

Nonhuman Rights

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Our culture abhors the world.
— Michel Serres¹

While the crew of technicians worked through the last hours of a day-long operation to plug the drilling hole, a mass of hydrocarbons leaked into the bottom of the bore well, some thirteen thousand feet below the sea floor. Undetected by the safety sensors, the material rapidly flowed upwards inside the giant tubular structure. As it rose closer to the surface, where pressure is much lower, gases present in the mixture quickly expanded in volume, pushing drilling fluids within the riser further above. This sudden influx led to the complete deregulation of the pressure balance within the well, generating a pump-effect that sucked large quantities of high-pressure oil and gases from the reservoir deep down in the earth's crust. Emergency alarms and valves designed to shut down the pipes failed to function. At 21:47 on April 20, 2010, an uncontrolled stream of mud—a mixture of seawater, oil, gas,

and other components—burst over the deck of the Deepwater Horizon floating rig in the Gulf of Mexico. Two minutes later, the hydrocarbons inevitably ignited, causing the first of a sequence of massive explosions.²

For the next thirty-six hours, an army of ships tried in vain to halt the fire, until the platform finally collapsed and sank five thousand feet below the surface of the ocean. Then the real ecological catastrophe began. Because the marine riser failed to disconnect from the rig, the tubular structure fractured completely while Deepwater Horizon was sinking, leaving a large opening to the giant

Macondo oil field in the seabed. A series of systems were engineered to try to stop the spill, all of which either totally failed or were ineffective. Meanwhile, as large-scale contamination loomed from the deep sea and forecasts of a severe hurricane season prompted concerns of further ecological chaos in the gulf, response operations escalated to war-like proportions.³ Only six months later, after the installation of a cement cap, was the well considered permanently sealed. One year on, local testimonies and international media reports revealed that oil was still leaking under the ocean.⁴

By any comparison, the “BP oil spill” was one of the largest offshore oil disasters in history and the gravest ever registered within US jurisdictional



Fig. 1. Oil spill zone, July 2010. Source: Corbis.

Forensic Architecture

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waters. The official (and highly controversial) quantification of the amount of oil that was discharged into the gulf amounts to a volume more than six times greater than the quantity discharged into the ocean by the *Exxon Valdez* spill in 1989.⁵ Apart from the damage caused to coastal communities, scientists paint a grim ecological picture of planetary proportions. Being one of the most important migration corridors in the world, the Gulf of Mexico is the feeding ground for multiple species of fish, sea-birds, and marine mammals. The spreading of toxic fluids and gases may significantly alter the rates of mortality of sessile plants and damage coral-reef habitats, thus severely affecting the food chain and impacting the population size of certain species of fish. Furthermore, scientific analysis of real-time satellite data concluded that there is enough evidence to show that the biochemical and biophysical effects of the oil spill led to the break-up of a crucial ocean stream named the Loop Current, which could possibly trigger chain reactions that will alter the thermoregulation functions of the Gulf of Mexico and thus affect the global climate.⁶

“To invent the sailing ship or steamer is to invent the shipwreck,” wrote architect Paul Virilio with respect to the philosophical dimensions of technological catastrophes. “It follows that fighting against the damage done by Progress above all means uncovering the truth of our success in this accidental revelation.”⁷ Perhaps more relevant than all the other historical records broken by the BP oil spill was the fact that it inaugurated a previously unknown form of disaster, for which the best available means of environmental defense were completely inadequate. Up until this point, the science of governing oil spills was informed by what had been learned with the Exxon Valdez oil spill on March 24, 1989, in the Gulf of Alaska, a tank vessel disaster. The technologies of containment that were developed were thus prepared only to deal with surface-based leaks, battling waves of crude in order to protect shorelines.⁸ The ultra-deep water spill in the Gulf of Mexico, however, exposed a totally different accidental chemistry and physics. It demonstrated that as the frontiers of resource extraction are expanded towards formerly unreachable geological depths and land surfaces of the earth, the nature of catastrophes to come will be completely other than those already recorded, from the Gulf of Mexico to Fukushima—far more violent and devastating than before.

