

# **The Natural Contract: From Lévi-Strauss to the Ecuadorian Constitutional Court**

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## ABSTRACT

In 2008, the Ecuadorian Constituent Assembly became the first juridical body in the world to legalize what Michel Serres might have called a ‘natural contract.’ With the assistance of the U.S.-based Community Environmental Legal Defense Fund, representatives at the Assembly in July of 2008 re-wrote their 1998 constitution to include a landmark series of articles delineating the rights of nature – a notion long familiar to Indigenous communities in the Andean region, actively propagated by anthropologists like Claude Lévi-Strauss at the French National Assembly as early as the 1970s, and often mocked by mainstream Western jurists for its conceptual confusion about the sorts of entities that can properly be said to have rights. Drawing on the experiences of activists currently engaged in the first national-level lawsuit to make use of these rights as well as a range of both activists and non-activists involved in alternative implementations of them, the article explores the possibilities, limitations, and paradoxes of this extension of rights-based discourse. At a time when the natural world is increasingly being talked about at the United Nations and elsewhere not as a ‘rights-holder,’ but as an ‘ecosystem services provider,’ I suggest that while the discourse of ‘rights’ signals promising shifts in how Andean governments are conceptualizing agency and responsibility in ways that productively break with the trend toward marketization, it also runs the risk of providing the administration with symbolic cover for its intensifying commitment to what Eduardo Gudynas has called, a ‘new extractivism.’

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For at least the last two decades, anthropologists have been increasingly preoccupied with new forms of property-making that threaten to transform substances, landscapes, ideas and people which had not previously been thought capable of ownership into trade-able commodities (Hann 1998; Strang and Busse 2011; Verdery 2004). This trend toward accelerating commodification is perhaps nowhere more visible than in the relatively recent re-conceptualizations of nature as a provider of ecosystem services – re-conceptualizations that are being powerfully embraced by both corporations and mainstream international conservation groups. While green developmentalism or green capitalism has been the favored remedy for environmental degradation on the part of Northern states, the WTO, and the United Nations since at least the 1992 Rio Conference, it has only been in the last decade or so that ecosystem services have begun to be rigorously quantified (Coombe 2011). In order to promote market-based solutions to the problems associated with massive species loss, desertification, and forest depletion, organizations as otherwise disparate as the United Nations and the

International Union for the Conservation of Nature have promoted a vision of the earth aptly characterized by Sian Sullivan as ‘Earth Incorporated’ – a vision that explicitly sees the natural world as a kind of corporation that ‘provides goods and services that can be quantified, priced, and traded as commodities’ (Sullivan 2010: 113). As the Deputy Head of the International Union for the Conservation of Nature recently put it most bluntly, ‘Nature is the largest company on Earth working for the benefit of 100 percent of humankind -- and it’s doing it for free’ (IUCN, as cited in Sullivan 2010). Similarly, according to Bob Watson, co-author of the UK’s first-ever Ecosystems Services Assessment (2011): ‘Putting a value on these natural services enables them to be incorporated into policy in the same way that other factors are. We can’t persist in thinking of these things as free’ (*The Guardian*, 2 June 2011). From this perspective, nature provides concretely quantifiable billions of dollars of different kinds of ‘services’ each year which need only to have their economic value recognized in order to ensure more sustainable practices (Dailey 1997). Inland wetlands, we are told, provide some 1.5 billion pounds sterling worth of free water purification; pollinators like bees add 430 million pounds of unaccounted-for agricultural improvements; and living next to a green area provides residents some 300 pounds per year in health benefits. These price tags – arrived at through complicated and contested formulae that aim to provide clear metrics by which to measure environmental degradation – ostensibly register the extent of the labor performed for humanity by this most exploited of all corporations – Nature, Inc. (Sullivan 2010).

While anthropologists have critically registered their hesitation about such commodifying impulses in a range of domains, they have had less to say about the recent efforts on the part of environmental activists to push in what is ostensibly the opposite direction – that is, toward the vital *de*-commodification of parts of the natural world that have previously been treated as mere legal property (Comaroff and Comaroff 2009; Hayden 2003). Building on Patrick Bond’s recent observation that perhaps the most central conflict in the contemporary world is that between ‘forces bent on further commodification and those committed to decommodification,’ in this article my concern is not with the movement of persons, tissues, body parts, seeds, genetic materials, carbon, or other parts of the living world into the category of trade-able *things*, but with precisely the opposite – that is, with the intensifying efforts in both North and South America to transform parts of the natural world that, at least in the West, have traditionally been conceived as ‘property’, into juridical ‘persons’ invested with ‘rights’ (Bond 2004). While growing numbers of theorists have explored the neoliberalization of nature, my concern is with the efforts of Ecuadorian activists to work precisely *against* this trend by insisting on the (supposedly) *decommodifying* language of rights. Drawing on fieldwork conducted with environmentalist NGOs and non-activist community members in Ecuador in January – February 2012, as well as policy documents, activist websites, and transcripts from the 2008 Constituent Assembly, I describe the processes by which, over the past four years since the passage of the 2008 Ecuadorian constitution – the first in the world to explicitly grant rights to nature – a range of environmental activists both within and beyond the country have struggled to implement a rights regime so diametrically opposed to the dominant paradigm of ecosystem services (Buscher et al. 2012; Castree 2008; Heynen, Prudham, and McCarthy 2007). Following Eduardo Gudnyas, Marisol de la Cadena and others, I argue that the rights of nature importantly pluralize the dimensions of value attached to the natural world at a time of exceeding conceptual narrowness – a time in which there exists among conservation specialists and sustainability experts a systematic ‘refusal to countenance alternative value practices and organizational forms, particularly those oriented toward...animistic conceptions of a sentient, communicative world of diverse embodied practices’ (Buscher et al. 2012; de la Cadena 2010; Gudnyas 2011). At a crucial moment in the development of what Buscher et al. have recently called the ‘Sustainable Development Historic Bloc’ – that burgeoning coalition of corporate CEOs, sustainability experts and environmentalist NGOs committed to the ideology that ‘hyper-consumption and environmental sustainability are ... fundamentally compatible projects,’ - these rights are, as

