movement in Ecuador are rooted in liberal principles. It emerged nearly simultaneously with the indigenous movement in the late 1970s, starting with the establishment of Fundación Natura in 1976, and it garnered support from a centrist-right political party, Democracia Popular. One of its founders was Roque Sevilla, former mayor of the Metropolitan District of Quito and associated with the World Wildlife Fund. During the 1980s, the grassroots environmental movement emerged with an agenda that facilitated alliances with historically marginalized sectors, including indigenous peoples and Afro-descendant communities. Certainly, this provided resilience in the social sphere amid the country's persistent political and economic crises. According to Sara Latorre (2015), this trend peaked in the 1980s with the creation of the Ecuadorian Environmental Movement, the Green Party, and the Ecuadorian Coordinator of Organizations for the Defense of Nature and the Environment (CEDENMA in Spanish).

This movement was initially established with the goal of creating opportunities for participatory discussion to coordinate proposals addressing environmental issues. As Latorre (2015) explains, it brought together various social sectors such as workers, indigenous peoples, farmers, and professional

associations, and evolved into a coordinating body for various NGOs in the early 1990s. Likewise, other coordination mechanisms emerged, including environmental networks and international campaigns, notably Amazonía for Life and Save the Mangroves (Latorre, 2015). As Esperanza Martínez points out, this environmentalism has leftist origins:

As we were left-leaning, we began to engage, that is, to work in defense of nature with unions, which was a big headache, but we did it, also with farmers. We worked a lot with farmers and indigenous people. So, the idea was to work on both issues related to nature and to social sectors, and that's where the idea of popular ecology was born. There was Fundación Natura, which was very instrumental, from the upper class. Well, that difference still exists. So, we started working on campaigns. I've worked in oil all my life since I can remember. In Texaco. I started working with the Yasuní [...] we started the Amazonía for Life campaign with other, more local organizations. In fact, our first direct actions were with León Febres Cordero. Very much in the style of holding candles in the central plaza. And so, along the way, we decided to become an organization that promotes direct action, active nonviolence. Those principles gradually grew within us, leading us to define ourselves as environmentalists. (personal interview, November 25, 2022)

This new context led to a displacement of productive sectors and the labor movement; it also laid the groundwork for a new activism. According to Maristella Svampa (2010), activist leftism in Latin America experienced substantial changes starting in the 1990s, marked by the emergence of activism centered around territorial rights and socio-environmental conflicts (p. 1). This shift became evident following the crisis of the model, which questioned concepts such as verticality (with leadership positions often held by men) and pragmatism, among others. Esperanza Martínez (personal interview, November 25, 2022) highlights these changes, emphasizing the linkage of actions by the grassroots environmental movement with leftist visions and actions. In this context, the left is characterized by its fight against transnational and extractivist capitalism, as well as its alignment with marginalized social sectors.

From the late 1980s onward, “collective action” was forged through coordination between the environmental and indigenous movements, with

some historic moments involving the protection of Yasuní National Park in the Ecuadorian Amazon. The strategies of the social movements were focused on direct action and resistance in a challenging context that offered little promise for the advancement of the rights of nature. This changed with the 2008 Constitution, which incorporated the rights of nature. Activists subsequently refocused on new avenues of political participation, marking a generational repositioning characterized by rupture. The concept of “activist ethos” moves away from more biologically deterministic notions like “generations” and is closer to that of collective identities, akin to Bourdieu’s (1980) concept of *habitus*. Carlos Walter Porto Gonçalves concisely defines it as “the set of values that shape identity” (as cited in Longa, 2016, p. 50). Nevertheless, identity is more complex, requiring additional constitutive elements such as ideologies, political goals, and even socio-legal aspects.

2. The activist ethos for the rights of nature

Svampa (2010) points out that the leftist activist ethos in Latin America shifted with the emergence of activism more closely related to everyday life and socio-environmental conflicts while more distant from the classical leftist activist model (Longa, 2016, p. 54). The neoliberal context, coupled with the crisis in the socialist bloc in Eastern Europe following the fall of the Berlin Wall in 1989, prompted leftist activism to shift toward other arenas, including the indigenous movement (Rodríguez Caguana, 2017), academia, and environmental organizations, among others. The activist ethos, which questioned relationships with capitalism, remained relevant, but it could no longer persist in the same manner.

