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## Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador

Maria Akchurin

*In 2008, Ecuador became the first country to grant legal rights to nature. In this article, I examine how this happened. I show that while proponents of nature's rights acted during a key political moment, their efforts were successful due to the presence of environmentalist social movements that elevated the environmental agenda at the national level during prior decades, and due to the power of indigenous organizations and their call to recognize Ecuador as a "plurinational" polity, demanding respect for indigenous territories and ways of life and incorporating politicized versions of indigenous beliefs about the environment. The study considers the consequences of mobilization for legal innovation and institutional change, and shows the complexity of struggles over the environment in the global South. It is based on research at the Ecuadorian National Legislative Assembly archive, semistructured interviews with respondents involved in the politics of nature and the constitutional assembly, and secondary historical sources.*

### INTRODUCTION

How do our ideas about the natural environment shape how we protect the environment in law? Many cultural understandings of nature exist—as William Cronon argued, even wilderness can be viewed as the “creation of very particular human cultures at very particular moments in human history” (1996, 69). In the case of environmental protections in the contemporary United States, for example, we see instances in which the environment is treated as a public good, as an entity composed of natural resources that need to be scientifically studied and managed, or as a commodity. So how do alternative views of the environment make their way into legal codes and institutions?

Since the origins of the field, law and society scholars have extensively studied the various dimensions of how law and society shape one another. If law is a culturally and structurally embedded social institution (Sarat and Kearns 1993; Edelman, Leachman, and McAdam 2010), then understanding the production of environmental laws and the views of the environment that are written into them calls for

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investigating the social structures and cultural materials with which they are created. Legal systems are resistant to change, and change in established legal institutions is notoriously gradual (Mahoney and Thelen 2009), shifting slowly and unevenly along with the changing values of the social worlds around them. At the same time, the law is continually subject not only to the work of lawmakers and forces of endogenous change, but also to pressures from social movement organizations, interest groups, political parties, and other actors that aim to shape public policy (Laumann and Knoke 1987; McAdam, McCarthy, and Zald 1996; McCann 1998; Burstein and Linton 2002). At moments when such actors can impact the law, the content of the reforms is fluid and malleable until it becomes imprinted in law-on-the-books and in institutions. What do such processes of legal construction and innovation look like when they are in motion, and how do ideas that are in a sense “out there” in the social world and exogenous to established laws come to permeate and shape legal concepts? Specifically, how do social movement organizations mediate how particular ideas become incorporated into legal frameworks, and to what extent is the salience of such ideas affected by political dynamics at a given historical moment and the organizational conditions under which law is made?

In this article, I reflect on these questions through one story: the case study of a particularly unusual constitutional reform in which the Republic of Ecuador became the first country to extend legal rights to nature itself. The new constitutional language affirmed nature’s intrinsic right to exist, to maintain and regenerate its vital cycles, and to be restored if damaged, as well as establishing the right of individuals and communities to bring cases on behalf of nature to public authorities. By adding nature’s rights alongside human rights and emphasizing Ecuadorian society’s location in a broader ecosystem at the highest legal and symbolic levels, the provision represented a radical move to expand the boundaries of the ethical community to which the constitution applies.

There were many potential obstacles to introducing the reform. For one, the idea ran counter to traditional understandings of rights-bearing subjects in the Western legal tradition and existing characterizations of the environment in constitutional law. Both the new provision and the alternative vision of development associated with it also fit uneasily with the country’s economic development model and practices, which have been dominated historically by primary exports and a reliance on extractive industries such as petroleum. Since the rise of environmentalist mobilization in the country, activists had developed multiple ways of conceptualizing environmental problems and solutions, but the rights of nature was neither the most dominant concept nor the most widely accepted one as the constitutional assembly convened to draft the new text and many social movements competed to introduce their concerns into the constitution. There was also no indication that slow processes of endogenous change in the Ecuadorian legal framework were unfolding in the direction of recognizing nature’s rights. Nevertheless, proponents of the idea created a new category of rights, enabling the rights of nature to be recognized at the constitutional level, and generated new legal frames and resources allowing individuals and organizations to demand not only state responsibility to address environmental problems, but also a revision of fundamental principles regulating the relationship between society and nature. How?

The main proponents of the concept were a group of internationally connected environmentalist lawyers and activists who worked to develop and promote the rights of nature, which emerged from a period of internal questioning within the group and developed into a full-scale constitutional proposal. Their work involved strategic collective action that allowed them to take advantage of an important political juncture in Ecuador, yet it is unlikely that their efforts would have succeeded without two historical developments: first, the presence of environmentalist social movements that had done the groundwork of elevating the environmental agenda at the national level during prior decades, and second, the power of indigenous organizations and their call to recognize Ecuador as a “plurinational” polity, a form of multiculturalism that, along with demanding respect for indigenous territories and ways of life, incorporates politicized versions of indigenous beliefs about the environment.

The case enables us to see how a new legal category and a new form of legal fiction were constructed, as a set of individuals and organizations in the legal setting of the constitutional assembly mobilized cultural and ideational content, bolstering their arguments by bridging the rights of nature—from the perspective of many groups an otherwise rather novel and esoteric claim—with the demands made by environmentalist and indigenous organizations. By showing the contested and occasionally uncertain process through which the rights category was created, the case also underscores the extent to which cultural assumptions influence legal institutions and shows the challenges of incorporating diverse beliefs about human relationships with the natural environment into law.

This story is not simply about introducing an alternative view of the environment into a legal framework. The case represents an instance in which indigenous politics influenced nonindigenous systems of state authority. Though indigenous movements did not actively pursue the constitutional rights of nature, their political presence and the recognition of the cosmologies of indigenous groups provided a conceptual opening, permitting assembly participants to think differently about environment-society relations and to consider the creation of a new set of rights. Consequently, an idea placing the intrinsic worth of nature and its elements alongside that of human beings, and muting the separation between nature and society by emphasizing the interconnectedness between natural ecosystems and social worlds, became part of a bureaucratic rational-legal system. Ecocentric ideas had been present in other contexts, such as in the United States in the 1970s, but they were never transformed into radical legal reforms.

The historical developments of the environmentalist and indigenous movements in Ecuador are what created the political and cultural conditions for the reform to happen. Yet as I discuss in the conclusion, while the reform provides new symbolic power and legal resources for environmentalist and indigenous mobilization, it continues to be at odds with the practices of the Ecuadorian state and the country’s reliance on extractive industries, raising questions about how it will affect future political battles, economic development models, and the use of natural resources. How the legal recognition of nature’s rights will be translated into concrete consequences remains to be seen.

The article is based on archival data, including transcripts and committee reports from the constitutional assembly archives housed at the National Legislative Assembly in Quito, Ecuador; other government documents and materials generated by social movement organizations during the assembly process; media sources; and secondary literature. The documentary research component is complemented by interviews with key respondents who participated in introducing the rights of nature into the constitution, social movement leaders, government officials, and academics.

### **INTRODUCING NOVEL IDEAS INTO EXISTING INSTITUTIONS: NATURE, MOBILIZATION, AND LEGAL REFORM**

The natural environment is ubiquitous and in various social spheres and systems of knowledge, we find different ways to make sense of nature-society relationships. Biology and environmental science measure and observe nature to study how it works, for instance, while conventional economics takes its elements and treats them as natural resources that are inputs into production, conceptualizing consequences for the environment as externalities. Where analytical categories fail, literature personifies the forces of nature and expresses their poetry. In the legal sphere, lawmakers articulate and codify the ethical relationship between society and the environment that societies aim to uphold, from big ideas and norms at higher levels in the legal hierarchy down to detailed rules and regulations.

Older references to the environment in Western legal codes often referred to specific matters related to water, land, and public health, and mentioned nature in a broader sense in terms of its utility and as a source of national wealth. Since the rise of the global environmental movement and the development of modern environmental law, laws have proliferated regulating the effects of human activities on the environment and protecting common pool resources and the rights of people to live in an environment that allows for their health and well-being (Hays and Hays 1987). With respect to nonhuman beings, some countries, such as India and Germany, have animal protection clauses in their constitutions and, in some cases, regulations protect particular species—for example, endangered species in the United States. Against this backdrop, the emergence of an intellectual movement around ecocentric environmental ethics and the rights of nature (Leopold [1949] 1981; Devall and Sessions 1985; Nash 1989), and the attempts by legal scholars and practitioners to incorporate such ethical ideas into legal thought and jurisprudence (Stone [1972] 2010; Favre 1979) have provoked important debates but generally remained on the fringes. In the social sciences, scholars such as Viveiros de Castro (1992, 2004) and Descola (2013) based on their ethnographic work in the Amazon with the Araweté and Achuar groups, respectively, have argued for taking elements of indigenous cosmology as a starting point for reorienting anthropological theory about nature/society relations. Viveiros de Castro, for instance, argues for multinaturalist perspectivism based on the notion of

different natures in Amazonian cosmology that incorporate both humans and non-humans.<sup>1</sup> Whereas these lines of thought emphasize society's interdependence with other members and parts of the environmental community, Western legal philosophy and the environmental protections associated with it have tended to continue, on the whole, to place humans at the center of why the environment ought to be protected.