Through examining the disastrous blowout at the Macondo well and the multiple reactions that ensued, what becomes apparent is that this event challenged not only the currently available knowledge and technologies of environmental remediation, but also the means of representation that render socio-ecological catastrophes culturally and politically meaningful. The unprecedented scope of the disaster, and the extraordinary qualitative dimensions of the ecological damage it unleashed, exposed the limits of a certain regime of visibility that shape our perceptions and relations to what we have named “nature.” By looking to a crucial space of mediation through which our conceptions of the natural world are constructed (the

courts, codes, and protocols of law), probing how nature appears within legal forums and texts, and questioning the ways by which violence against forms of life other than human are legally moderated, this text contends that, ultimately, the fundamental conflict is not so much related to the question of whether the existing legal provisions can ensure proper protection to ecosystems, but rather to the very concept of nature itself that is being inscribed by law. As such, I conclude by speculating on the idea that power is concerned as much with relations of cultural hegemony as with those of “natural hegemony,” insofar as power seeks to impose a particular view of what nature stands for in such a manner that it appears as a universal condition, thus reducing the diversity of forms of entanglement between society and environment to an univocally utilitarian perspective. The hidden laws and politics that constituted this natural order have functioned and continue to function as a subtle yet powerful instrument of domination of both humans and non-humans, and, crucially, of the relations established between them.

In Defense of the Rights of the Sea

What was even more troubling in the case of the BP oil spill was that the unforeseeable socio-ecological impact it unleashed was not only a consequence of the spill itself, but in large part the result of the technology that was used to contain it and to “clean up” the sea. Besides setting a record for the quantity of discharged oil, the Macondo well blowout became a landmark event in the history of catastrophes because BP’s response strategy released an incalculable volume of dispersant agents into the ocean. Corexit—the carcinogenic chemical compound deployed as a dispersant—is manufactured under the monopoly of a US-based company named Nalco whose managerial board includes executives from powerful petroleum multinationals such as Exxon and, not surprisingly, BP.⁹ Designed to break up oil into tiny droplets and thus avoid the formation of large waves of crude, dispersants help to reduce impact on shorelines. At the same time, their toxic chemistry also has the capacity to severely damage and even kill various forms of marine life. As if we were watching another version of the chemical attacks deployed against the sea of tropical forests of Indochina during the Vietnam War, aircrafts such as the US Air Force C-130 sprayed millions of liters of Corexit over the Gulf of Mexico and millions of liters more were directly injected deep into the ocean.¹⁰

“Never before in human history,” wrote journalist Julia Whitty after visiting the disaster zone while clean-up operations were taking place, “has the vast food web of the ocean—rooted in the dark, and flowering at the surface—come under so many assaults from below, above, and within the water column: marine warfare masquerading as a cleanup.”¹¹ It is almost as if we were trapped within a vicious, deadly loop: the same means of inflicting

violence against nature deployed as instruments for its healing, the industry of production and destruction converging into a global conveyor belt lubricated by heavy crude and its petrochemical derivatives. While economists have long built upon Marx's original insights to demonstrate how capital finds in devastation its most energizing forces, nothing can be compared to the geographical scope achieved by the logic of "creative destruction" today, which now operates at the scale of Earth's climate.

"What action could we take?," activist and writer Esperanza Martínez asked herself when news about the Deepwater Horizon catastrophe started leaking through the media. "What could function as a pedagogic instrument to bring public awareness to the limits imposed by extreme disasters such as the BP oil spill?"¹² During an interview conducted in Quito in late 2011, Martínez, member of NGO Acción Ecológica and Oilwatch representative in Ecuador, explained to me why the response came in the somewhat unusual form of a lawsuit filed in the Constitutional Court of Ecuador, a country which, in principle, had little if any direct relation to the devastation that swept through the currents of the Gulf of Mexico. Signed by the main

Fig. 2. "Safe Seas": A US Air Force C-130H aircraft sprays water-based dispersant simulators over the Pacific Ocean offshore San Francisco as part of the program Safe Seas Oil Spill Response Exercise, August 9, 2006. Photograph by Capt. Brent Davis. Source: US Air Force.



indigenous organizations of Ecuador together with an international coalition of NGOs and activists, the preamble of the lawsuit set the dispute in the following terms:

We hereby submit, in *defense of the rights of the sea*—understood as an integral part of nature which the Ecuadorian Constitution of 2008 recognizes as a subject of rights and which we recognize as a giver of life of which we form part—the present lawsuit filed under the *principle of universal jurisdiction* against the transnational corporation British Petroleum PLC, headquartered in the United Kingdom, as the responsible party for the environmental disaster that struck the Gulf of Mexico on 20 April 2010.¹³

Legal advocacy is of course not a novel strategy in responding to ecological catastrophes. Most notably after the publication in 1962 of *Silent Spring*, Rachel Carson's seminal indictment of chemical pollutants, the alliance between the natural and legal sciences was firmly consolidated as lawyers and ecologists increasingly joined efforts to take action on behalf of the environment. The lawsuit filed against BP in Ecuador draws from this historical tradition, but at the same time projects it anew, appropriating the classic tools of environmental advocacy to expose its own limitations, searching for means to expand the political force of what has been called "environmental justice." More than an action with law as its instrument, the lawsuit was an intervention within the very frames of law itself, which sought to make visible how the existing legal order inevitably legitimizes the ecological violence it should help to restrain.

Although rigorously crafted to respond to juridical protocols, the lawsuit subverted the traditional grammar of legal demands by framing the dispute as a political-cultural conflict of broader implications. The plaintiffs justified the indictment through a forceful criticism of the "model of growth, overexploitation and plunder" of the global fossil-fuel industry, the "development philosophy antagonistic to nature" upon which that model is based, and the international legal system that regulates it.¹⁴ Besides the clarity with which the lawsuit exposed the hidden economic, political, and juridical mechanisms that lie behind large-scale ecological disasters such as the BP oil spill, what made this legal text a rather exceptional intervention within the larger context of environmental politics was the position that the environment occupies within it. Similarly to traditional class suits, the plaintiffs emphasized the necessity to redress the harm caused to local communities but, in a radically different manner, they situated the demand beyond the arena of human rights and socioeconomic rights, advocating not on behalf of the interests of the users of the Gulf of Mexico but "in *defense of the rights of the sea*." Nature thus appears as the primary subject whose rights had been violated rather than only the medium through which the rights of persons were impaired.

From this juridical gesture unfolded a series of pragmatic consequences that challenged the then current mechanisms of restorative justice with regard to the environment—the most significant being that, while acting as the legal guardians of the rights of nature, the plaintiffs rejected any form of economic reparation, penalty, or award. Instead, following a pioneer initiative launched in Ecuador to keep large reserves of crude in Amazonia *bajo tierra*, they demanded that BP commit to leaving underground the equivalent amount of oil that was discharged into the ocean. There is a dissident conception of environmental damage and compensation operating here which, as opposed to traditional juridical approaches, aims to respond to forms of injury and rights violations that extrapolate the geography of the (collective) human body and the temporality of social history, thus requiring a legal framework that corresponds to the scaleless spatiality of nature and the deep time of the geological.

Starting from the understanding that nature itself should be considered as a subject entitled to rights, the reinstatement of the ecology of the Gulf of Mexico is considered imperative yet not sufficient. By displacing the human-centric foundations of modern/colonial law, the lawsuit projects a legal concept of environment that cannot be bound to regional ecological dynamics or the artificial lines that demarcate national jurisdictions. Therefore leaving oil in the ground, the plaintiffs argued, could be a more just way of compensating nature for the impact that the BP oil spill had on global regulatory thermodynamic cycles. Conceived as a “pedagogic instrument,” as Esperanza Martínez described it, the lawsuit’s central message dwelled within the field of the biopolitical, situating environmental crimes as a form of violence against life itself, but only insofar as the inscription of life into the realm of politics is not limited to the philosophical tenets of humanism. Rather, biopolitics is considered to be contingent upon the multi-species agency that makes natural history, before and beyond the human, against state-led forms of territorialization.