This new narrative has been shaping a shared ethos that emphasizes organizational de-bureaucratization and democratization. As a result, it is fueled by a deep distrust of party and union structures, as well as any higher coordinating bodies. Broadly speaking, autonomy is not only an organizational principle but also a strategic approach, invoking “self-determination” (in Castoriadis’ sense of “to give oneself one’s own law”). (Svampa, 2010, p. 9)

Since its inception, the environmental movement in Ecuador has been the most consistently active, both in terms of organizational and community support for socio-environmental conflicts and of engagement in subsequent legal processes of various kinds and at different levels. Advocacy for the

rights of nature in Ecuador spans different arenas, including the grassroots environment, the indigenous, and the animal rights movements. These movements embody distinct ethos, which will be explored via the narratives of specific individuals' life experiences.

3. Indigenous activist ethos

Indigenous activism shares its origins with the Ecuadorian left. Notably, the first national indigenous organization, the Ecuadorian Federation of Indians, emerged within the Communist Party in the 1930s under the leadership of Dolores Cacuango. However, starting in the 1970s, as oil exploitation increased in Ecuador and the indigenous movement gained autonomy, the focus of their struggle shifted toward cultural affirmation within their territories. These territories constitute the geographic areas where indigenous peoples persist and resist, maintaining unique ontological relationships with their surroundings. This assertion of their territories served as the foundation for the development of rights for *Pachamama* (Mother Earth). Current activism, especially in the Amazon, draws upon this historical background as collective memory. According to Justino Piguave:

Actually, I believe that being connected to social and cultural issues has roots in my grandfather's past, who was a prominent social leader. My dad was the first teacher; he graduated from high school with a focus in bilingual education. So, I come from a family perhaps much more connected to and concerned about social and cultural issues. Above all, my grandmother was a skilled narrator of oral tradition; she was a good historian. So, I learned a great deal about those struggles, especially about resistance. During the military conflicts between Ecuador and Peru in the 1940s, my grandfather was forced to resist, because when the state's territory was divided, the nationality's territory was split down the middle, and he attempted reunification. He ventured into the jungle for two months without a compass or any tools, relying solely on his knowledge of the jaguar, and managed to reunify the territory once again. From there, my conviction was born. Later, when I was just 18 years old, my involvement with environmental disasters led me to engage with cases like Chevron, for instance. I was the first underage person to sign against Chevron. So, all of that connects me, makes me

much more inclined to believe in social activism, and also reinforces my belief that cultural differences should be respected. It also underscores the importance of understanding nature according to the worldview of other actors who might believe that extractivism will destroy nature and everything else. (personal interview, October 30, 2022)

In Justino's narrative, memory emerges as a crucial tool for reclaiming identity through the construction and redefinition of his vital space, particularly the territory. For Justino Piguave, an indigenous leader from the Amazon and president of the Secoya-Siecopa nationality, his family history is closely linked to organizational processes. He is the son of his community's first teacher and the grandson of an important leader who reunified communities affected by the Ecuador–Peru conflict in the 1940s. Because of his career advocating for the indigenous communities affected by pollution by Texaco-Chevron, Justino became involved with the Ceibo Alliance, a coalition of individuals from the A'i Cofán, Siona, Siekopai, and Waorani peoples. This led him to participate as an *amicus curiae* as part of the case of the A'I Cofán Sinangoe community (Judgment No. 273-19-JP/22).

Oral memory serves as a resource for delving into mnemonic mechanisms that facilitate its transmission, such as recounting communal family history via stories within the community. As suggested by Ruth Moya (1992), myths serve as a functional tool for memory, bringing together political engagement, developing-world church initiatives, the Christian left, and other stakeholders. The mythical narrative continues to provide support for contemporary territorial struggles today. Similarly, Svampa (2010) notes the “political awakening” of indigenous peoples through memory:

The contemporary resurgence of indigenous political engagement draws strength from both the enduring collective memory and recent struggles. It emerges against the backdrop of neoliberal globalization's encroachment into territories once deemed unproductive. (p. 11)