One important way via which big shifts in ideas about nature-society relationships make it into legal code is through the interaction between lawmakers and organizations that pressure them to incorporate particular norms into legal institutional frameworks, supporting demands for such modifications by referring to particular problems that need to be solved (say, air or water pollution), presenting new scientific knowledge that calls for a reevaluation of existing norms (e.g., about climate change), claiming to represent the views and interests of larger social sectors (as in the case of environmental justice groups), or aiming to represent larger-scale transformations of social values, thereby drawing on various sources of power and legitimacy for their ideas and claims. Given the character of environmental policy, often such organizations combine networks of professionals and experts with broader social mobilization to attain their goals.

A number of studies have shown how organizations mobilize to influence the law and the kinds of resources and arguments they use to make their demands, for instance, as in the case of legal mobilization around environmental and social policies (Handler 1978) and women's rights (McCann 1994). Other studies have demonstrated how conservative organizations also have influence over legal and policy outcomes, including when it comes to the environment (Hays and Hays 1987). Some studies have considered specifically how rights- and justice-based discourse are used by social organizations in support of movement goals and claims (Capek 1993; Polletta 2000; Pedriana 2004), including by more radical groups that tend to view legal mobilization as a conservative strategy (Wall 1999). Meanwhile, sociolegal scholars have explored the role of activist lawyers who support particular causes (Sarat and Scheingold 2001).

This study builds on this work by showing how internationally connected cause lawyers, public intellectuals, and activists promoted a particular idea about protecting the environment in Ecuador, and by doing so were able to introduce an idea from philosophical and ethical writings into law. The idea related not only to the work of thinkers promoting environmental ethics and especially more ecocentric thinkers in the Western legal tradition, but also fundamentally connected with key dimensions of indigenous beliefs, rituals, and values related to environment and the land shared by Ecuadorian highland and Amazonian indigenous groups. In this sense, the story complicates arguments made by world culture scholars such as John Meyer and his colleagues (Meyer et al. 1997a, 1997b), according to whom norms diffuse through the world polity, with relatively isomorphic processes supported by

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1. See also Kohn's (2013) work on this ontological turn, based on an ethnographic study with a Runa community in Ecuador's Upper Amazon, in which he describes how people communicate and relate their experiences with various kinds of beings in everyday life. Science and technology studies have also sought to create an analytical framework that includes both humans and nonhumans; in this sense, the rights of nature connect with work on materiality by scholars such as Bruno Latour (1993).

experts resulting in similar policies across diverse contexts. Here, international norms favoring environmental protection were certainly present, but had little consequence relative to local understandings of nature and national political dynamics.

Given the multiplicity of ideas and cultural schemas about nature-society relationships (Dryzek 2005)—from ecomanagerialism to sustainable development to environmental justice—when an idea is relatively marginal relative to established institutions, its proponents face the double task of mobilizing their structural positions in the organizational communities relevant to the legal setting at hand to push the idea forward and developing the idea and connecting it to other cultural schemas in a way that will make it resonate and gain political support (Sewell 1992; Fligstein 2001; Skrentny 2002). Analyzing the interplay between these historical, structural, and cultural dimensions helps us better understand the social processes that lead to diverse normative beliefs becoming codified as law.

## THE CASE STUDY

Ecuador's 2008 Constitution lists four articles describing the rights of nature. According to these articles, nature or the Pachamama has the "right to exist and to maintain and regenerate its vital cycles, structure, functions, and evolutionary processes." Nature also holds the "right to be restored" in case of environmental destruction, independently of the damages owed to people who may have been affected. People, referred to as "persons, communities, peoples, and nationalities," are the ones who demand that the rights of nature be observed before public bodies and are encouraged to protect nature and its ecosystems; they also "have the right to benefit from the environment and from the natural wealth that allows for their wellbeing" (2008 Constitution of the Republic of Ecuador, Part 2, Chapter 7, Articles 71–74).<sup>2</sup> This section traces the process of how this legal category came to be constituted.

### A Political Opening

President Rafael Correa, a US-educated economist preaching socialism for the twenty-first century, was elected to office in 2006 on a progressive platform broadly supported by an electorate disillusioned with traditional party politics. Correa criticized the neoliberal policies of prior decades, the political role of entrenched business elites, and US involvement in the region, promising instead to reorient the country toward alternative models of development. Building on momentum fueled by the work of social movements and the support of the public, including the urban middle classes (Burbach 2007; Guerrero et al. 2008), Correa formed Alianza País, a new political coalition; incorporated the promise of constitutional reform into his campaign; and won the presidential election, calling for a referendum to draft a new charter for the country through a participatory process. The political platform

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2. The 2008 Constitution is the country's twentieth since independence. It was drafted via a constituent assembly of 130 elected delegates and ratified by 64 percent of the population in a constitutional referendum, replacing the 1998 Constitution.



outlined by Alianza País (2006) even incorporated a statement on the need for the country to rethink the relationship between society and the environment, evoking the kichwa term *sumak kawsay* or living well,<sup>3</sup> articulated in contrast to exploitative relationships between people and nature.

Over 80 percent of voters supported the proposal to rewrite the constitution and by 2007, 130 delegates were elected to comprise the assembly. In contrast to the previous constitution, which had been written “behind closed doors at a military site,” Correa promised that this constitution would be the product of a “citizen revolution” (Alianza País 2006; Carter Center 2008).<sup>4</sup> Though the goodwill between Correa and many social movement organizations would quickly dissipate, Correa’s election and the constitutional drafting process created a crucial political opening for leftist organizations. Such organizations developed and amplified the critiques calling to reform the existing political and economic system.

During the months leading up to the assembly, delegates and their staff received constitutional proposals from throughout the country. Some came in the form of letters from organizations and private citizens, while other groups visited the assembly members, engaging in lobbying efforts and public awareness campaigns to promote their agendas. A special assembly unit was even created in Montecristi, the site where the constitution would be written, to gather and process citizen proposals; meanwhile, assembly members traveled the country, holding town hall meetings and receiving citizen delegations. In six months, the assembly received approximately 70,000 visitors in Montecristi, as well as 1,632 written proposals (Carter Center 2008, 12). Among them were proposals from environmentalist groups, organizations representing indigenous peoples, and other social movement sectors. There were also letters from the private sector, including mining companies and chambers of commerce. Delegates convened for the first of ninety-seven plenary sessions of the assembly in November 2007. The final version of the constitutional text on the rights of nature was approved and went to a final assembly-wide vote in July 2008.<sup>5</sup> Ecuador’s new constitution was ratified by 64 percent of the population in a constitutional referendum in September that same year (Muñoz Jaramillo 2008). The political moment, characterized by openness toward leftist social organizations, was important for creating the legal setting in which the rights of nature could be introduced, yet the groundwork had been laid by the dynamics of environmental and indigenous politics in Ecuador during prior decades.

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3. For more on the concepts of *sumak kawsay* and *buen vivir*, see Almeida (2012), Gudynas (2011), Houtart (2011), Macas (2010), and Walsh (2010).

4. Correa held a referendum to decide whether to convene the Constituent Assembly to draft the new constitution and 81.7 percent voted in favor of holding the assembly. The Alianza País coalition won 80 out of 130 assembly seats. Other political parties such as PRIAN, RED, and Pachakutik were also represented.

5. During the final vote (under Fernando Cordero as Assembly President), delegates voted on the articles one by one (Asamblea Constituyente 2008e, 140). For the first article, the one recognizing nature as the subject of rights: ninety-three voted in favor, eighteen against, zero blank, and three abstained. Second article: ninety-one yes, thirteen no, one blank, nine abstained. Article 3: ninety-six yes, seven no, zero blank, eleven abstained. Article 4: ninety yes, fifteen no, two blank, six abstained. Article 5: eighty-nine yes, nineteen no, one blank, four abstained.



### Building the Politics of Nature: From Environmentalists to *Ecologistas*

Perhaps the earliest moment of legal recognition of nature's intrinsic value occurred in Ecuador when the Galápagos Islands, an exceptionally biodiverse area made internationally famous by Darwin's *On the Origin of Species*, were declared a protected area in 1934. The initial measure was buried in a set of hunting and fishing regulations, but nevertheless referred to the linked concepts of nature conservation and wildlife refuges (Executive Decree No. 697, 21 August 1934, cited in Paucar 1980). Over the next several decades, arguments about the merits of environmental protection and the finiteness of natural resources would often come from those working in the natural sciences. For example, Misael Acosta Solis, a botanist and important early conservation advocate, published on the need to protect nature as early as 1939 (Solis 1939), also writing in specialty journals about the risks of deforestation and soil erosion. In 1940, he established the Ecuadorian Natural Sciences Institute (IECS), which was among the first local institutions supporting research on natural resources, and by the late 1940s, he headed the Forestry Department (Departamento Forestal), one of the first government organizations devoted to forest management (Cuvi 2005).<sup>6</sup> At the constitutional level, Ecuador's 1945 Constitution incorporated the need to protect places of natural beauty and local flora and fauna alongside the country's artistic treasures (1945 Constitution of the Republic of Ecuador, Section III, Article 145).