Lévi-Strauss might have put it, ‘good to think’ (Buscher et al. 2012: 20). And not just ‘good to think,’ but *necessary* to think. However, this pluralization of values (or what de la Cadena calls, the ‘ontological pluralization of politics’) – much like the pluralizations of the nation itself for which the Indigenous movement in Ecuador has long fought – are presently being used in ways that suggest, as one recent observer has put it, that there is little ‘post- in the post-neoliberalism’ of Rafael Correa (Bebbington and Bebbington 2010; de la Cadena 2010: 360). As Charles Hale (2002) has observed of neoliberal multiculturalism more generally, too often the limited extension of cultural rights to Indigenous communities in Latin America – whether in Guatemala or in Nicaragua – has gone hand in hand with an unwavering commitment to neoliberal economic restructuring. The result has been a kind of tokenistic ‘multiculturalism’ that officially celebrates ‘pluri-nationality’ or ‘pluri-culturalism’ but does not allow for the most important practices of *actual* Indigenous autonomy – for example, in economic decision-making that threatens valuable state resources or questions macro-economic decisions. My central argument is that the rights of nature currently run the risk of being deployed in similar, largely symbolic ways – implemented in terms and forms that do not fundamentally challenge the ecosystem services approach of the neoliberal ‘Sustainable Development Historic Bloc’ and that may, in fact, simultaneously legitimize further expropriations of Indigenous, poor, and Afro-Ecuadorian communities and provide political cover for a dramatically escalating engagement with large-scale mining and oil refining.

The essay proceeds as follows: in the first section, I locate the impulse toward something like the rights of nature in the broader regional and theoretical contexts of Pachamama worship and a growing concern with the agency of things, respectively. In the second, I explore the conflicts and convergences between assembly-people and social movement activists that ultimately led to the enshrinement of these rights in the Ecuadorian constitution of 2008. Drawing principally on transcripts of the constitutional process, on-line publications and reports from activist organizations, and fieldwork conducted in Quito and Manta, I then trace the efforts of arguably the most radical wing of the rights movement to file a universal jurisdiction case against British Petroleum at a time when the government was increasingly implementing these articles in ways far more consonant with the ecosystem services framework. Reflecting on some of the difficulties (if not to say failures) of this case allows me to offer a concluding series of cautionary notes – well-known to at least some activists themselves – about the speed with which discourses of ‘rights’ become not counter-points to marketizing trends, but allies and accomplices in precisely those trends.

## THE POLITICIZATION OF NATURE IN THE ANDES

Anthropologists have long been intrigued by social and cosmological systems in which the spectrum of personhood is animated by human/non-human distinctions that are fundamentally unlike those that undergird Western property law. As is well known, in Latin America in particular, the lines between the natural, the social, and the supernatural are highly permeable, and many features of the natural world – mountains, lakes, and now rapidly disappearing glaciers – are perceived as having human-like force, feeling, and agency. As Michael Taussig, for example, explains in his classic 1980 *The Devil and Commodity Fetishism in South America*, ‘This kinship of resources, person, and society finds its expression and ratification in a series of ideas that enliven nature with a social persona and humanlike empathy’ (Taussig 1980: 156). This is a view further nuanced by scholars like Eduardo Viveiros de Castro, who have long pointed out that in parts of Amazonia, the relations between humans and other species are conceived as fundamentally socio-cultural, since all beings in the ‘highly transformational world’ of Amazonian ontology – whether plants, jaguars, or peccaries – are believed to possess human-like consciousness and agency (Viveiros de Castro 2012: 48). It is this extended sociality or trans-species sympathy that often provides, at least in the Andes, the idiom through which people express their opposition to extractive industries and particularly

mining projects. As Marisol de la Cadena has recently pointed out, among at least some of the Indigenous anti-mining protestors with whom she worked in the highlands of Peru, mining is opposed not only on the grounds that it will contaminate the pastures that families depend upon to earn their living grazing alpacas and sheep, but because the mountains within which the mines will operate are thought capable of exacting vengeance. ‘Ausangate will get mad,’ the highland villagers told her again and again, referring to the mountain itself, ‘He could even kill people’ (de la Cadena 2010: 339).

Such conceptions of the force and agency of the material world are not limited, of course, to the Andean and Amazonian worlds of Latin America. On the contrary: more and more social anthropologists and political philosophers are increasingly concerned with the political ramifications of thinking more inclusively about the entangled agencies at work in human/non-human collectivities of all sorts. As can be gleaned by even the most cursory glance at the major anthropological journals, there has been a veritable explosion of interest in ‘socio-natures’ and ‘multispecies ethnography’ over the course of the last ten years. As Martin Holbraad has pointed out, over the past few years alone we have witnessed a growing effort in anthropology and cognate disciplines to ‘widen the circle of the human’ and to thereby include, as active agents with a kind of personhood, history, voice, freedom, and responsibility of their own, ‘those subaltern members of the collective, *things*, that have been silenced and “othered” by the imperialist social and humanist discourses’ (Holbraad 2011: 3). Holbraad and others are explicitly inspired by the work of Bruno Latour, who has argued perhaps more forcefully than any other contemporary theorist that the ‘political representation of non-humans seems not only plausible now but necessary, when the notion would have seemed ludicrous or indecent not long ago’ (Latour 1998: 119). While the followers of Latour are principally concerned with re-thinking the agency of human-technological hybrids like electrical grids or garbage dumps, the question of the ‘political representation’ of the most ‘subaltern members of [our] collective’ is a question that cannot, it seems to growing numbers of environmental philosophers, be restricted to non-organic material things (Bennett 2010; Plumwood 2006). At a time when, as postcolonial scholars like Gayatri Spivak have begun to recognize, the most subaltern of all – or what some eco-socialists have called, ‘the last exploited proletariat’ – is arguably the natural world, there is an urgent need to re-think the personhood, and particularly the potential *juridical* personhood, of trees, rivers, and mountains (Spivak 2003).<sup>1</sup>