This form of memory is not structured as an objective (scientific) recollection of the past but rather as an ongoing dynamic that clarifies both present and future identity. Justino speaks of his struggle against Texaco not as something inherited but as a consequence of his own life. This confrontation with the past is reminiscent of the social dynamics proposed by Walter

Benjamin and his thesis on history, as examined by Sergio Tischler (2010), who states the following:

To a certain extent, it could be argued that these individuals' struggles are a response to the process of real and symbolic abstraction. This process, driven by notions of progress and rationalization, threatens to reduce them to mere objects, frozen in time, devoid of agency or vitality. Hence, there is a struggle to preserve time in its living form to prevent its escape and transformation into a denial of that essence as something independent. However, they are aware that this implies confronting the dominant temporal structure, which is the commodified form of time in the capitalist society they fight, symbolized by the clock. (p. 45)

The relationship with time in activism is akin to that with nature: a rejection of capitalist abstraction. It might seem idealized, given that activism often revolves around clocks, appointments, meetings, and commitments, objectifying and subordinating them to serve commodities rather than prioritizing individuals and concrete matters. Therefore, when discussing the rights of nature, we are not speaking of an abstract environment but of a vibrant, living ecosystem. This dynamism leads to the emergence of additional, more democratic approaches to activism within the indigenous movement, for example, the movement of Amazonian women, who have their own agenda focused on defending their territories with a feminist approach. Although this shift is recent, women's participation in Puyo's March 8th marches since 2017 demonstrates that the indigenous activist ethos is continuously evolving, embracing new realities rooted in memory.

4. Activism: an environmentalism ethos from the people

The activism stemming from grassroots environmentalism has its source in traditional left-wing ideology. It tends to emphasize recent experiences and interactions with various social sectors, including indigenous organizations, leftist activism, academia, and NGOs. Detailing her involvement as an environmental activist, Esperanza Martínez points out:

Since becoming capable of rational thought, I have been an activist. Since I was 15 years old, I have participated in the May Day demonstrations, but from a leftist perspective. Very much in line with what Galeano

used to say, that the heart is on the left, intelligence is, too. I became interested in environmental and nature-related issues when I started studying biology. Forty years ago, we established an organization called the Society for the Defense of Nature, which later evolved into Acción Ecológica. (personal interview, November 25, 2022)

Esperanza Martínez is the most recognized environmental activist in the country, known for her involvement in various key milestones of the environmental movement, with an extensive career in the defense of territories against oil and mining exploitation. She is a biologist and lawyer, as well as one of the founders of the organization Acción Ecológica. She has participated in several cases presented before the Constitutional Court and as an *amicus curiae* in the Los Cedros case (Judgment No. 1149-19-JP/21), and her organization Acción Ecológica acted as a plaintiff in the Manglares case (Judgment No. 22-18-IN/21). In her organizational activism, she highlights the following:

We began as a sort of alliance between CEDENMA and a communication group that were all men, but we were women. We split off and decided to create Acción Ecológica, which initially was an environmental information and documentation center. But within the first year, we began to engage more actively in activism-related issues. We then started to develop our own ideas, like working on environmental issues, and especially learning. I think we had some moments of revelation or magical inspiration from the beginning; among these was deciding that we have a joke here, and it's that they've been deceiving us all along. We talked about the human right to have a voice, for each person to have a cause. So, we decided that each of us would be in charge of an issue. I mean, it was like saying, "We're going to learn this." So, Glorita focused on mining, meaning she read, studied, checked what was going on, and we learned very quickly. I was oil, mining, and we covered plantations. We divided the different topics among ourselves to explore what we could accomplish with each one, and we maintain this structure, which is deeply rooted in Acción Ecológica, to this day. In an organization, in an NGO, you typically end up adopting organizational structures more like those of a ministry than a social process. So, there's the person in charge of legal processes and the one for training processes, and we reversed

that. So, we said, “This person will work on and oversee everything related to mining.” So, we learned and got each person to learn a lot, be responsible for their own representation, and we developed very diverse strategies because as human beings, we are all unique. Some became more academically oriented while still focusing on their respective topic. Others became more grassroots-oriented, but we worked together really well. Others focused more on the political but continued with their issue. For example, Elizabeth was focused on biodiversity and is very scientific, but she took over GMO-related information and brought her expertise to that aspect of our work. Glorita was very grassroots-oriented. I think I’ve always been a more political person, always networking. I started leading many campaigns. So, the first thing I did was create “Amazonía por la Vida” to make it not just about one person but an alliance of people working on the issue of oil, and each person representing their own perspective. Somehow, that has worked. (E. Martínez, personal interview, November 25, 2022)