Despite these early developments, environmentalism did not yet exist as a movement in Ecuador and environmental concerns were slow to materialize in government policies. In 1959, the Galápagos became the country's first national park, with the accompanying order declaring that the "state should give priority to the protection of flora and fauna constituting wealth created by Nature" (Executive Decree No. 17, 4 July 1959, cited in Paucar 1980).<sup>7</sup> Another two decades would pass before this logic was transferred to the mainland and a system of national parks was put in place. These were early expressions of preservationist and conservationist ideas—mainly promoted by conservation advocates in the scientific community—which would later be reimagined and rebranded using the language of biodiversity. At the time, however, nature was recognized primarily as a source of aesthetic pleasure and national wealth.

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6. The same year, the Pan-American Union—the precursor to the General Secretariat of the Organization of American States—drafted the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. The treaty sought "to protect and preserve in their natural habitat representatives of all species and genera of . . . native flora and fauna" and "to protect and preserve scenery of extraordinary beauty, unusual and striking geologic formations, [and] regions and natural objects of aesthetic, historic, or scientific value." To accomplish such goals, the convention urged parties to establish national parks, wilderness reserves, and nature monuments. Ecuador signed the convention in 1940 and ratified it in 1943, signaling that it was on board with this approach, although a national system of protected areas would not be established for several decades. Ecuador's 1945 Constitution incorporated the need to protect natural beauty throughout the country.

7. The same year, the penal colony on Isabela Island was closed; see Vivanco and Rodas (2012).

Oil was rediscovered in the Ecuadorian Amazon in 1967.<sup>8</sup> Five years later, a refinery was operating in Esmeraldas province and construction was completed for the Trans-Ecuador oil pipeline system (Sistema de Oleoducto Transecuatoriano [SOTE]) that would transport oil from the fields in the Oriente to the Pacific coast for export. In 1972, when the first barrel of Amazonian crude was brought to Quito to celebrate oil production, people touched it for good luck as it was paraded through the streets of the historical center on top of a military tank.<sup>9</sup> Over the next several decades, production would rise and petroleum would become the country's leading export, giving new meaning to the value of natural resources. Ecuador's development model had always relied on primary exports: before oil the country had experienced a banana boom, and before bananas, cacao (Acosta 1982; Cárdenas 1995). Alongside the bustling oil business, traditional export crops like bananas, coffee, and cacao continued to be important, and shrimp production grew substantially (Banco Central del Ecuador 1997). Still, the growth of the oil industry had a tremendous impact on Ecuador's economy and the politics of nature, creating the conditions that would eventually set the tone for discussions about the relationship between environment and development and fuel some of the most visible environmentalist campaigns.

Oil revenues facilitated a brief period of industrialization, leading to rapid urban population growth in a country that remained primarily rural even as late as the 1970s (Mora 1991). State revenues from oil also financed the growth of the public sector and increased social spending on health and education for Ecuadorians, including new urban residents and the middle classes (Banco Central del Ecuador 1979), though the government would soon face another epoch of fiscal deficits. At the same time, as oil pipelines were built through the rainforest, construction exacerbated existing patterns of deforestation that had occurred with the expansion of the agricultural frontier—expansion that began during the colonial period and intensified following the 1960s agrarian reforms that encouraged internal migration to previously uncultivated lands. Soil and rivers were also polluted by crude processes of oil extraction and transfer and, in some cases, already marginalized indigenous populations were displaced from their land, as in the case of the Cofán and Huaorani, who were directly affected by the arrival of the oil industry in the Lago Agrio area. Similarly, as Ecuador became a leading producer of shrimp, the expansion of the industry resulted in the destruction of coastal ecosystems, including mangrove deforestation and water pollution (Southgate and Whitaker 1994). In other words, economic growth had its costs. Such developments coincided with the expansion of international environmentalist discourse during the 1970s

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8. Rediscovered, because petroleum reserves had previously been found on the coast in Santa Elena and extracted by the British company Anglo Ecuadorian Oilfields Ltd. during the 1920s, but production had remained low for more than four decades. The Shell oil company had also acquired exploration rights—in the Amazon in 1938—but did not pursue extensive drilling. Exploration took off again during the 1960s as Anglo Ecuadorian Oilfields expanded their concessions and international companies such as the Texaco-Gulf consortium joined the efforts (Acosta 1982; Cárdenas 1995).

9. The military parade took place on June 28, 1972. The event was covered by newspapers such as *El Comercio* and *El Telégrafo*. See also historic video footage (Cuesta 1972). The barrel was deposited at the Colegio Militar Eloy Alfaro in Quito.

and set the scene for the emergence of an environmentalist agenda, which international organizations and local groups would soon begin to press upon the state.

The first major environmental legislative reforms appeared during the 1970s, with the introduction of the Law on National Parks and Reserves in 1971 and the Law on the Prevention and Control of Environmental Pollution in 1976. By the end of the decade, the government had established a national system of protected areas, and two years later, a new Law on Forests and Conservation of Natural Areas and Wildlife sought to provide a unified statement on managing wildlife and safeguarding natural areas (Narváez Quiñónez 2004). The right to live in an environment free of pollution was incorporated by the government during constitutional reforms in 1984 (1978 Constitution of the Republic of Ecuador, codified 16 May 1984, Title II, Section, Article 19.2), modeled after a similar measure in Spain's 1978 Constitution (Albán 2009).<sup>10</sup> Many of these early measures were formally adopted as a result of isomorphic processes (DiMaggio and Powell 1983; Dobbin, Simmons, and Garrett 2007) and the legislation had yet to be developed and institutionalized further to have weight and practical implications.

While natural resources had been implicitly present in earlier political struggles, the first self-identified environmentalist NGO, *Fundación Natura*, was founded as civil society spaces opened up with the return of democratic rule in 1979. *Fundación Natura* brought together Ecuadorian activists and professionals who worked to establish environmental education programs, emphasizing conservation and natural resources management based on scientific principles. By the late 1980s, enough groups had formed to hold the First Ecuadorian Congress on the Environment, which was organized by *Fundación Natura* and drew 350 delegates, and that led to the creation of CEDENMA, the Ecuadorian Coordinating Committee for the Defense of Nature and the Environment (Tamayo 1996; Varea et al. 1997).

Propelled by the country's participation in international events like the Rio 1992 conference, the activity of environmental NGOs and activists flourished during the 1990s. Ecuadorian environmental lawyers, connected with regional expert networks, worked to bring national institutions in line with internationally established principles emphasizing sustainable development and the protection of biodiversity. At least at the formal level, their efforts paid off; Ecuador had made international commitments and national legislation was following suit. When the constitution was reformed in 1998, in addition to the introduction of the right to live in an environment free of pollution, many environmental principles from the Rio conference were incorporated.

Efforts were also under way to strengthen the Ministry of the Environment, which had been set up in 1996. Local organizations received support from international donors to work on conservation, research, and the creation of environmental laws. For instance, *Fundación Natura* continued to work on environmental research and management; many of its early members would go on to take positions within the state and participate in the institutionalization of environmental policy in the

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10. This right was reaffirmed in the 1998 Constitution.

country.<sup>11</sup> Meanwhile, within CEDENMA, conflicts would arise among more radical members and the more technocratic and professionalized organizations, but it continued to function as a coordinating space for environmentalist groups.

As the legal and institutional framework for environmental issues continued to be built, other activists organized campaigns to bring attention to specific environmental problems at the local level. Groups like Acción Ecológica, founded in the late 1980s by ecofeminists with ties to the Ecuadorian left, became important voices representing the *ecologista* strand of environmental social movements, emphasizing environmental justice and systemic critiques identifying environmental damage as a feature of the capitalist mode of development. Grassroots campaigns eschewed conservationist and management schemas to make claims about how environmental degradation caused by particular industries was not only detrimental for the environment, but was also affecting livelihoods and worsening inequality.

For example, in the first Amazon for Life (Amazonía por la Vida) campaign, *ecologista* activists worked alongside indigenous and *campesino* organizations to condemn the consequences of the oil industry's practices for the rainforest ecosystem, as well as for the livelihoods and health of communities living in territories adjacent to oil projects. The Amazon Defense Coalition (Frente de Defensa de la Amazonía), which formed in the mid-1990s, mobilized Amazonian communities in the Sucumbíos, Orellana, and Napo provinces, working to give voice to the claims of indigenous and peasant organizations. The centerpiece of work in this area became the lawsuit against Chevron Texaco,<sup>12</sup> which garnered international attention and cast a spotlight on the impact of several decades of oil extraction during Ecuador's oil boom on the Cofán, Huaorani, Kichwa, Secoya, and Siona communities (Fontaine 2007). Other efforts have focused on gaining compensation for affected communities and stopping further oil exploration in protected areas, such as the campaign to prevent extractive activities in Yasuní National Park (Fontaine and Narváez 2007; Martínez and Boedt 2007).