This is a need, it seems to me sometimes forgotten, to which at least some anthropologists have long been attentive – not only in their ethnographic work but in the legal contexts of their countries of origin. On May 19th, 1976, for example, long before Latour’s ‘parliament of things’ caught the imagination of so many, Claude Lévi-Strauss put before the French National Assembly a conception of what he called, the ‘rights of the living’ – a vision that he hoped might displace the centrality of the rights of man that were, at the time, being debated in the Assembly. For Lévi-Strauss – and in terms not entirely unfamiliar to current discussions around environmental rights between dark-green and light-green environmentalists or deep ecologists and mainstream conservation biologists – the conceptions of liberty being put forward by both the majority party and the Communist group were excessively human-centered, some even going so far as to describe liberty itself as a ‘distinctive characteristic of the *human will*’ (Lévi-Strauss 1985: 279). As he pleads in the beautiful concluding chapter to *A View from Afar* – a somewhat lengthier version of the speech first delivered at the National Assembly,

Can we conceive of a [new] basis for freedoms so self-evident as to impose itself on *all* human beings without distinction? Only one such basis seems possible, but it implies that man be defined not as a moral being, but as a living being, since this is his most salient characteristic. But if man possesses rights as a living being, then it follows immediately that these recognized rights of humanity as a species will

encounter their natural limits in the rights of other species. Thus the rights of mankind stop whenever and wherever their exercise imperils the existence of another species (Lévi-Strauss 1985: 282)

In order to protect the rocks and birds and animals that were among his first and most enduring passions, the concept of rights needed to be enlarged to encompass all living species. He continued: 'The right to life and to the free development of the living species still represented on the earth, is the only right that can be called inalienable – for the simple reason that the disappearance of any species *leaves us with an irreparable void in the system of creation*' (Lévi-Strauss 1985: 282). It was this 'irreparable void in the system of creation' – regardless of the immediate effects of that void on human beings – that most worried Lévi-Strauss and to which he felt that the rights of the living were the strongest and most appropriate response. Such rights would mean that humans could not just wantonly wipe out whole ecosystems or species without being charged with something akin to genocide – an intuition that presciently foreshadows recent discussions in the UK and elsewhere about the viability of the category of 'ecocide.' 'At a time when the quality of life and the protection of the natural environment are among the foremost needs of man,' he concluded triumphantly, 'this reformulation of the principles of political philosophy might even appear, in the eyes of the world, as the beginning of a new declaration of rights' (Lévi-Strauss 1985: 284).

Some thirty-two years later, something akin to this 'beginning of a new declaration of rights' was initiated not in metropolitan France, but in rural Ecuador – a country which, as Susana Sawyer has so vividly documented, continues to suffer particularly acute environmental damage as a result of Chevron-Texaco's dumping of millions of barrels of oil into unlined pits beginning in the 1980s and one that has the misfortune of being home to the worst relative environmental indicators in South America, including some of the highest deforestation rates on the continent (Gudynas 2008: 24; Sawyer 2004). On July 24, 2008, in the tiny, inland city of Montecristi on the arid western coast of Ecuador, the Ecuadorian Constituent Assembly – a body of some 130 elected assembly people tasked with re-writing the constitution following the 2007 election of the leftist-populist Rafael Correa – overwhelmingly approved a constitution that made Ecuador the first country in the world to legally recognize the rights of nature, or *derechos de la naturaleza*. The constitution is one of the longest in the world with 444 articles, and the rights of nature fall within the second section devoted to rights of all kinds – the rights of good living (*buen vivir*), of communities, pueblos, and nationalities, of participation, and of liberty, to name just a few. As spelled out in Article 71, albeit somewhat non-specifically, the text reads: 'Nature, or Pacha Mama [the Incan mother-goddess], where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognitions of rights for nature before the public organisms' (Constitution of Ecuador 2008: 52). Continuing in the same vein, Article 72 goes on: 'Nature has the right to an integral restoration. This integral restoration is independent of the obligation on natural and juridical persons or the State to indemnify the people and the collectives that depend on the natural systems' (Constitution of Ecuador 2008: 52) And Article 74 concludes: 'The state will apply precautionary and restrictive measures to activities that can lead to the extinction of species, the destruction of ecosystems, or the permanent alteration of natural cycles.' (Constitution of Ecuador 2008: 52). Despite the well-known scientific difficulties of discerning what exactly constitutes an 'alteration' or a 'permanent alteration' in a natural cycle, as well as of defining the boundaries of ecosystems in the first place, the articles were intended to provide significantly more robust protections for the natural world than had featured in any previous constitution.