The self-determination of political subjectivity is one hallmark of the new activist ethos, which departs from the classical idea of a uniform party. While Esperanza has roots in leftist activism, she has pursued a path more closely aligned with her own experiences and exercise of freedom. Throughout its history, Acción Ecológica has had female leadership, as women were among the first to break away from the masculinized and patriarchal left. However, as Esperanza notes, “We don’t self-define as feminists, but we don’t exclude it, either” (November 25, 2022), which is part of the organization’s heterogeneous dynamics.

Cinthia Andrade is another environmental and cultural activist. Her work has focused on literacy, working-class communities, and indigenous worldviews. She has conducted research on the history of Guápulo and Andean cosmovision, which led her to collaborate with the Error Vial Guayasamin Committee in the Bolaños neighborhood, a committee protesting road construction that would affect vulnerable residents. She participated as an *amicus curiae* in the Rio Monjas case (Judgment No. 2167-21-EP/22).

I have a degree in education science, a postgraduate specialization from the Autonomous University of Madrid in society, culture, and development in Latin America, and another from the Complutense University of

Madrid. What can I say? I completed a Ph.D. in educational research. That's more or less it. From there, I was always involved, somewhat, in social issues. I'm a teacher, I've been involved in things like literacy programs in working-class neighborhoods and with indigenous issues. But lately, I've been involved in what we call the Guayasamin Road Committee, which opposes the Guayasamin Road Solution project, in which the Bolaños neighborhood, an ancestral community, would be torn down. I began researching everything related to this ancestral community. I've conducted several investigations into Guápulo because they're also part of it. For more than 20 years, I've been involved in Andean issues, so both things came together. This research has focused on Andean topics and a little on the history of Guápulo, particularly regarding its surroundings and that of the Bolaños Pamba community. That's essentially how I became involved with Acción Ecológica, which has been supporting us in various road safety matters. It was through this collaboration that I enrolled in the specialist course at the university. Given my involvement in Andean issues, we discussed the possibility of me presenting an *amicus curiae* regarding the Andean perspective on water, including the significance of rivers, in the case of the Monjas River during the Constitutional Court's judgment. So, that's when I submitted this *amicus* brief on the topic of what the entire issue of water meant for Quito—the rivers, the symbolism, the associated myths, and the ancestral significance for us as Andeans and specifically as Quito residents (C. Andrade, personal interview, January 23, 2023).

This activism operates autonomously and is not tied to any specific organization, a characteristic that is also reflected in the ecological activist ethos. Andrade could be described as an intellectual committed to ecological causes and offers her services to various organizations. She has even participated in legal proceedings defending the rights of nature through *amicus* briefs.

Finally, activist environmentalism is grooming new leaders from within its ranks, such as Gustavo Redín, a lawyer and president of CEDENMA. His professional work has involved litigating environmental cases. He intervened directly as an *amicus curiae* in the case of the A'I Cofán Sinangoe community (Judgment No. 273-19-JP/22), while his organization CEDENMA

participated as an *amicus curiae* in the Los Cedros case (Judgment No. 1149-19-JP/21) and as a plaintiff in the Manglares case (Judgment No. 22-18-IN/21). Gustavo emphasizes the significance of his organization's history for the continuation of his work as a professional activist:

Throughout my life, I've been committed to activism. I've consistently engaged with cases, reviewing them, crafting proposals, and offering support from the standpoint of collective rights, the rights of nature, and human rights. Later on, I enrolled in a master's program in Madrid on human rights [governance and human rights]. I lived in Madrid for a long time. After returning to Ecuador, I joined up with CEDENMA. First, I worked as a lawyer for the organization and then ended up as president. For me, there's a clear distinction between before and after in these court processes since I started working directly with CEDENMA. It's evident that institutionally, the organization carries the weight of over 35 years of history. We existed before the Ministry of Environment. So, this institutional background has enabled me to participate in the processes I've been involved with as a lawyer for CEDENMA. Having access to all our archives provides us with a strong foundation. In all our engagements, we no longer begin from square one. We review our previous stances in specific cases, making it easier to formulate subsequent positions. Of course, every case requires thorough preparation, but you're no longer starting from scratch, needing to build an entire argument or position from nothing. Instead, you have a history that supports your argument, making the process more manageable. So, in a way, all you're doing is building and developing upon an argument that is already formed. (personal interview, November 7, 2022)