Communities affected by specific environmental problems also mobilized in partnership with grassroots organizations and NGOs around other issues. For example, the Committee for the Defense of the Peoples of Muisne (later the Foundation

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11. For example, Yolanda Kakabadse, who was Ecuador's Minister of Environment in 1998–2000, had started as Executive Director at Fundación Natura in 1979 and had worked at the organization until 1990. Lourdes Luque, Minister of Environment in 2001–2002, had worked as Executive Director of Fundación Natura's Guayaquil office in the 1990s.

12. The Chevron Texaco case has attracted a lot of attention and has led to much legal controversy. In 1993, the class action lawsuit *Aguinda v. Texaco, Inc.* was filed in a New York federal court by residents of the Amazon against the US oil company Texaco for environmental and personal injuries resulting from pollution from the oil fields, and related oil exploration and extraction operations in the Oriente region between 1964 and 1992. The court dismissed the case on the grounds of forum non conveniens, determining that bringing the case to an Ecuadorian court would be an adequate forum. Texaco was acquired by Chevron in 2001. In 2003, a class action lawsuit (Case No. 2003-0002, Provincial Court of Sucumbíos) was filed in an Ecuadorian court against Chevron-Texaco. A ruling against Chevron was issued in February 2011, but Chevron refused to pay the damages and appealed the ruling multiple times. The company has repeatedly argued that Texaco carried out all necessary remediation activities and had been released of all liability for claims by the Republic of Ecuador back in the 1990s, shifting responsibility to the state-owned oil company Petroecuador. The case has been complicated by simultaneous proceedings, including a lawsuit by Chevron against the plaintiffs' lawyers and representatives in US federal court, and an international arbitration claim at the Permanent Court of Arbitration at the Hague.

for Ecological Defense, FUNDECOL, and then C-CONDEM) organized to defend mangrove ecosystems along the Ecuadorian coast and to bring attention to the impact of the shrimp industry on wetland ecosystems and the people dependent on them. Campaigns also focused on the use of pesticides in African palm cultivation and the impact of large-scale mining on water resources and agricultural activities (Varea et al. 1997; Bebbington 2007; Latorre Tomás 2009; Chicaiza 2010). Activists have employed different tactics—from legal to direct action—to defend their causes, in some cases gaining support from regional and international networks. What unites these forms of advocacy is that they have created ways of talking about the environment tied to particular socioenvironmental conflicts in their communities, blending claims about livelihood, health, and identity with arguments about the need to identify alternative development models and prevent environmental destruction.

### **Indigenous Movements and the Politics of Nature: Land, Identity, Autonomy**

In July 1990, representatives from twenty countries throughout the Americas met in Quito for the Continental Conference of Indigenous Peoples. They met in the wake of the National Indigenous Uprising (*Levantamiento Nacional Indígena*), a massive strike that marked a major turn in the political presence of the Ecuadorian indigenous movement on a national scale, and that would lead to a series of subsequent mobilizations throughout the 1990s. The uprising also led to a realignment within Ecuadorian social movements, making indigenous demands about collective rights, land, development, and education more visible in the public sphere (Almeida 1993). In the declaration produced during the conference, participants wrote emphatically: “The land and indigenous peoples are inseparable. Land is life; it cannot be bought or sold. It is our responsibility to care for it according to tradition, to guarantee our future” (CONAIE, CONFENIAE, SAIIC, ECUARUNARI, and ONIC 1990, 38).<sup>13</sup> Land has been at the center of political struggles of indigenous populations, for many of whom it is both a means of subsistence and a connection to ethnic identity.

By the late twentieth century, Ecuadorian indigenous groups were powerful political actors organized into a national movement, led by the Confederation of Indigenous Nationalities of Ecuador (CONAIE).<sup>14</sup> Indigenous uprisings had occurred since the arrival of Spain in the New World. However, it was the period of political mobilization starting in the 1960s and intensifying especially during the 1980s and 1990s that led to the emergence of a visible and organized indigenous movement with a national political presence. This organized indigenous movement had a variety of historical roots. Some indigenous organizers had worked with the

13. Indigenous organizations have also made strong arguments linking land to the politics of self-determination at the international level (e.g., land use is mentioned in ILO Convention 169; see also Anaya 1996).

14. CONAIE was organized as an umbrella organization for indigenous groups in 1986. The Federation of Peasant, Black, and Indigenous Organizations (FENOCIN) and the Ecuadorian Evangelical Indigenous Federation (FEINE) have also been active alongside CONAIE (Lucero 2008).

Ecuadorian left, including socialist and communist parties; for instance, indigenous leaders, labor leaders, and other leftist activists had formed the first national indigenous organization, the Ecuadorian Federation of Indians (FEI), back in the 1940s. Others had focused on addressing local issues in indigenous communities or affiliated with progressive elements of the Catholic Church<sup>15</sup> (Guerrero Cazar and Ospina Peralta 2003; Herrera 2003; Becker 2008; Simbaña 2009).

While the indigenous movement became organized on a national level, it remained a heterogeneous body linked to regional organizations and local communities.<sup>16</sup> The divisions were palpable, including in the ways indigenous struggles over land and nature were framed (Chiriboga 1987). For instance, as Yashar suggests, although land was central to the various organizations that later became CONAIE, the significance of the land was subject to different emphases. Whereas for many Amazon-based groups, “demand for land meant the fight to delimit territorial spaces in which Amazonian Indians could live according to their own practices,” for the sierra-based groups, the “demand for land initially drew on the demands voiced by *campesino* organizations—the demand for a plot of land to farm” (2005, 139). Lucero describes this as the difference between “land,” which centers on its use as a “factor of production,” and “territory,” which invokes “notions of autonomy and sovereignty” (2008, 105). These views would merge in the indigenous movement’s discourse, as land came to be politically presented not only as a source of livelihood, but also as a source of cultural identity, connecting present generations to the past.

There are different indigenous nationalities in the organized indigenous movement, each with its own cultural practices, but in political discourse, the organizations often refer to a broad indigenous cosmology. According to this set of beliefs, various elements of the natural world are tied to the social organization and spiritual beliefs of indigenous groups (Seibold and McDowell 1992; Moya 1999). The appropriate relationship between people and nature is one that emphasizes interconnectedness and the belief that human society is but one part of a complex interrelated system, articulated in contrast to individualism and nature/society dualism. As the 1990 conference participants stated: “Our

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15. For example, Monseñor Leonidas Proaño was an important figure in Ecuadorian liberation theology and is known for his work on social justice issues with indigenous Ecuadorians (see, e.g., *Creo en el Hombre y en la Comunidad*). According to secondary sources cited in Guerrero Cazar and Ospina Peralta (2003), Proaño also supported early discussions of “plurinacionalidad” when the first bill for the Ley de Nacionalidades Indígenas del Ecuador was drafted.

16. CONAIE brings together fourteen “nacionalidades” (including the Achuar, Andoa, Awá, Chachi, Cofán, Épera, Kichwa, Secoya, Shiwiari, Shuar, Siona, Tsáchila, Waorani, and Zápara) and eighteen “pueblos” (Chibuleo, Huancavilca, Kañari, Karanki, Kayambi, Kisapincha, Kitukara, Manta, Natabuela, Otavalo, Paltas, Panzaleo, Pastos, Puruhá, Salasaka, Saraguro, Tomabela, Waranka) from the country’s twenty-four provinces. It incorporates the regional organizations ECUARUNARI (Ecuador Runacunapac Riccharimui, created in 1972), CONFENIAE (Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana, created in 1980), and CONAICE (Confederación de Nacionalidades y Pueblos Indígenas de la Costa Ecuatoriana, created in the 2000s). Of course, different indigenous groups have distinct theories, classifications, and ways of talking about human beings, animals, and nature (to give one example that shows the diversity of beliefs within the Amazon, Descola (2013) compares the nuances between the Achuar, the Yukuna, and Makuna of Colombian Amazonia, and the Yagua of Peruvian Amazonia, among other groups). Yet these cosmologies share the notion that there are no clear ontological differences between humans, animals, and plants, in contrast to the dichotomy between nature and society prevalent in Western thought.



conception of territory stems from a way of understanding humans and nature as interrelated” (CONAIE, CONFENIAE, SAIIC, ECUARUNARI, and ONIC 1990, 29).<sup>17</sup> Conflicts over nature are thus bound up with struggles over land and territory. Yet while indigenous beliefs about nature have been intertwined with their defense of land and territory, they have not been typically elevated to the forefront of movement claims.<sup>18</sup>

Because indigenous groups have been politically and economically marginalized, their demands have often centered on citizenship and material issues such as agrarian reform (Zamosc 1994) or the impact of environmental practices associated with particular industries on their livelihoods, as in the case of oil and mining. Their battles have been based on maintaining autonomy, fighting exclusion, and defending their cultural practices and forms of social organization, such as when government policies or the practices of extractive industries have collided with the communities’ day-to-day existence. In the mobilization against the 1994 Agrarian Development Law, for example, the indigenous movement allied with peasant and small farmer organizations that likewise opposed the law to protect communal lands and rally around issues like food security (Pacari 1996). As the indigenous movement entered the public sphere with a newfound intensity in the 1990s, leftist organizations viewed their political demands as a source of social critique and vision for alternatives. They became a powerful voice speaking out against inequality and on behalf of marginalized sectors, and their discourse influenced broader leftist ideologies, building on a long history of engagement between indigenous mobilization and the Ecuadorian left.