This was juridical language for which Indigenous, environmental, and legal coalitions based in the Ecuadorian highlands and the Amazon had fought passionately between 2002 and 2008, struggling to ensure that communities throughout the country did not have to fight

to be granted legal standing in environmental cases, that even those not directly affected by environmental pollution could be allowed to bring cases into Ecuadorian courts on behalf of ecosystems, and that the State would engage in the long-term work of restoring communities injured by Chevron-Texaco, Occidental Oil and others. The campaign was spearheaded by numerous organizations, but featured the small, far-left, Quito-based *Accion Ecologica*, the somewhat more moderate *Pachamama Alliance* (a founding member of the Global Alliance for the Rights of Nature, which continues to organize transnationally for recognition of the rights of nature at the UN and elsewhere), the Indigenous political and social organizations *Pachakutik* and *CONAIE*, and members of Rafael Correa's own left-of-center political party, *Alianza Pais*. To greater or lesser degrees of explicitness, all of these actors were driven by an understanding that the Andean cosmo-vision is one structured around what Esperanza Martinez has called, the four principles of relationality, correspondence, complementarity, and reciprocity (Acosta and Martinez 2011: 10). It is a vision, as activists often reminded me, that is neither biocentric nor anthropocentric, but one committed to what the Indigenous call, in direct opposition to the aspirations of endless growth that remain mainstream economic sense in much of the world, '*sumac kawsay*,' or balanced living.

Just three months after the occasionally heated discussion with members of the conservative Social Christian Party (*Partido Social Cristiano*) that marked the first assembly of the 5th roundtable<sup>2</sup> on 'Natural Resources and Biodiversity' in Montecristi on April 29, 2008, assembly-person after assembly-person agreed that nature should be granted these historic rights. 'Some people will think,' summarized assemblyman Guillem Humberto, explicitly acknowledging the opposition,

that to recognize the rights of nature is a juridical heresy because rights are for humans, not for things. But it was in just this way that people at the end of the 19th century who were opposed to recognizing the rights of slaves would have been thinking. The slave was, to their eyes, subject to the ownership of his master.... But we can't keep thinking of nature being owned in this way. Perhaps if we conceive of nature as a subject of rights, the transnationals [that have all the rights], the corporations, will understand that the indiscriminate bloodletting of oil, the destruction of water sources by mining projects, the incessant slaughter of forests, are not simply the necessary costs of doing business, but attacks against the planet which, sooner or later, will assert itself against humanity (Asamblea Constituyente, Mesa 5, Acta 040, p. 112).

This was a point made repeatedly by the assembly-people. Whereas once slaves and women were treated as 'commodities' and not too long ago it would have been inconceivable to talk about them as bearers of 'rights,' the same is now true of nature, which, from their perspective, likewise needed to be re-conceptualized not as property, but as a kind of juridical person.<sup>3</sup>

Despite the fact that the constitution was approved by 63.93% of the Ecuadorian population in a constitutional referendum held in September 2008, the reaction throughout the country to this extension of rights-discourse was, perhaps predictably given the country's pronounced regional, ethnic, and class variation, somewhat mixed. Most environmental activists and leftist intellectuals were predictably ecstatic. 'Nature still has so much to say,' the Uruguayan novelist, Eduardo Galeano, proclaimed, 'and it is high time we, its children, stopped playing deaf. And maybe even God will hear the call coming from this Andean country – Ecuador – and add the eleventh commandment forgotten in the instructions given to us from Mount Sinai, "Thou shalt love Nature, of which thou art part."' (Galeano 2008, as cited in Acosta 2010). Even the more tempered and less poetic could not help but celebrate the fact that this new legislation would significantly challenge Western conceptions of Nature as property and bring Indigenous understandings of the Pachamama into law – an advance that signaled to many a deepening commitment on the part of the government to de-colonizing the country's juridical framework (Acosta 2010).

However, many non-activist others felt distinctly otherwise. As Alexis Mera, legal advisor to the president, wrote via e-mail to the head of the Constituent Assembly – Alberto Acosta – in July of 2008,

This is not an ideological problem, but technical. I agree with all possible protections for Nature. I have even come to the conclusion that the ITT<sup>4</sup> must not be exploited. The rights-holder system has been in existence on the planet for 2,500 years. The difference lies in that the Law is aimed at regulating human relations. Therefore, only people can acquire rights and contract obligations. If nature is a rights-holder, it meant that it must be represented by someone, which is stupid. This not only applies to biodiversity, but includes flies and cockroaches, which must be represented. By whom? Bacteria? Virus? We should be suing the WHO for eradicating smallpox, since the virus is part of nature too, and we have gotten rid of that ‘valuable’ species (Acosta 2010: 6).

Not dissimilarly, one young man who lived next door to me in the nearby coastal city of Manta (some 12 km from Montecristi) pointed out in 2008, ‘It’s ridiculous to say that Nature has rights! For something to have rights, it must have obligations. What obligations does nature have?’ ‘So if there’s a flood or some other kind of natural disaster,’ joked another, ‘are we within our rights to sue nature?’ Still others simply felt that the notion was not sufficiently coherent, since one cannot be said to have rights in any meaningful sense unless one is capable of will, volition, and consciousness. Furthermore, how could humans be expected always to discern what was in nature’s best interest? Maybe that mountain actually *wanted* to be home to a ski resort? How could these rights possibly be enforced? Were we really expected to entertain the thought that communities should be allowed to bring suit on behalf of butterflies? Wasn’t this the very worst sort of anthropomorphizing?<sup>5</sup>