There have been several attempts at defining provisions for including severe environmental damage alongside other forms of international crime, such as, for example, establishing “ecocide” as a crime against peace. However, there exists no international or national court that recognizes the rights of nature apart from courts in Ecuador, under the constitutional provisions established in 2008, and more recently in Bolivia, under the Law of the Rights of Mother Earth, passed in 2010. Therefore, the lawsuit against BP was filed on the basis of the principle of *universal jurisdiction*, a doctrine of international law which contends that a state can claim jurisdiction over crimes committed outside its territorial boundaries, regardless of whether those crimes were committed against its own citizens, in the context of certain types of international crime such as genocide and crimes against humanity. Because those types of crimes are considered severe attacks on the dignity and consciousness of humanity, the means of legislating them are not ascribed to domestic courts, but belong to a conceptual

“universal court” that can potentially be activated anywhere around the globe. By invoking the principle of universal jurisdiction, the lawsuit filed against BP sought to position the oil spill as a matter that concerned humanity as such, calling attention to the absence of an adequate legal forum capable of protecting the vital cycles of global ecosystems.

“We are filing this lawsuit to break with the longstanding colonial logic of positive rights, which closes the doors to us for demanding fulfilment of the rights of nature in formal spaces,” the lawsuit concluded.¹⁵ Environmental advocacy has since its early beginnings made use of strategies of exposing wrongs to the “court public,” trying to mobilize the attention of society in order to put pressure on both states and private enterprises to change their practices and conducts. By making visible certain facts and findings that had previously remained largely concealed from the public, activists seek to build up new forms of conscience, calling for more transparency in policy making and tighter scrutiny over governments and transnational corporations. The lawsuit filed against BP operated on the same plane, albeit in a totally different mode. Rather than trying to intervene in the realm of collective sensibility, it sought to question the regime of visibility that shapes the gaze of the law, exposing the partitions between those who count and those who do not count not as legal subjects, challenging the economy of distribution of rights, the limitations of existing juridical forums, and the structures of power that this regime helps to sustain.

Black Sea, Dark Earth

The framing of environmental catastrophes as events that concern universal rights and international politics is inevitably conditioned by means and channels of representation and mediatization. To a large extent, globalization and humanity—the objective and subjective conditions of universality—have been forged at the juncture between global communicational systems and what ecologist Wolfgang Sachs has called “massive accidental internationalization,”¹⁶ the entanglements between transnational flows of information and pollution which forge a sense of a shared earthly space. The ways in which ecological disasters are rendered visible and narrated therefore have a determining effect on their political and ethical impact. One of the most notable examples in this respect, perhaps paralleled only by Chernobyl, is the accident of the Exxon Valdez oil spill in 1989, a paradigmatic case at many different levels. Probably no other marine catastrophe has been so extensively reported by the international media or exerted such a great influence on collective consciousness. The images of dead fishes washing up on shores, seagulls soaked in oil, and the darkened beaches of the Prince William Sound formed an iconography of sea-life destruction of sorts, a set of recognizable signs and symbols which have since been repeatedly mobilized as political-aesthetical instruments within the field of environmental advocacy and by the media at large.

The Deepwater Horizon disaster broke with this visual language. Just as the uncontrolled blowout challenged the technologies of environmental defense that had been developed in response to the contamination in the Gulf of Alaska, the devastation in the Gulf of Mexico could not be adequately indexed using the iconographic vocabulary traditionally associated with maritime oil spills. Because the leak occurred in ultra-deep water, and most of the oil was fractured by dispersants into hidden plumes before surfacing, there was little corresponding to the visual imagery that emerged from the Exxon Valdez disaster. Rather than pictures of darkened beaches and oily birds, the canonical images of the BP oil spill were recorded by a remotely controlled underwater camera whose primordial objective was not to mobilize public empathy but rather to perform strictly technical functions, such as aiding in the assessment of the amount of oil that was leaking and shutting down the hole. Perhaps even more than Prince William Sound, the Gulf of Mexico has been extensively monitored by reporters and activists, but the available visual code could not properly convey the real extent and intensity of the damage. The definitive image of the disaster then became much more dependent on scientific evidences.

Since the Exxon Valdez disaster, when scientists developed a technology called “geochemical fingerprinting”—a means of identifying a chemical signature that, similar to human fingerprints, is unique to each type of oil and thus allows precise identification between residues to their sources—environmental forensic investigations became a common feature within oil-spill litigations. This methodology enables the reconstruction of what experts call “release histories” of the leak.¹⁷ By identifying chemical traces of oil compounds in contaminated elements, chiefly in the bodies of wildlife species, scientists can reconstruct dispersion patterns of oil flows within the ocean currents, building up a sort of model of the regional ecology. Introduced as evidentiary material within a court of law, the information extracted from this model is used to corroborate damage assessments and determine the necessary compensation measures for the reinstatement of the environment.