Organizational experience is crucial in shaping the development of an activist. The rights of nature have disrupted legal positivism to such an extent that neither the legal education in public nor private universities has fully incorporated this approach to nature's rights into the curricula. Thus, organizations have endeavored to address this educational gap by providing training for their own activist-workers.

5. Activism ethos for animal rights

We observe another type of activism based on recent experiences, often rooted in autonomy: the animal rights movement, which has emerged more recently and maintains a somewhat distant relationship with leftist ideologies. Tatiana Rivadeneira, an animal rights activist, describes the trajectory of this movement as follows:

The movement truly began to grow during the bullfighting struggle, a battle that has not yet ended. Not only bullfighting but also cockfighting. But this issue gained momentum, especially thanks to the referendum, further propelling the movement forward. The movement began to grow rapidly. Now, in terms of our relationship with other environmental organizations, as you mentioned, I would say that we're not completely isolated. The thing is that, in my opinion, I truly feel and am certain that the issue of animals is not well understood. I mean, it's something that even I, in my work, have realized requires much more specificity; even discussing just one species can be more effective. [...] Actually, it's an incredibly diverse issue, and I'd even say it's a little like the dynamic. The movement doesn't like to define itself politically, and I appreciate that. There are also many interesting topics that have emerged. For example, we've seen significant collaboration in collective feminist activism; there has been a strong sense of unity in these efforts. But this is also normal because, for some reason, globally, animal rights organizations are predominantly composed of women. So, it's actually women who are doing the work, I mean, there's much more female participation here. [...] But without a doubt, among all my colleagues and the wonderful people I meet through the animal rights movement, there's a profound understanding of vulnerabilities. These are individuals who also dedicate their work and even more to animals. Because, ultimately, in other causes, at the end of the day, the emphasis is on collecting money. Here, as we're dealing with animals, at least in my case, our efforts for them are truly heartfelt and genuine. Without a doubt, I would say these are people who clearly understand leftist ideals, although they may not like to define themselves as such. You'll never hear them say that, or at least not in our current discussions. Because I've even proposed that we become a political movement; we

already work to nominate candidates and things like that. I've explained my reasons to them. In other words, we're aiming for a different kind of impact, to attain positions of authority and all that, and they're not interested. For example, during campaign periods like now, they reach out to us a lot because they know we mobilize people, but we decline their offers. Besides, they don't want to be involved in that kind of stuff. That's not how I feel, but I'd say it's the general sentiment. (personal interview, February 1, 2023)

Animal activism has an ideological openness that is manifested through the understanding of the vulnerabilities inherent in animals. Of course, this characteristic is more democratic, but it likely presents greater organizational and/or decision-making challenges. As Svampa (2019) points out, "Concerning the emerging autonomist narrative, largely situated within the framework of 'short memory,' its core components include the assertion of autonomy, horizontalism, and consensus democracy" (p. 19). This type of activism represents a collection of individual experiences that together shape approximate identities around common objectives, a narrative that highlights the individual actions of their activism or commitment. This has also allowed animal defense strategies to be redoubled. According to Rivadeneira:

I must confess that I've had an inclination toward the rights of nature because just after I graduated from law school, the issue of the constitution came up, and all this started. The most groundbreaking aspect at that time was the idea of granting legal rights to nature. So, I have to admit that at that time, I was quite intrigued because, of course, I had just graduated as a lawyer and during my studies, I was always searching for a subject I could focus on and specialize in. I always knew what I liked, and I actually work and make a living in the field of constitutional law. However, within constitutional law, I was particularly interested in the concept of the rights of nature. So, from there, I began to prepare and take a personal interest in getting involved with other groups, particularly environmental ones, and in some other causes. One of the causes that definitely resonated with me, and one that I'm still actively involved in, is the GMO-Free Ecuador group. GMOs led me to explore topics related to food, delve into discussions about the meat industry and veganism, and ultimately, I became involved in animal rights issues.