To meet these charges and solidify their case for extending rights to nature, the assembly people and their activist supporters routinely invoked the kind of juridical person that corporations have long been under under U.S. and, increasingly, international law – describing to resistant, center-right assembly-people like Cynthia Viteri (many of whom thought it entirely nonsensical to apply rights to inanimate beings) the histories by which U.S. corporations have steadily usurped rights intended for individuals. As another assembly member from the ruling political party, *Alianza Pais*, explained as part of the same discussion in Montecristi of Roundtable 5 in April 2008, ‘I think it’s been established that nature should have rights, that nature is alive, but for those of you who have any doubts, also remember that we have delivered all kinds of rights to corporations. So... why not to nature?’ (Asamblea Constituyente, Mesa 5, Acta 040). Granting rights to ecosystems might initially seem far-fetched, some conceded, but since at least the late 19<sup>th</sup> century, far stranger kinds of entities – and more particularly, corporations – have wielded enormous and proliferating human rights. This was precisely the point made by staff members from the Pennsylvania-based Community Environmental Legal Defense Fund, who were invited to Ecuador by the Pachamama Alliance because of their long-standing experience assisting U.S. city councils re-write municipal ordinances to include the rights of nature. As Thomas Linzey, a U.S.-based staff attorney for the Fund, has often pointed out in Democracy Schools all across the United States, over the past 150 years, the U.S. Judiciary has increasingly conferred constitutional protections once intended to protect natural persons upon artificial ones. These protections have included first, fourth, fifth, and fourteenth amendment rights, the latter of which – initially intended for the protection of newly-emancipated slaves – has famously been used hundreds of times by corporations but just a handful by the people for whom it was initially designed. Thus, activists rightly wonder, why is it that corporations should so routinely be conceptualized as rights-bearing entities protected by all the amendments originally intended to protect individual citizens from illegal search and seizure, unequal treatment before the law, and so forth, while

nature continues to be seen as mere property devoid of rights? In the end, these concerns were persuasive. But nearly as soon as the rights of nature were approved by the two thirds majority, the inevitable questions about how, precisely, the Ecuadorian state, local communities, and Indigenous title-holders would put them into practice began to proliferate and metamorphose.

#### IMPLEMENTING THE 'RIGHTS OF NATURE': BRITISH PETROLEUM IN A HOSTILE ENVIRONMENT

As activists soon came to know only too well, writing a new constitution that grants ecosystems the sort of robust protections that corporations currently enjoy and actually implementing such protections are two entirely separate endeavors. By November of 2010, just two years after their passage in Montecristi, Articles 277 (to guarantee the rights of nature), 389 (to protect nature from the negative effects of anthropogenic disasters) and 397-2 ('to establish effective mechanisms for the prevention and control of pollution') were used for the first time against a major transnational corporation in an Ecuadorian court. Accepted in Ecuador's highest court – the *Corte Constitucional* – by magistrate Nina Pacari in November of 2010, a group of ten activists that included Ecuadorian, Mexican, Nigerian, and Indian nationals from organizations as diverse as Accion Ecologica, Oil Watch, and Navdayana International, lodged a universal jurisdiction case against British Petroleum for its negligence in the Deepwater Horizon spill of April 2010. Given a political climate in Ecuador that, just two years after the re-writing of the constitution, was turning rapidly hostile toward environmentalists whose anti-mining agenda was routinely construed by the president as either 'infantile' or 'terroristic,' the Ecuadorians involved decided that the only sort of case that stood a chance of being heard was one that did not directly implicate the administration (interview with representative of Accion Ecologica, January 2012).<sup>6</sup> While many of my non-activist interlocutors in the coastal city of Manta believed that, two years into his presidency, President Correa was doing important work in defense of the rights of nature by banning the most indiscriminate forms of deep-sea fishing and regulating the large commercial shrimp pools in the coastal provinces that for years have been destroying already-fragile mangroves, numerous Quito-based activists never tired of pointing out that the administration's first formal deployment of these rights had been in one of the poorest and most marginalized provinces in Ecuador: the northwestern and predominantly Afro-Ecuadorian province of Esmeraldas.

It was here that these rights first hit the ground – not to bring a major transnational corporation to its knees or into dialogue, but as a justification for an armed intervention on the part of the Ministry of Defense. In May of 2011, the Ministry forcibly destroyed the equipment of illegal, small-scale miners in eight localities in Esmeraldas on the grounds – at least in part – that they were violating the rights of nature. If the backhoes, tractors, and other mining paraphernalia were not destroyed, the Ministries of the Environment and Non-Renewable Resources argued, they would simply find their way back to the illegal miners through corrupt local judges. While many non-activists in the coastal province of Manabi (the province that is home to Montecristi where the constitution had been re-written) supported this government intervention – citing their first-hand experiences with the health-related effects of mining-contaminated water – the Quito-based activists most aggressively opposed to what they considered to be the rampant commodification of Indigenous-occupied forests for sale on the European carbon markets via the medium of REDD+ (Reducing Emissions from Deforestation and Degradation), were vehemently skeptical about this deployment of military force. It was – at least to one – a reminder of the need for constant vigilance to ensure that these rights are not used to further disempower the already-disempowered for the sake of opening up land to the transnationals – whether in logging or in 'conservation services' (interview with representative from Accion Ecologica, February 2012).

REDD+ in Ecuador has become perhaps the major dividing line in the post-2008 environmental movement. While some groups, like the Pachamama Alliance, have yet to take

an unambiguous position on the UN-led and Correa-supported *Socio-Bosque* (Forest Partners) program by which Ecuador is hoping to position itself as a primary provider of ‘ecosystem services’ for the emerging carbon markets, others, and most principally *Accion Ecologica*, are strongly opposed to what they consider to be the continued privatization of the atmosphere. *Socio-Bosque*, begun by the Ecuadorian government in 2009, aims to provide Indigenous and other forest-dwelling communities small annual compensation for agreeing to engage in conservation practices that often involve no longer being able to move freely through their ancestral territories. The government claims to be hoping for a win-win situation, in which forest land is efficiently conserved at the same time that Ecuador is able to become a global leader in the sale of ecosystem services. But such a position is deeply problematic for at least some activists because it effectively avoids the structural issue of ongoing pollution on the part of developed world emitters, essentially risks rendering Indigenous communities wage-laborers for distant corporations invested in buying their carbon credits, and too often provides a license for evicting people from ancestral territories by constructing forest cultivators as perpetrators of ‘unsustainable’ practices (Accion Ecologica). And they are not alone in these worries. Growing numbers of Indigenous and non-Indigenous activists throughout the hemisphere are beginning to vigorously organize against REDD+, which many have cynically dubbed a new form of ‘carbon colonialism’ (Accion Ecologica 2012).