In the case of the BP oil spill, in order to grasp the full picture of destruction, biologists have been archiving carcasses of dead dolphins in nitrogen freezers, as their bones and tissues are considered key evidence of the crime. Being at the top of the food web, once geo-prints are identified and it is proven that the dolphins were killed by BP, the reconstruction of the chain of events that led to their death will serve to render the most accurate view possible of the real scale of the disaster. So far there have been more than one hundred similar investigations, but it is likely that the true extent of the environmental impact of the spill will in the future remain an open question, since the more scientists investigate the effects of the disaster the deeper they plunge into the unknown nature of the ocean.¹⁸



Fig. 3. Still image of the live feed “spill cam” captured on June 23, 2010. Source: Corbis.

Fig. 4. Environmental Forensics: Ultraviolet light tests used to identify residues of crude on samples of fish tissues after the Exxon Valdez oil spill. Source: Corbis.



Figs. 5, 6. Murky Evidence: Scientists extract earth samples to be examined by the court during proceedings of the trial against Chevron/Texaco in the Ecuadorian Amazon. Photos: Lou Dematteis.



A similar methodology was tested in the Ecuadorian Amazon in the early 2000s during the trial for a lawsuit that was filed by local peasants and indigenous communities against Texaco/Chevron. During almost thirty years of operating in this region, the US oil-giant corporation deliberately dumped billions of gallons of toxic waste directly into the Amazonian soils, generating massive contamination, endemic disease, and death in one of the most biodiverse regions on the planet. Famously named by activists the “Amazon Chernobyl,” this ecological catastrophe was as devastating as the BP and the Exxon Valdez oil spills. It also shared the traits of being highly mediatized and that the full scope of the destruction was nearly impossible

to represent or visualize without the aid of forensic techniques. In attempting to map the extent of the contamination and its long-term effects, earth samples were taken from hundreds of sites scattered around oil-production facilities and housing settlements, and then brought to makeshift laboratories installed in the middle of the jungle where they were precisely archived according to GPS data and geological taxonomies. Mediated by the language and tools of expert witnesses, the darkened portions of earth became central pieces of evidence within the juridical dispute.

Because of the vast geographic area that was affected and the long time-span of the process of contamination, causal links between sources of pollution and its direct effects upon human and nonhuman bodies are very difficult to trace. Science is thus called into court to interrogate the opaque testimony that was gradually recorded in soil transformations, the earth samples functioning as a model of an entire socio-ecological dynamic constructed over decades. The mud registers the historical agency of multiple forces and actors—the impact of the technology used to extract oil, the negligence of state institutions and corporations, the misfortune of migrant peasants and indigenous communities, wildlife refugees, polluted water streams, and contaminated atmospheres—out of which a complex political history can be narrated. As the microchemistry of the hydrological transport chain carries the traces of breaches of rights, the mud serves as a murky prism

in which human and natural forces are entangled into a single, relational historical force field, the environment itself appearing as the very medium of violence and, ultimately, its victim.

Insofar as nature has become a fundamental space to which cultural and political rights are bound, with increasing frequency and relevance, ecological systems inhabit the courtrooms of national and transnational forums as potential witnesses of legal violations. Shattering the limits of predefined forums, merging the laboratory and the court, ecological and legal sciences, nature participates in a scaleless political construct that connects the universal and the particular, articulating ethical engagements on behalf of humanity with the particularity of local political struggles.