In this context, the call for *plurinacionalidad*, the creation of a plurinational state, has been especially important. Plurinationality emerged as a core political demand of the indigenous movement in the 1980s and 1990s; the idea was to establish indigenous peoples politically as nations alongside nonindigenous peoples, seeking “unity in diversity.” When the country’s constitution was reformed in 1998 following a legitimacy crisis during Abdalá Bucaram’s presidency, the indigenous movement actively participated and gained the recognition of collective rights for indigenous peoples and Afro-descendants; the constitution even stated that the Ecuadorian state was “pluricultural and multiethnic,” though it did not yet use the term plurinationality (1998 Constitution of the Republic of Ecuador, Title I, Article 1; Andolina 2003). Over time, the call for plurinationality came to stand for something bigger than the literal demand for its recognition; it came to be associated with a broad critique of the country’s model of development, especially the role of extractive industries (Jameson 2011), and the call to

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17. Marlon Santi, president of CONAIE at the time, echoed this in his talk at a 2010 workshop: “for us, for the indigenous world, the territories are not for sale, they are not pieces or merchandise . . . they are collective spaces where life continues jointly with and through . . . relationships that we have as indigenous peoples with Mother Earth.” Foro sobre Derechos de los Pueblos Indígenas (Forum on Indigenous Rights), sponsored by the Facultad de Jurisprudencia y Centro Derechos Humanos de la PUCE and La Red Jurídica Amazónica RAMA, held at the Pontificia Universidad Católica del Ecuador, Quito, August 31, 2010.

18. CONAIE’s (2004) draft law on biodiversity, for example, approached the topic by discussing the relationship of nature to the collective rights of indigenous communities, and stressing their right to manage natural resources.



redefine politics and reimagine the principles upon which Ecuadorian society is built.<sup>19</sup>

The historical developments discussed in the prior sections were vital for the introduction of the rights of nature. Environmentalist groups had waged local campaigns while environmentalist activists and professionals promoted the environmental agenda at the national level during prior decades, contributing to a growing institutional framework for environmental protection. Meanwhile, indigenous organizations saw their power to shape national politics grow, as they also gained influence over how leftist organizations articulated ideas about alternative development and built a vision for the future of the country. The indigenous movement's intensifying call for the recognition of Ecuador as a plurinational polity, a form of multiculturalism that incorporates politicized versions of indigenous beliefs about the environment along with demanding respect for indigenous territories and ways of life, was especially important to putting forward alternative ethical understandings of nature/society relationships. While these historical developments set the stage for legal reforms, proponents of the rights of nature had to mobilize to harness these developments, take advantage of the political opening, and introduce the concept into the constitutional assembly. First, however, they had to convince themselves.

### Constructing the Rights of Nature: From Ambiguity to Ratification

The core supporters of the rights of nature began as a small group of environmental lawyers, activists, and government officials concerned about continued patterns of environmental degradation in the country. Although they fit the bill of skilled and well-positioned institutional entrepreneurs (Fligstein 2001), with access to the constitutional assembly leadership, knowledge of the field, and ties to multiple social movement groups participating indirectly in the assembly process, it would take time for them to develop the idea internally and to generate the necessary arguments to convince others that it was a worthwhile pursuit. The rights of nature were not only legally unconventional; the concept implied a profound shift in the way the proper ethical relationship between nature and people would be described in the constitution.

Several environmental lawyers involved in developing the proposal had previously come across ecocentric legal ideas in passing, in texts they had read or in conversations, but put the notion on the back burner until the rights of nature became a topic of discussion at a series of meetings held by a group of environmental lawyers to discuss possible proposals in the months leading up to the constitutional drafting process. As one lawyer who had worked closely on the concept remarked: "We had heard about [the rights of nature idea] a while ago. But . . . there was no possibility of changing the constitutional framework, at the time we were limited

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19. In late 1995, right before the 1996 elections, indigenous leaders from the Amazon founded the Pachakutik Movement for Plurinational Unity-New Country to participate in electoral politics, putting forward candidates to represent indigenous views while maintaining ties to other popular movements (see Becker 2008, 2010).

by [existing] legislation ... this possibility simply was not there” (Interview H, 7 September 2010).<sup>20</sup> Now the possibility presented itself, but figuring out what the concept meant and how it would fit into the Ecuadorian legal framework presented a challenge. She continued:

The first time we talked about [the rights of nature] as a possibility of something to be pushed through as a proposal for the constitution, I think that several of us were still a bit skeptical. Not because we didn't think it would be good, but rather because we had to see what it would mean to implement it ... so little by little we kept discussing it, and sometimes with more opinions against it than in favor of it ... from some of the same lawyers and colleagues working on these issues now. Nevertheless, it was discussed so much in various meetings here [and in other organizations] that we finally convinced ourselves that yes, it was viable, yes, it was possible—as a living being, [nature] should have rights, should have a voice. (Interview H, 7 September 2010)

Some of the lawyers were familiar with the work of US lawyer Christopher Stone, who wrote the essay *Should Trees Have Standing?* in the 1970s, and the Chilean lawyer and animal rights activist Godofredo Stutzin, who had written essays advocating the legal recognition of the rights of nature. Such works provided some reference points for discussion. Alberto Acosta, the president of the assembly, would write about the topic as well, beginning with a short piece critiquing accepted anthropocentrism and raising the question of animal rights, followed by an essay on “nature as a subject of rights,” both circulated within several months of the assembly's first session (Acosta 2008b, 2008c). Fundación Pachamama, one of the organizations promoting the idea, invited US lawyers from the Community Environmental Legal Defense Fund (CELDF) to share their experiences. CELDF, a Pennsylvania-based public interest law firm, had pioneered rights-of-nature legislation in local government ordinances in the United States, and gave a workshop helping to make the concept more concrete (Interview N, 14 September 2010). Supporters of the rights of nature also circulated materials discussing the measure

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20. Interviews were conducted by the author in Quito, Ecuador in August–September 2010 and July 2011. With the exception of one phone interview, all interviews were held in person. Interviews were held at the following organizations: Acción Ecológica, Cámara de Comercio de Quito, Centro de Derechos Económicos y Sociales (CDES), Centro Ecuatoriano de Derecho Ambiental (CEDA), Corporación Coordinadora Nacional para la Defensa del Ecosistema Manglar (C-CONDEM), Ecociencia, Ecolex Corporación Gestión y Derecho Ambiental, Ecuador Runacunapac Riccharimui, Confederación de los Pueblos de Nacionalidad Kichua del Ecuador (ECUARUNARI), Facultad Latinoamericana de Ciencias Sociales (FLACSO-Ecuador), Fundación Pachamama, Fundación Regional de Asesoría en Derechos Humanos (INREDH), Instituto de Ecología y Desarrollo de las Comunidades Andinas (IEDECA), Instituto de Estudios Ecuatorianos (IEE), the Ministerio del Ambiente (Ministry of the Environment), and the Universidad Andina Simón Bolívar. Interviews were also held with Alberto Acosta, former Minister of Energy and ex-president of the National Constituent Assembly; Mónica Chuji, indigenous Kichwa activist, delegate and head of the Natural Resources Roundtable at the Constituent Assembly, and former Secretary of Communication; Edgar Isch, former Minister of Environment; and Luis Macas, former president of the Confederation of Indigenous Nationalities of Ecuador (CONAIE). Fieldnotes and/or transcripts are in the author's possession. All translations from Spanish are the author's.