Highly sensitive, then, to the ways in which rights discourses were being used to facilitate what they construed as a privatization of Ecuador’s already heavily degraded forests, most of the Quito-based groups were not inclined to think highly of the military intervention in Esmeraldas. Worried about the possibility that the rights of nature might be used to ever-more systematically trump collective and territorial rights, others from organizations like the National Network for the Defense of the Mangrove (C-CONDEM) similarly believed that these rights were being deployed by the administration in particularly counter-productive ways. More specifically: they were being deployed to further alienate the poorest and most marginalized. A representative from C-CONDEM argued that beneath the guise of rights discourses that encourage the international community to look optimistically toward the Andes for more creative legal possibilities at a time of near-stalemate in international climate talks, the administration of Rafael Correa continues to open the country to transnational mining corporations and to further expand commercial shrimp farming in coastal mangroves. Since the approval of the constitution – and despite the most recent talks at Rio+20 that saw the Ecuadorian contingent violently opposed to the bailing of banks and aggressively pushing its plan for Yasuni – the government’s position has been repeatedly reiterated by both Rafael Correa and the Minister of Renewable Resources, Wilton Pastor. ‘Responsible mining is fundamental for the progress of the country,’ Correa explained on January 15, 2009 during his address to the nation, ‘We cannot sit like beggars on a sack of gold’ (Acosta 2010: 3). And again, on the occasion of the March 5, 2012 signing of the largest mining contract in the country’s history – a \$20 billion agreement with the Chinese *Ecuacorriente* to create the largest open-pit copper mine in the country – he asked ‘simplistic’ environmentalist detractors to think carefully about their naivete when it came to leaving the minerals underground: ‘Can you understand a world without mining?’ While the government went spectacularly after the lowest hanging fruit in its attack on illegal small-scale miners, the real aim, many activists felt, was simply to clear the land for legal mining and sell off the mineral assets of the country to the highest bidder – regardless of environmental toll.

It was thus upon transnational corporations that the most radical segments of the movement chose to focus – and it was these groups that were principally responsible for the filing of the November 2010 case against British Petroleum. While groups like the Pachamama Alliance (who were less frontally opposed to REDD+) were more concerned with educating Amazonian communities about the possibilities inherent in these rights, lodging low-level (and successful!) cases against provincial governments for their violation of these rights,<sup>7</sup> and building an international coalition, those opposed to green neoliberalism in all its forms kept

their eyes squarely on the role of corporate interests in determining the range of the environmentally enforceable. And for good reason. By 2012, when I arrived back in the arid coastal province of Manabi that had been home to the Constituent Assembly of 2008, the government had already begun construction on what, in the next five years, is projected to be the largest crude oil refinery and petrochemical complex in South America. The collaborative brainchild of Hugo Chavez and Rafael Correa, the RDP (or Refinery of the Pacific), inaugurated in 2009, will not only refine 300,000 barrels of Venezuelan crude a day using water pumped 10 kilometers from the coast from a soon-to-be-built desalinization plant, but it will be surrounded by an enormous stretch of newly planted forest irrigated by waste waters from the nearby city of Manta. It is even, some villagers told me, expected to be the largest forest plantation in the country. In the already heavily policed zone of El Aromo (some 15 kilometers from Montecristi), ‘ghost villages’ that will house the thousands of Venezuelan, Korean, and Ecuadorian oil workers are already being built. And all throughout the area – which houses small, deeply impoverished settlements of people who have been paid to leave their homes and a local office devoted to ‘Studies of Environmental Impacts’ (*Estudios de Impactos Ambientales*) – are dozens of newly posted signs proclaiming the importance of protecting the natural environment: ‘To plant trees is to preserve life because they produce oxygen,’ read one. ‘Trees protect life; Take care of them today for tomorrow,’ proclaimed another. And yet another: ‘Save the Forest: It is our lungs.’

While local opinion is clearly divided about the facility – some seeing it as a flagrant violation of the rights of nature on the part of a no-good, wealth-redistributing ‘communist’ government who simply answers to Hugo Chavez’s Bolivarian Revolution (of which Correa’s ‘citizen’s revolution’ is a local variant), and others celebrating its potential economic benefits by pointing out the extensive environmental impact assessments that have already been conducted – long-time historian of Manta and professor of communication at the LAICA university, Roberto Larrea, has written movingly of what he sees as both the commodifications and practical limitations of rights-discourse. ‘The municipality of Manta,’ he proposed on his daily blog in late December 2011, ‘should...propose an ordinance of consciousness-raising, education, and defense of the rights of nature. In this ordinance, people, as parts of nature, should be directly involved...’ Reflecting on the dismal and deteriorating situation of the current oil refinery in Esmeraldas (which is also home to the illegal miners whose equipment was confiscated in 2011 by the Ministry of Defense), he often reminded his fellow coastal citizens of the fact that most of the men living in proximity to that facility just north of Manta are no longer able to give blood because of lead poisoning. ‘Children [here in Manta] will have to be educated,’ he notes with grim anger, ‘about the contamination that the refinery will produce so that they are not surprised. It is like educating them how to live with AIDS or with cancer... We will have to learn to wear masks to survive the pollution and bottles of oxygen for personal use, like the bottles of water we buy now, will have to be produced.’ But what about the rights of nature?, I asked him in February of 2012. Where are they? Who has organized to prevent this refinery on the grounds that it is constitutionally illegal? ‘We Mantenses will have to *learn to live with death*,’ he told me realistically one Saturday afternoon. And it is not just the Mantenses, or the people of Manta, who will be asked to live this way. As more and more boats arrive at the port bearing crude oil from afar for the accelerating Asian markets, the whales will no longer come. ‘With fourteen boats arriving weekly,’ he continued, ‘the sounds of the engines will drive away the snails, octopuses, and small fish, whose food chains will also begin to be contaminated by the desalinization plant necessary for the operation of the refinery. And the trees planted around the refinery? What will happen to them as the complex ages and breaks down?’ ‘We need a new planetary society,’ he concluded, speaking directly to those who push for ecosystem services – one that is *not* about the use of nature for money.