That's when I started my activism journey as an animal rights activist. I first got involved with the Animal Libre group, which is mainly focused on promoting veganism. I was already engaging in activism, but within this group, I noticed we weren't focused on taking legal action or representing animal cases in court. Animal Libre does an amazing job, but it wasn't quite what I wanted. So, I joined the national animal rights movement, which truly engages in many causes. There's a lot of work and mobilization within the national movement, making it the largest movement in Ecuador. It also involves not only activists but over 40 organizations. During that same time, I was also recruited by Victoria Animal. The organization's primary strength is advocating for animal rights causes, and I've chosen to stay with them and am very happy with my decision. They've also entrusted me with the coordination of the foundation, of the organization, so, for some time, I've been leading this foundation. With Victoria Animal, we brought the Estrellita case (personal interview, February 1, 2023).

It is worth noting the prominence of the theme of emotions, an aspect traditionally overlooked within mainstream political leftism, which has historically prioritized Marxist science and a "political commitment to changing these realities." This rationality detached from emotions contrasts with the focus of this movement. Its connection to the rights of nature occurs easily, perhaps due to its distance from abstract and textual legal frameworks toward a more vibrant, concrete conception of rights.

Up to this point, we have examined narratives recounting the experiences of environmentalists, indigenous activists, and animal rights advocates who have participated in either direct demands or *amicus curiae* briefs in cases concerning the rights of nature before the Constitutional Court between 2019 and 2022. The following section analyzes the role of justices in shaping a type of jurisprudence that some have characterized as activist. It should be noted that analyzing the extent of judicial activism is beyond the scope of this study.

6. The role of justices in shaping the rights of nature

Ecuador recognized the rights of nature in the 2008 Constitution, amid a contentious discussion around the content of these rights. This marked a historic moment for the Ecuadorian environmental movement. The current Constitution is often seen as aspirational (Saffon and García-Villegas, 2011, pp. 75-107) and as requiring the active involvement of social movements to achieve its principles. This explains why these rights did not undergo significant development in the early years, as achieving a radical change or transformation required a favorable environment, such as non-positivist legal education in law schools. Another contributing factor is the positivist judicial system, which has historically been detached and sometimes even resistant to the recognition of the rights of nature. In some cases, it has adopted a preservationist or conservative discourse, positioning itself as an adversary to proponents of protective interpretations.

Gustavo Redín characterizes the period before the emergence of jurisprudence for the rights of nature, here termed the “positivist-formal” period, as a “dark” period for the court because “of the limited scope for meaningful discussion. There was a moment when environmental organizations and nature rights organizations decided not to bring many cases to the court out of fear that it would not recognize the right, so there was an understanding that it wasn’t the way forward” (personal interview, November 7, 2022).

Starting in 2019, the Constitutional Court underwent a radical shift in its trajectory, closely tied to what Bourdieu (1980) conceptualized as a network of solidarities within civil society. In that year, the new composition of the court, which included academics with a history of engagement with the demands of social movements, contributed to a change in the traditional strategy, opting for a new path within the highest legal institution. Agustín Grijalva provides an example when discussing his work philosophy: “It was always the policy of our office to combine technical proficiency with social empathy. There’s this human aspect while also maintaining rigor in the legal technicalities. We’ve always operated under the belief that not only are the two compatible, but they should be complementary, thereby enabling us to defend rights even more robustly. That was our philosophy” (personal interview, February 2, 2023).

Similarly, former justice Ramiro Ávila points out: “I have a particular sensitivity to the opinion of civil society expressed through people who appear in court [...] I couldn’t be inconsistent with my utopian vision of the oppressed, where the people are the source of law and institutional praxis had to be considered” (personal interview, November 30, 2022). In his contributions to legal theory, Ávila examines the systemic theory of law within the context of the rights of nature to clarify the radical departure from traditional and formal theory. Both jurists concur on the necessity of a specific “sensitivity” that is not opposed to technical proficiency; on the contrary, it demands a dual task from the interpreter: to have a deep understanding of the law and theory while also possessing a special sensitivity toward these paradigmatic rights. Sensitivity is not just an abstract feeling but a permanent dialogical activity.