(Melo and Greene 2008). The idea gathered momentum; still, many were not convinced. As one environmental lawyer recalled:

We were dubious at first. We were not sure if this was possible. Because it's a very dramatic concept. And I personally didn't understand at first how we could incorporate such a right if we are talking about a civil code perspective . . . It was a strange, exotic concept. If you are very strict as a lawyer, it would be hard to incorporate in our legislation. But I see it more as a philosophical vision, what is the state actually aiming at promoting . . . I would say it represents more a philosophical standpoint or vision of this new Ecuador we were trying to forge through this constitution. (Interview R, 30 June 2011)

Moreover, at the time of the assembly, many environmental groups—the logical supporters for the legal provision—were already making demands to assembly delegates using the language of sustainable development. The centerpiece of the environmentalist agenda was the 2008 proposal *Toward an Equitable and Sustainable Society*, presented by the National Environmental Assembly (ANA), an umbrella organization under which diverse environmentalist groups had come together to discuss their goals and formulate a proposal for the environmentalist sector.<sup>21</sup> The environmentalist coalition argued that in addition to a democratic regime that recognizes various civil, socioeconomic, and cultural rights, the state should be clear on where it stands with respect to the “ecological dimensions of social life” and should explain how the regime of existing rights relates “concretely with ecological equilibrium, the conservation of nature, and the sustainable use of natural resources” (ANA 2008, 15–16). The proposal also emphasized small-scale economies and “community and solidarity principles” (24). The coalition took a long-term view, arguing that addressing environmental problems not only was in the national public interest and should transcend the electoral politics cycle, but also that it should take into account long-term responsibility to nature and to future generations. However, its demands did not yet extend to nature's rights.

If the rights of nature stemmed from a particular philosophical position, what was its source and how was it developed, particularly if the familiar language of sustainable development already permeated the discussion of environmentalist groups? It seemed unlikely that several essays written by environmental lawyers would simply morph themselves into a constitutional proposal, and even though deep ecology was a perspective considered by some more radical environmentalist groups, it was not a common mode of talking about environmental problems. One *ecologista* activist involved in the constituent assembly process reflected on how indigenous politics provided an opening to develop the rights of nature:

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21. ANA's proposal had been drafted based on inputs from environmental and other civil society groups in workshops and provincial assemblies held throughout the country. In addition to participating in the ANA proposal, some groups such as CEDENMA and CCONDEM put forward their own proposals and engaged in their own lobbying and mobilization efforts.

One actor that had much impact in the assembly was the indigenous [movement]. But the indigenous [groups] did not strictly have in mind the rights of nature as such . . . they lobbied to attain the recognition of *plurinacionalidad* and also many collective rights. But just the presence of discussion about *plurinacionalidad* allowed an opening of the mind, let's say, on subjects related to nature. Then there were also *ecologista* organizations like us—and other environmental organizations—in which people had already started talking about the topic of granting rights to nature. (Interview D, 27 August 2010)

She suggests there was a schematic connection between plurinationality, collective rights, and “an opening of the mind . . . on subjects related to nature,” combined with the political influence of the indigenous movement in the assembly process. Another respondent, an environmental lawyer working on the rights of nature, was even more emphatic about the relationship between plurinationality and the rights of nature. During a conversation about this relationship, he commented on whether it is possible to treat the two subjects separately, saying:

I don't think so. It doesn't make sense. Same goes for *sumak kawsay*. In other words, these are the three ideological pillars that the Ecuadorian constitution lays out [*derechos de la naturaleza*, *sumak kawsay*, and *plurinacionalidad*]. Therefore of course it doesn't make sense to recognize the rights of nature if we are not capable of recognizing that there are other nations within the larger Ecuadorian nation . . . and not only that there are nations, but that there is equality among the nationalities . . . of course, this implies recognizing their world view—and the fundamental feature of the indigenous world view is to recognize the earth as a being. (Interview C, 26 August 2010)

In addition to the rights of nature and plurinationality, the respondent mentions a third “pillar”: *sumak kawsay*, a kichwa phrase used in the constitution to refer to a development regime based on well-being as opposed to neoliberal economic growth. His suggestion that the rights of nature be treated as part of this set of three core principles further suggests the ties between the rights of nature, the plurinational framework put forward by indigenous organizations, and the search for an alternative vision of development. Although stressing the importance of the indigenous movement, the respondent was nevertheless careful to point out the nuances in the movement's direct role with respect to the rights of nature concept:

[The rights of nature] is fundamentally a contribution from Andean civilization to Ecuador's constitution, but a contribution that is, of course, mediated by various other sources. This notion of the rights of nature is something that arose in the US during the 1970s and that in a way coincides with the ancestral vision of the indigenous peoples to view nature not as “something” but rather as “someone” . . . to respect her dignity. Of course, for us it is new; it is novel for Western civilization . . . but for them, no. It was interesting when we brought up this idea to CONAIE—the difficult part was pointing out to [indigenous groups] that this was not already recognized in the

juridical system. That didn't make sense to them . . . "but of course, nature is our mother, she has rights" . . . [we explained that] no, for the majority of people, it is a "thing." (Interview C, 26 August 2010)

During the assembly process, the organized indigenous movement put forward its own set of proposals. CONAIE's proposal, for example, outlined normative principles upon which the political and economic foundations of the country should be based, including plurinationality. Plurinationality represented "not only a formal declaration in the first article of the constitution, but rather a change in the state structure and the economic model" (2007, 6) of the country. According to this vision, the state ought to be built politically on the principle of "unity in diversity" (10) while orienting economic activity toward "human well-being [and] 'living well,'" with the economy as "a tool at the service of the community" (6–7) as opposed to being driven by profit seeking and capital accumulation. The proposal urged the delegates that the economy "ought to be based on ancestral principles like *sumak kawsay*," which values reciprocity and is set in contrast to accumulation as the ultimate end of economic activity.

The economic development model, rather than exploiting nature and viewing it purely as a source of commodities, should thus recognize that "nature is the Pachamama, that we are part of it, and therefore relationships with the natural environment need be respectful" (21). This respect takes the form of small- and medium-scale productive activities prioritizing food sovereignty over exports, the use of traditional agricultural practices as opposed to methods relying on heavy use of monocultures and pesticides, and valuing biodiversity. Grassroots indigenous organizations also had other priorities, many of them concentrating on improving material conditions such as access to clean water, securing collective rights to ancestral territories, and demanding prior consent before development projects affecting community lands would be undertaken (Interview K, 9 September 2010).

For some groups, the priority of making nature the subject of rights was unclear. For instance, groups that were mobilizing against the unbridled exploitation of natural resources like oil, copper, and gold for development opposed practices that allowed environmental destruction on a large scale and interfered with local livelihoods. Many of these groups participated in the assembly not only by lobbying delegates, but also via protest politics, using direct action to underscore their demands. To them, introducing the rights of nature seemed relatively innocuous—perhaps plausible and useful, yet also somehow "distant," "abstract," and "academic," even "lyrical." Their core concerns were food sovereignty, the impact of large-scale mining on water resources, and related issues that interpreted ecological problems as fundamentally intertwined with the livelihoods of people, many of whom were already economically and politically marginalized. To others, the underlying philosophy reflected by the rights of nature was self-evident and already part of their cultural identity; their project was to defend that cultural identity and their collective rights, and not necessarily to promote particular elements of that identity at the national level.

Furthermore, although the indigenous movement would lend its support to the rights of nature, some of its representatives were wary that the concept had a conservationist bent, despite the connection between the rights of nature and indigenous

cosmology, and were concerned that this concept may come in conflict with long-standing political demands of the indigenous movement. As one prominent indigenous activist explained:

The concept, the meaning, the spirit [of the rights of nature] stems from the indigenous worldview [*cosmovisión*], because according to the indigenous worldview, everything in nature is alive and worthy of respect . . . sacred spaces are filled with spirits . . . it is from there the concept originates. The problem is that . . . at the moment the rights of nature articles were developed and described, this was not truly taken into account. So then it can quickly get risky . . . Now there is a campaign for the rights of nature at the world level—we support this. Nevertheless, so that it is clear, the rights of indigenous peoples should also be respected . . . their rights to take advantage of the environment, take advantage of the resources that are available. (Interview P, 14 September 2010)

While indigenous communities and the organized indigenous movement often referred to defending the Pachamama as they challenged the impacts of environmental degradation, some groups were skeptical of past government and NGO programs emphasizing conservation, since they viewed them as also potentially interfering with local autonomy and not fully respecting local power structures. Consequently, some groups were cautious, wondering if the language of the rights of nature could somehow be twisted to trump human rights and the collective rights of indigenous communities. For instance, some activists were wary of the fact that the rights of nature sounded more focused on protecting “nature” without an explicit recognition of the continuing right of communities directly reliant on natural resources to continue using and managing them.<sup>22</sup>

Nevertheless, indigenous cosmology became an important source of cultural materials for the concept. As one prominent indigenous leader explained, in his view, the constitutional rights of nature were influenced by the work of *ecologista* environmentalists as well as indigenous discourse:

In [indigenous discourse], the relationship between man and nature is rather different. And I think this has also allowed [Ecuador] to take important steps . . . to grant the rights of nature. Take, for instance, an experience in my community. Our elders for example . . . sometimes it can