Similarly outraged not by the likelihood of a future oil spill in the small agricultural province of Manabi, but by the actually-existing global impacts of the largest oil spill in U.S.

history – the Macondo spill – the predominantly metropolitan activists in Quito who filed the case against British Petroleum in November 2010 were passionately committed to the defense and protection of that ‘vital blue segment of nature,’ the ‘rights of the sea.’ As they explained in their 2010 filing: ‘We are filing this lawsuit because the international system of rights is clearly biased towards protecting the interests of transnational corporations that make excessive, irresponsible and predatory use of their rights to property and free enterprise, based on a development philosophy that is antagonistic to nature.’ (26 November 2010: 2). One of the most effective ways to counteract such predatory property rights and to set a precedent for the adjudication of distantly inflicted crimes against nature was, from their perspective, to invoke the rights enshrined in the 2008 constitution. Despite the fact that, already by 2010, these rights were substantially more symbolic and fledgling than real and robust, these activists felt that they were particularly important for demonstrating to communities throughout the world that they might have some leverage in holding corporations to account for their infliction of environmental atrocities. As with genocide, the aim was to ensure that corporations begin to understand that ‘the whole world is watching.’

To do so, a group of seasoned economists, activists, and biologists began, shortly after the spill, to look closely at British Petroleum’s records, to identify its numerous failures to implement proper procedures to ‘avoid, minimize, and mitigate impacts to the marine and coastal environments,’ and to call attention to its seriously inadequate understandings of the ecosystems around the rig. As many others have subsequently discovered, the company had not only completely underestimated the risk (repeatedly stating that 48 miles to shore rendered the possibility of adverse impacts nearly impossible), but had written into its environmental impact assessments the presence of a range of marine mammals such as ‘walruses, sea lions, and seals which do not actually live there’ (26 November 2010: 4). Calling out these blunders, the activists then argued for a range of non-monetary compensatory measures to restore the rights of nature in the Gulf. For many of them, ‘no financial sum could compensate for the damage caused to the natural cycles of the sea and of nature and therefore we renounce any financial transaction that could result from this suit’ (26 November 2010: 10). What they wanted instead was for British Petroleum to be ordered to make public all of its records; ‘a list of scientific institutions and individual scientists who were commissioned by the company to undertake studies, research or technical reports related to the disaster;’ ‘to publish the disaster management plan or strategy that is being implemented specifically to contain or mitigate the Deepwater Horizon disaster;’ ‘to make public the lobbying strategy used in order to obtain an operating licence for the Deepwater Horizon;’ and ‘to make public the plans for long-term monitoring of the evolution of the impacts caused by the oil spill.’ (26 November 2010: 10).

While the Corte Constitucional eventually rejected the case because the plaintiffs had not followed proper procedure by first filing it in a court of the ‘first instance’ – that is, a lower court – by January 2012, the plaintiffs were awaiting the outcome of the lower court’s decision. When that decision comes down – and it is expected that it will be rejected in the lower court as well – the group can then take it to a provincial court and only then, back to the Constitutional Court, which is expected to re-hear it by June 2012. They remain disappointed, but hopeful.

## CONCLUSION

In this article, I have traced some of the contested processes that culminated in the re-writing of the Ecuadorian constitution to include the ‘rights of nature.’ By focusing not on the processes of commodification that are resulting in projects of neoliberal biodiversity conservation or species banking, but on the tensions generated by the first national-level legalization of forms of value radically opposed to commodification, my central claim has been that there exists a broad-ranging parallel between corporations and ecosystems that is being exploited to diametrically opposed ends by forces bent on commodification and those committed to decommodification. As I have shown, an intensifying battle is being waged in Ecuador over

how best to ‘value’ nature, with one side looking to the domain of the market to take account of formerly externalized costs and to institute REDD+ programs of carbon exchangeability, and the other to the domain of the law to defend rights that are both radically new and arguably ancient. For mainstream economists, a growing number of conservationists, and the corporations with whom they are allied, the most effective way to ensure the restoration of the planet’s health is to put a price on the ecosystem services provided by that most exploited corporation, Earth. For the more radical of Ecuadorian environmental activists, on the other hand, the parallel between ecosystems and corporations is deployed in the service of establishing more balanced rights regimes at a time when green neoliberalism is aggressively making commodities of the natural world at increasingly intimate scales. The contest – put simply – is between a vision that sees nature’s services as not being properly paid for versus one that sees its rights as having been systematically violated. And the worry at the moment is that these rights-discourses – much as Marxist theorists have argued of rights-discourses for some time – are being used to defend processes that will likely result in what Lévi-Strauss called in 1976, ‘an irreparable void in the system of creation’ (Lévi-Strauss 1985: 282).