Beyond Calculation

Although legal advocacy has been a central instrument in forming contemporary environmental ethos, ecology has arguably been much less influential in shaping juridical mechanisms. In the last four decades or so, a series of important international and national protocols directed at guaranteeing environmental protection has been implemented, but at a more fundamental level there has been little significant change, the ethical and philosophical foundations of modern law being rather resistant to incorporating bolder transformations that would ensure the proper protection of natural elements. The legal definition of what constitutes damage to the environment is in most cases conditioned by human-centric concepts of injury, such as damage to personal health, damage to property, or the “loss of profit” caused by the impairment of ecosystems. Therefore reinstatement of nature is often treated as secondary to human compensation. Moreover, even when restoration is directed toward the environment, the available methodologies for assessing the extent of the damage are based on cost-benefit models that reproduce similar anthropocentric rationales. Rather than protecting ecosystems per se, the current legal regime is primarily focused on the damages to the economic interests of natural or juridical persons that occur through the environment. In international maritime law, for example, liability for oil pollution other than that framed under the principles of human-based injury is limited to “costs of reasonable measure,” a provision which implies that if the scale of ecological destruction is so massive that financial costs for restitution are prohibitive or that reinstatement is technically impossible, the legal resolution is to leave the environment to recover itself without any external means of remediation. In other words, the worse the damage, the more likely it is that polluters will be absolved from environment-centered retributive and restorative penalties.¹⁹

A more progressive example is found in the domestic environmental law of the United States, particularly in the Oil

Fig. 7. Exxon Valdez crew member Robert Kagan testifies in court, 1990. Photo: Fran Durner. Source: Anchorage Daily News.



Fig. 8. Detail of a map presented in court showing the pattern of dispersion of the oil discharged by the Exxon Valdez vessel. Lines marked in bold black signal most severely affected shorelines. Source: Corbis.

to request that polluters recreate a comparable biotope elsewhere.²⁰ In practice, however, the application of these measures has been limited by political compromises, and OPA’s level of efficiency in assuring the whole restoration of natural elements seems to be rather feeble in the face of the powerful lobbying apparatus that surrounds the global oil industry. Paradoxical as it may sound, the same event that prompted the creation of OPA, the Exxon Valdez oil spill, is usually the example used to demonstrate its limitations, insofar as the settlements of this landmark case gave much more importance to human-based injury claims than to ecological reparation. The State of Alaska and the US Government, acting as the legal trustees of *ferae naturae*—i.e., “unowned property”—sought only one third of the estimated \$3 billion in environmental damages, a number already considered highly conservative; in contrast, awards directed towards the economic harm to users of the Sound were initially set at \$5 billion, roughly ten times the amount estimated.²¹

The perverse flaws of this regime have never been more clearly exposed than in the catastrophe at the Macondo well. Immediately after the disaster struck, BP reportedly rented nearly every hotel room in Louisiana, hired local scientists under confidentiality clauses, and employed virtually every worker who was suddenly made jobless by the spill. In parallel, the company allocated unprecedented sums for an aggressive advertising campaign.²² Promoting a good public image and assuring the public that affected communities are financially compensated may be costly, but in the final balance the political profit is rewarding. On the one hand, this strategy certainly helps to contain popular grievances, co-opt oppositional voices, and avoid public

confrontation. On the other hand, when everything comes down to a matter of paying the right price, fundamental questions about the economic and political structures of power that lay behind the disaster are left practically untouched, and little significant change in the logics of the system itself need ensue.

Two months after the blowout, BP set up a \$20 billion compensation fund for the victims and says it has so far spent nearly \$25 billion in clean-up efforts and restoration measures.²³ The company is en route to face a major litigation for violating US environmental laws such as the Oil Pollution Act and the Clean Water Act, which could lead to fines of up to \$17.5 billion. But regardless of the disputes over these numbers, the crucial conflict that emerged out of the Deepwater Horizon disaster is not so much related to settling the right compensation formula as precisely the opposite: to what is in excess of the economy of calculations. “Even if we were capable of meaningfully establishing a price for ecological harm,” explained law professor David Uhlmann, the former head of the environmental crimes section of the US Department of Justice, “there is so much that we do not know about the harm to the Gulf of Mexico—and will not know for years—that it may never be possible to come up with an accurate natural resource damage assessment.”²⁴

It is common sense that the fulfilment of justice in cases of ecological damage requires adequate compensation to persons that were directly or indirectly affected. Nevertheless, it is important to identify and understand the consequences of the political-ideological structures that are hidden within the legal differentiation between retributive measures to humans and nonhumans. This is not only because failing to properly recover the environment impairs the rights of future generations to access natural resources—thus violating the most basic principles of the concept of sustainability—but also because the general tendency to attribute more significance to the doctrine of “loss of profit” ends up reducing the meaning of ecological catastrophes to a matter of economic calculations. By way of expropriating the intrinsic value of forms of life other-than-human, confining all possible manifestations of nonanthropological alterity to the category of (owned or unowned) property, the current legal order functions as a mechanism that conceals the most important ethical and cultural implications of environmental crimes.