22. The relationship between indigenous groups and environmentalists has a complicated history, and not only in the Ecuadorian case. See, for example, Spence (1999) on the clash between indigenous groups and wilderness preservation in the United States when the first national parks were created as an idealized uninhabited landscape that led to the exclusion and removal of Native Americans who were occupying and using the land. For more on indigenous activism and environmental justice, see Gedicks (1993), Weaver (1996), and LaDuke (1999). The idea of indigenous populations as natural guardians of the earth has also been extensively analyzed and critiqued (Hames 2007; Harkin and Lewis 2007). Krech (1999, 2005), for example, investigates the extent to which American Indians were ecologists and conservationists, as well as writing about images of the “Ecological Indian” and how they have been used to simplify and marginalize native cultures in the case of native North Americans. Other studies compare traditional ecological knowledge of local ecosystems and Western conservation practices (for a review, see Smith and Wishnie 2000).



sound almost absurd, but this is how it is . . . we communicate with plants. Our parents, for example, know when it is the right time to use a particular tree for wood . . . And these dialogues happen spiritually in the forest. So for us, a tree is alive, just like animals . . . We as living beings are all interrelated so that human life can exist . . . and so that plant life can exist . . . In this sense, I think our discourse has also been incorporated quite a bit . . . such that nature could become a *subject* of legal rights. And the struggle has been much more intense, for example, when there have been direct attacks on nature, with these government policies about the use of natural resources like oil. (Interview T, 6 July 2011)

He went on to discuss how the clash between indigenous communities and the mining industry had also created opportunities to bring together discussions about environmental destruction with the discourse of the indigenous movement about the relationship between people and nature.

As the idea took shape, the core group of advocates drew on their local and international ties to invite additional voices to join the discussion. Uruguayan writer Eduardo Galeano wrote a widely circulated essay “La naturaleza no es muda” (Nature is not voiceless) in support of the measure. The Uruguayan *ecologista* academic Eduardo Gudynas, who has written extensively on environmental ethics and alternative modes of development (Gudynas 1999, 2002), including with the constituent assembly’s elected president Alberto Acosta (Acosta and Gudynas 2004), also participated in the assembly process. Sociologist Boaventura de Sousa Santos wrote an essay on plurinationality, referencing the rights of nature (Sousa Santos 2008). The continued support and initiative taken by Acosta himself added a powerful node to the network of rights-of-nature advocates.<sup>23</sup> Local environmental lawyers also circulated materials analyzing the measure (Crespo 2008). Advocates continued lobbying assembly delegates and approached local environmentalist groups, animal rights activists, indigenous organizations, and other social movement groups to gain their support. They began a media campaign, relying on radio spots by famous characters like “Las Marujitas” and even puppet theater to promote the idea.

Within the assembly, some delegates criticized treating nature from a purely market perspective and suggested that granting legal rights to nature could finally signify that it is an entity intrinsically worthy of respect and protection.<sup>24</sup> One

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23. Acosta, former Minister of Energy then affiliated with Alianza País, was elected to serve as the assembly’s president. Acosta received 121 of 130 votes. The other leaders of the assembly were Fernando Cordero (PAIS) and Aminta Buenaño (PAIS) (vice presidents); Jorge Escala (MPD) and Martha Roldós (RED) as spokespersons; and Fransico Vergara as Secretary General. Acosta would later resign on June 23, 2008.

24. The first major debate on nature and the environment was held in April 2008, within the scope of a general discussion on natural resources led during the plenary session by the delegates at Roundtable 5 on natural resources and biodiversity (Asamblea Constituyente 2008a). By May 2008, the thirteen delegates of Roundtable 1 on fundamental rights had been tasked with the question of the rights of nature and produced a report for the first formal plenary debate on the topic, including a set of draft articles (Asamblea Constituyente 2008b, 2008c). In June, the roundtable produced another report for the second and final plenary debate (Asamblea Constituyente 2008d). The final version of the constitutional text on the rights of nature was approved on July 3 and went to a final assembly-wide vote on July 7, 2008. Other key principles related to the environment in the constitution include *in dubio pro natura*, which stipulates that in case of doubt, the court should favor the protection of nature.



delegate asserted that nature “can never be solely an object of commerce” (León Roldós, RED—Ethical and Democratic Network Party, Asamblea Constituyente 2008a, 76). Another delegate echoed: “It is no longer possible to view nature solely as an object of property, its rights must be recognized” (Rafael Esteves, Sociedad Patriótica Party, Asamblea Constituyente 2008a, 78). In the debate that ensued, some delegates explicitly reinforced the connection between the rights of nature and indigenous politics. For example, one assembly delegate remarked:

The right of nature to exist and to have its vital cycles be allowed to sustain life . . . converges with the collective rights of indigenous peoples and their self-determination, reinforcing the struggle for the defense of territories facing the assault of extractive and developmentalist activities. (Humberto Guillén, Sociedad Patriótica Party, Asamblea Constituyente 2008a, 113)

Similarly, another assembly member addressed the other delegates at the plenary session:

Does nature have a right to persist, to maintain itself, to regenerate its vital cycles . . . does nature have a right to exist? I think the answer is yes, I think that many assembly delegates have said that the answer is yes . . . Moreover, because humans are a part of nature, to speak of the rights of nature is to speak of the rights of the communities, is to speak of the rights of the *huaoranis*, is to speak of the rights of uncontacted peoples, it is to speak of the rights of the *comunas*, because they derive their livelihoods from nature. (Sofía Espín, Acuerdo País Party, Asamblea Constituyente 2008a, 108)

Yet some delegates remained skeptical about whether it made legal sense to make nature the subject of legal rights, whereas others agreed with the spirit of the idea but saw the actual measure as impractical. One assembly member, for example, was concerned about the potential conflict between giving rights to nature and the interests of human beings. She asserted that “nature should not be the subject of rights” and instead argued that “we should talk about the *duties* that we have as human beings toward nature” (Rosanna Queirolo, Acuerdo País, Asamblea Constituyente 2008a, 50). President Correa’s support was mixed. During an interview with a Mexican newspaper before the constitution was ratified, Correa first spoke approvingly of the need to recognize the rights of nature. However, he suggested human rights are more important than the rights of nature, or as he joked, “if I am starving to death and I see the last condor on earth, I will fry it up” (BBC 2008). Another delegate put forward a blunt critique about the compatibility of environmental concerns with the needs of people, particularly the poor, and pointed to the extent of Ecuador’s reliance on oil revenues:

There are speeches which have been given here and—perhaps in a lyrical way—they say that nature should be respected, that we should not run

into conflict with natural resources. Many have said that we should not even touch petroleum, and I ask, what do we live on, then? Perhaps the salary we receive as assembly members doesn't come from resources based on petroleum? Maybe the roads, education, health, and housing don't have to take from resources based on petroleum? . . . Yes, we have to respect [nature], but we cannot deify nature. (Jorge Calvas, Acuerdo País, Asamblea Constituyente 2008a, 81)

A number of delegates, as well as legal consultants to the assembly, raised questions about whether nature could acquire juridical personhood. Others countered the critique with the example of allowing corporations to have personhood, and other legal fictions—“if corporations can have rights, why can't nature?” was a common refrain among rights-of-nature supporters. In one such debate, one delegate remarked:

It is true that nature as [a rights-bearing] subject breaks with the classic principles of Roman law, but let us not forget that there is another principle, another principle that is valid . . . Aren't there subjects that are [juridical] fictions? Perhaps the State isn't a fiction? The State is definitely a fiction. (León Roldos, Asamblea Constituyente 2008a, 75)

In the fifty-eighth constitutional plenary session, assembly delegates discussed a formal report on the rights of nature, including a set of draft constitutional articles. The report refers to indigenous cosmology and belief systems as the legitimate sources of an alternative approach that will help lead the nation away from ecological crisis. As the delegates who authored the report explain, “what concerns [us] and leads [us] to protect Nature, raising her from an object of juridical protection to a subject of rights, is the need to change the development paradigm . . . and the relationship that human beings have with their environment, in order to avoid or at least palliate the unforeseeable consequences that will result” if Ecuador continues with its model of development and anthropocentric approach to the environment (Asamblea Constituyente 2008b, 2).<sup>25</sup>

While trying to articulate a new vision moving forward, proponents of nature's rights have often argued that existing normative and legal frameworks tend to accept environmental damage as an inevitable outcome of modernity. Thus people make use of nature to “build civilization” and bring about a particular kind of progress; however, addressing environmental damage in this context often means regulating how much damage is allowed or how that damage is perpetrated, as opposed to questioning the underlying model of development or the idea of progress generating the damaging practices (Acosta 2008a). At their best, such frameworks allow affected people or communities to be compensated, while the damages done directly to the environment are treated as water under the bridge. As the passages from the report suggest, rights-of-nature arguments were often connected to a critique of a development model that emphasizes economic growth over collective well-being

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25. The report was discussed in the Plenary Session No. 58, held 6 June 2008.

and gives primacy to market-based solutions to social problems above other alternatives. Thus pollution becomes something to be quantified and exchanged, as in the case of carbon finance. From the view of rights-of-nature advocates, such approaches to addressing environmental problems do not change the fundamental logic of environmental exploitation; they work within it.