As activists regularly point out, the rights of nature are undoubtedly performing urgent work – pluralizing the valuations attached to ecosystems in ways that profoundly challenge the one-dimensionality of econometric analyses (Acosta and Martínez 2010; Gudynas 2011). They emerge out of critical thinking that is unfolding all throughout the hemisphere about the kinds of entities that can properly be said to have ‘rights’ – particularly multinational corporations – as well as long histories of reciprocal relationships between Indigenous Andean and Amazonian communities and what Marisol de la Cadena has recently called, ‘earth-beings’ (de la Cadena 2010). As in other domains and despite its limitations, rights-language remains important because, as many have noted, it keeps firmly in view the gap between our desires for environmental protection and the limited ways in which that protection has thus far been implemented. Like the Indigenous rights movement more broadly – which has achieved such important advances in Ecuador in recent years – these rights are arguably at the forefront of global political innovation.

However, the degree to which this juridical discourse and the more expansive forms of personhood embedded within it are challenging, in actual fact and on the ground, the dominant ecosystems services framework, is questionable. While it is certainly the case, as Robert Fletcher has recently proposed, that diverse environmentalities always exist and intersect in any political formation – as, for example, neoliberal environmental governance based on the manipulation of financial incentive structures and what he calls, ‘truth environmentality’ based on a moral recognition of human/non-human interconnectedness – it is also true that the two do not only co-exist, but that the latter is increasingly being used to mask the former. While critical geographers and anthropologists have written persuasively of the need for a ‘liberation ecology’ through which to articulate ‘different possibilities for relationships with each other and the non-human world,’ the case of Ecuador demonstrates that even such alternative forms of value enshrined at the highest levels of law are only faltering, partially, and often misleadingly implemented in ways more consonant with the ecosystem services approach (Fletcher 2012: 179).

The ‘citizen’s revolution’ of the Correa administration is undoubtedly redistributing income in a country that has long been home – like much of Latin America – to dramatic wealth differentials, and it has emerged on the international stage as a novel contributor to discussions about better ways of enacting and enforcing environmental responsibility between developed and developing nations. But at the same time, and increasingly, environmentalists in Quito tell me, ‘It has *never* been worse for us.’ Not even under any neoliberal administration, I ask? ‘Not under even the worst.’ While the power of rights to expand the moral imagination of both the Ecuadorian public and the world-at-large is undeniable, it will be crucial to watch the slippages between ‘rights’ and ‘services’ in the years to come as the struggles between commodification and de-commodification continue to escalate.

## NOTES

1. I do not mean to suggest that this move toward more fully recognizing the intrinsic agency of the natural world is the product of the last ten years alone. Deep ecologists like Arne Naess and Roderick Nash were among the first Westerners to push for such rights in the late 1980s and the others took up the call – in slightly different idioms – throughout the 1990s. In fact, the intensity of the movement was such that, by 1995, Donald Worster could open a review essay for the November/December edition of *Foreign Affairs* by proclaiming: ‘A spectre is haunting the French humanist mind these days – a radical ecology movement that threatens to replace the idealization of humanity with the idealization of nature’ (Worster 1995). That said, thinking frontally, centrally, and less hierarchically about human/non-human relations seems to me an increasing preoccupation of anthropologists over only the past few years.
2. The Constituent Assembly was made of ten roundtables or working groups, including groups for Fundamental Rights and Constitutional Guarantees (1), Organizations, Social and Citizen Participation (2), Structure and Institutions of the State (3), and Justice and the Fight against Corruption (8). It was Working Group #5 that first hammered out the specifics of this constitutional text.
3. This analogy has also long been made by American theorists of the ‘rights of nature,’ particularly Roderick Nash, who has suggested that, ‘Nature in their eyes is just the latest minority deserving a place in the sun of the American liberal tradition’ (Nash, as cited in Eckersley 2007: 177).
4. The Yasuni-ITT initiative – first presented by the administration in 2007 – has been widely heralded as an innovative effort to keep the oil underground in one of the most biodiverse regions of the world by asking the international community to compensate the Ecuadorian government \$350 million dollars a year for the next 10 years (50% of its expected earnings from extracting the oil). As part of a payment for an ecosystem services scheme, this idea to ‘leave oil in the soil’ (as the activist slogan goes) is currently garnering support, but as of mid-2012, it remains unclear whether the government will resort – as many activists predict and as has repeatedly been threatened – to Plan B: to drill. As of February 2012, many non-activists in Quito were already becoming disillusioned with the proposal because it seemed to them to do little more than provide a rationale for expensive foreign travel on the part of government Ministry personnel.
5. Variations on these debates have played out among political theorists for at least the past twenty years, as critics of the rights framework have worried about the gap between the formal existence of rights and their substantive instantiation, the rationality of extending agency to non-human beings who lack the moral, rational, and linguistic abilities recognizable as definitive of agency, the degree to which such rights can be prosecuted (what if a boulder destroys a nest of birds?), and the extent to which we might be setting up the courts for increased and excessive litigation. As Norton has pointed out, ‘As one expands the class of rights holders to larger and larger portions of nature, one necessarily increases the number of conflicts’ (Eckersley 2007: 190). For a comprehensive overview of the debate within political theory, see Eckersley 2007.
6. In 2009, the Correa administration revoked the licence of Accion Ecologica because of its well-known opposition to granting new mining licenses. After extensive international pressure, on May 11, 2009 the license was re-instated.
7. On March 5, 2011, the first successful case was brought against a provincial government on behalf of nature. In the southern province of Loja, Richard Wheeler and Eleanor Huddle presented a case on behalf of the Vilcabamba river whose rights, they claimed – drawing on Article 71 of the new constitution – were being violated by a highway project that was resulting in the dumping of sediment into the river. The provincial court of Loja decided on behalf of the river.

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