Grijalva reflects on the rise of these rights within the court’s jurisprudence, encompassing aspects such as the nature of the collegial body, dialogue and deliberation among judges, and the court’s independence from other powers or external actors:

In my experience, it’s evident that a court is a collegial body, comprised of a small number of individuals, wherein the ideological and political positions of these individuals carry significant weight. The way they relate to each other and interact is also very important. I would say that objectively, Ramiro and I were the justices who showed the most interest in this issue. But we also shouldn’t overlook, for example, Teresa Nuques in the Estrellita animal rights case. Let’s not forget Daniela Salazar in one of the initial judgments concerning river channels. Then, there’s the case with Karla Andrade’s report on the consultation. So, I think that what happens is that, especially if there’s deliberation, that’s the most interesting phenomenon. (personal interview, February 2, 2023)

Grijalva’s position echoes the ideas of John Hart Ely in his work *Democracy and Distrust* (1980, p. 135) regarding the role of the judge in ensuring a deliberative process in cases involving representation of minority groups. Hart Ely views the normative approach from the procedural dimension of democracy via deliberation; constitutional justices must review both formal normative and substantive aspects to develop democratic jurisprudence. Roberto Gargarella references Ely to enhance and radicalize the relationship

between democracy and law, taking into account the active participation of “stakeholders” in an ongoing deliberation.

On the other hand, Ávila contemplates jurisprudence from a perspective distinct from the deliberative dimension. He argues that the evolution of this jurisprudence was propelled by the Constitutional Court’s commitment to addressing these issues, setting aside traditional doctrine and incorporating concepts and definitions from other disciplines. Emphasizing this point, he says, “The court finally develops words that lack legal resonance within traditional doctrine, such as natural cycle, function, structure, or evolutionary process. These terms are highly relevant, particularly in fields like biology, geology, and hydrology” (Ávila, 2022, p. 137). Nevertheless, it remains a product of deliberation. Similarly, aligning more with a theory of the values underlying these rights, Ávila mentions that the justices of the court had a particular interest in working on cases related to their “theoretical obsession.” This would even explain why the court’s most significant jurisprudential output on the rights of nature occurred during the last year of the court’s turnover, specifically between 2019 and 2022.

For me, it’s crucial that whoever leaves does so urgently. So, there’s a kind of understanding regarding the obsessions of the judges who are leaving. There’s this thing where everyone wants to leave their legacy and give their best effort while also respecting the perspectives of their fellow justices. So, I was obsessed with the rights of nature, and there’s an obvious fondness, but I won’t interfere with their plans. Each one pursued their theoretical obsession. And there was, let’s say, this idea of “you’re leaving, leave your mark.” It was an implicit pact (R. Ávila, personal interview, November 30, 2022).

Emotions also play a role in deliberation. Hence, it is unrealistic to expect justices to adjudicate cases devoid of their personal subjectivities. As Ignacio de Otto (1998) argues, the notion that judges should be entirely apolitical, free from any prior public opinions, is untenable, and this should not impinge upon their independence. The “theoretical obsession” inherently implies an objective that does not evade dialogue; on the contrary, it advocates for it (Otto Pardo, 1998).

CONCLUSIONS

The active participation of various social movements, advocating for the transformation of law to protect ecosystems and promote intercultural interpretation, is not a novel concept. As demonstrated, this process began in the 1990s, characterized by the emergence of a different model of activism that diverged from the classic authoritarianism of the left. It promotes a practical and more democratic participation, aiming for change and adjusting tactics and strategies according to the political landscape. Collective action unfolds amidst shifting alliances and contexts. In 2019, following the change in the composition of the Constitutional Court, an emphasis on judicial strategy facilitated a rearticulation around historical demands. By 2022, a distinct jurisprudential evolution was evident, largely attributed to the dynamics of strategically crafted alliances between social movements and legal entities.

The Constitutional Court, in turn, has engaged in a dialogical synergy with social movements. This enabled several justices to pursue their own theoretical and technical commitments, underpinned by a unique “sensitivity” toward the issue of the rights of nature. This synergy, or dialogical activism, facilitated a necessary convergence for the advancement of constitutional rights.

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