For the delegates and advocates, granting rights to nature, then, was an attempt to move away from such understandings of the environment and the accompanying approaches to environmental problems. Rather than stopping at attempts at environmental management or planning, the rights of nature represented an effort to articulate a different underlying conception of what nature means for society. At the discursive level, we might say that the rights-of-nature reforms reflected a shift in the approach toward environment-society relations from more ecological modernization perspectives (Mol and Spaargaren 2000) that tend to be implicitly present in many Western environmental laws emphasizing regulation to address risk and mitigate environmental damage to an approach combining Western and indigenous ecocentric ideas connected to a political economy perspective in which environmental degradation stems from the structure of market economies, the institutions of modernity, and relentless commitment to growth (Schnaiberg and Gould 1994; York, Rosa, and Dietz 2003). It was an attempt to overcome the dualism between society and nature (Collingwood 1945; Viveiros de Castro 1992; Descola 2013; Kohn 2013) and instead offer a view that emphasizes human beings' embeddedness in and coexistence with nature, although curiously seeking to accomplish this by bounding nature as a distinct legal entity. Moreover, it represented a critique of development as rooted in the exploitation of natural resources for export—a response to the neoliberal paradigm—and an expression of the search for alternative visions of development and progress by the left.

The recognition of the rights of nature was not a pro forma recognition of widely accepted rights. The rights had to be imagined, described, and explained—they had to be constructed. Rights-of-nature advocates were able to construct the rights of nature as a legal concept by bridging different schemas, promoting the idea during the constitutional drafting process, and finding audiences with whom the concept would resonate. Their position at the intersection of multiple organizational communities gave them access to a set of heterogeneous cultural materials, as well as potential organizational alliances, that affected their understanding of what kind of institutional change was possible.

This positioning allowed them to draw on elements of indigenous cosmology regarding the relationship between humans and nature, to define them as concepts that were translatable into legal language and thus eligible for inclusion in the constitutional text, to combine them with schemas from deep ecology, and to mobilize material and symbolic resources in support of these concepts during the assembly process. Moreover, the connections between nature as a subject of rights and alternative development, indigenous rights and plurinationality, and environmental justice counterbalanced the tension between the rights of nature and ingrained legal schemas based on treating nature as property or a resource. In this way, during the 2008 constitutional assembly process, a group of advocates created a hybrid version of nature as a new candidate for the *persona ficta* club, using existing cultural

materials and alliances across organizational communities to construct it as a subject of legal rights.

## CONCLUSION

In this article, I have traced the introduction of the rights of nature into Ecuador's 2008 Constitution, aiming to show what legal construction and innovation can look like when they are in motion, prior to the moment of being imprinted in law-on-the-books and in institutions. I emphasized one way in which ideas that are "out there" in the social world come to influence existing legal concepts, focusing on how advocates and the social and political organizations to which they are connected mediate how particular ideas become incorporated into legal frameworks, and how the heterogeneity of cultural materials available to them can provide opportunities for institutional change. I have also shown that to better understand legal mobilization outcomes in which groups attain their goals, it is important to pay attention to a combination of factors that includes not only strategic action toward a particular end, but also how the salience of a new legal idea is influenced by political dynamics at a given historical moment, the organizational conditions under which law is made, and longer-term historical processes connected to the idea.

Rights-of-nature advocates were able to take advantage of the political opening created by the new constitution to combine radical Western ecological perspectives, politicized indigenous beliefs, and legal rights discourse to construct a hybrid concept that imagined and codified nature as a subject of constitutional rights. I argued they were able to do so due to the rise of an environmentalist agenda in the country as well as the power of indigenous organizations in national politics and their intensifying demands for the recognition of Ecuador as a plurinational polity in the decades leading up to the new constitution. This story was not only an instance of an alternative philosophy becoming incorporated into a legal framework, but also an important case of how indigenous politics influenced nonindigenous systems of authority and created the space for a different understanding of nature/society relations to be conceptualized, described, and incorporated into the constitution, pushing the boundaries of existing ideas about rights, authority, and the state. This process also allowed for the legal materialization of broader ontological debates about the status of nature.

Of course, attaining the legal reforms was only the first part of the story. As skeptics and critics point out, new rights guarantees can be shallow victories because they can remain in the realm of ideas. Moreover, as studies of movement cooptation argue, focusing on legal change may undermine movement goals and may direct limited resources to reforming laws and continuing a dialogue with an unresponsive state when energy should be spent elsewhere. In the case of the rights of nature, such arguments have certainly been made. Ecuador's government has continued to develop the primary export industries that bring in revenue, and in one move among many signaling shifting commitments, gave up plans to suspend oil drilling in the Yasuní National Park. Many members of social movement

organizations who were invited to participate in governing via positions in ministries and other roles later left the government after serious disagreements over vision and strategy.<sup>26</sup> Moreover, there are some sectors of Ecuadorian society that do not identify with all aspects of the new constitution, including the language borrowing from concepts such as *sumak kawsay*.

At the same time, the rights of nature and other aspects of the 2008 Constitution did not simply become dormant. Social movement actors began to refer to the constitution as the new normative vision of where they want Ecuadorian society to be headed. Once the rights of nature became a part of the constitution, the idea gained additional momentum. Cause lawyers have sought to introduce the constitutional provision in cases involving environmental damage.<sup>27</sup> Both environmental organizations and indigenous organizations increasingly began to use the language of the rights of nature, discussing internally how the rights of nature fits with other struggles as well as incorporating the provision in legal and symbolic ways into strategies and discursive frames in ongoing campaigns.<sup>28</sup>

Yet who puts forward claims on behalf of nature and on what terms makes a difference. For example, indigenous communities may at times view the rights of nature as a provision that they can use in tandem with other facets of the law to make claims about the use of natural resources on their territories. On the other hand, it can be challenging to mobilize a particular version of spiritual beliefs and translate indigenous cosmology into Western legal language and procedures. The conservative nature of law and different organizational and normative cultures make it so that it is not always possible to introduce new ideas into legal institutions and other parts of the state bureaucracy. As Espeland (1998) described in her study of the Orme Dam controversy in the US southwest, where the Bureau of Reclamation sought to build a dam at the confluence of the Salt and Verde Rivers in central Arizona, the rational-legal bureaucratic logic of the government agency was

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26. Fundación Pachamama, one of the central organizations that participated in discussions about the rights of nature during the constitutional drafting process, was dissolved by the government in December 2013 following a dispute over the organization's participation in protests against future oil development in the Amazon. The organization has presented its case at the Inter-American Commission on Human Rights. Indigenous organizations have also been mobilizing against the criminalization of protest. See, for example, Verdezoto (2014).

27. Legal action calling for the defense of the constitutional rights of nature is usually done via *acción de tutela*, in which nature is represented by a third party, akin to how a minor would be represented. Several cases have incorporated the new category of rights, including a case involving the Vilcabamba River in Loja province, another involving the Blanco River in Pichincha province, environmental damage connected to a mining concession in Mirador in El Pangui, Zamora, and another connected to road infrastructure expansion in Santa Cruz in the Galápagos. Several others undertaken by lawyers at Ecolex and elsewhere are in progress.

28. For example, at the Encuentro Continental de los Pueblos del Abya Yala por el Agua y la Pachamama (Continental Conference of Indigenous Peoples for Water and Pachamama) in 2011, various speakers mentioned the rights of nature and one of the work groups at the conference was specifically dedicated to analyzing and developing the concepts of the rights of nature and *sumak kawsay* further. Meanwhile, representatives from Bolivia, which also passed a law on the rights of Mother Earth in 2010; activists such as Vandana Shiva; and members of the Global Alliance for the Rights of Nature have continued to develop a campaign around the rights of nature at the international level.

at odds with the cultural claims of the Yavapai community.<sup>29</sup> Therefore, the potential of the rights of nature to be used by groups for environmental protection, to strengthen alternative development visions, and be linked to indigenous efforts to defend cultural identity and community is great, but remains to be seen.

The case raises many questions and points to future research directions about the rights of nature as an ethical concept as well as a new legal rule and institutional script that can influence how environmental problems and the rights of indigenous communities are understood in Ecuador and the region. The practical consequences for cases brought to the judicial system and for the legal categories available to the public and in legal mobilization are slowly emerging, but have yet to be fully understood. As such, the contest between Ecuador's current practices and the normative vision articulated in the constitution continues. As with other countries throughout South America, legal frameworks set up early on in Ecuador's history left behind institutional legacies affecting long-run patterns of development. Only time will tell whether deep revisions of such legal frameworks will create the spaces to pursue new forms of development.

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29. Also see Nadasy (2002) on the problems of using concepts like “property” and “ownership” in the negotiations over land claims between Canadian First Nations people and government officials.



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