Legal Animism

By positing nature as the subject of rights, the lawsuit filed in the Constitutional Court of Ecuador was meant as a critique of the existing legal regime and its inherent anthropocentric/capitalist logic of cost-benefit calculations. Under contemporary conditions, when global natural resources tend towards scarcity, large-scale extraction activities expand, and climatic chaos ensues, the contemporary political consequences of this juridical gesture are doubtless meaningful, though the idea itself is not completely new. Perhaps the oldest

and oddest of the possible examples one might mention in this respect is the fact that in medieval courts it was not unusual to bring criminal proceedings against animals, for example accusing rats of wanton destruction of crops. Similar cases have been recorded well into the twentieth century.²⁵ Because jurisprudential procedures of this kind today sound bizarre, and to a large extent rightly so, the concept of nature as a rights-holder tends to be criticized as being at best a naive idea that belongs to a premodern form of social contract in which the ontological distinction between things and persons was not yet clearly demarcated. At worst, the notion is condemned by a persisting colonial thinking as a facet of “primitive” belief. What its enlightened critics usually do not take into account is that modern law is essentially “animist,” populated by right-holder entities whose personhood is a product of legal fiction. Corporations, for example, are defined as “fictitious persons,” and under various international statutes and national constitutional provisions have their own specific rights in a manner similar to human citizens—the ultimate fetish of capital made real by law.

“We are inclined to suppose the rightlessness of rightless ‘things’ to be a decree of Nature, not a legal convention acting in support of some status quo,” concludes law professor Christopher Stone in his groundbreaking manifesto *Should Trees Have Standing? Towards Legal Rights for Natural Objects*, arguably the first in-depth modern legal study on the possibilities of endowing natural elements with rights.²⁶ As with the lawsuit filed against BP in the Constitutional Court of Ecuador, Stone prepared this text as a form of intervention into a specific legal dispute, *Sierra Club v. Morton*, which at the time of his writing, in late 1971, was about to enter the US Supreme Court. The renowned environmental advocacy organization Sierra Club brought an injunction against Walt Disney Enterprises to try to block a development project in the Mineral King Valley, an important wilderness area in the Sierra Nevada Mountains in California. In the first round of hearings at lower federal courts, judges rejected the suit based on the opinion that, insofar as Sierra Club had no property holdings in the area and therefore would not suffer any direct injury from the project, the organization had no “standing” to bring the case to court. Although the Supreme Court upheld this decision, Justice William Douglas, referring directly to Stone’s text, presented a dissident opinion contesting the idea that it was impossible to make a legal demand on behalf of the environment per se:

The critical question of “standing” would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.²⁷

Therefore, Justice Douglas further stated, the suit would be more properly named *Mineral King v. Morton*. Animated by law, natural elements could assume a degree of personhood in a similar manner to the way other nonhuman entities such as corporations are endowed with legal personality:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life.²⁸

Justice Douglas’s dissent set a jurisprudential milestone for subsequent claims and *Should Trees Have Standing?* became an influential reference in theoretical debates on environmental law. Drawing on historical relations between law, ethics, and politics, Christopher Stone shows how the modern system of rights has been progressively enlarged throughout history, demonstrating that elements once considered alien to the arena of rightness were made rights-holders following paradigmatic ethical-political transformations. He situates the question of the rightlessness of nature in relation to the jurisprudential history of the objectification of humans, as for example in the case of the legal status of women and slaves, similarly

Fig. 9. Earth Justice: Superior Court Justice Alberto Guerra during proceedings of the trial against Chevron/Texaco in Lago Agrio, Ecuadorian Amazon. Photo: Lou Dematteis.



reduced to the category of property until very recently. Writing in the early 1970s, when the ecological agenda was at its height, Stone’s arguments that Western-modern systems of law should consider nature as something more than just a collection of things to be possessed and mastered by humans was part of a larger set of concerns and debates that occupied diverse fields of knowledge and political forums. Yet reading his text one can grasp how the possibility of attributing rights to the environment was an idea still considered unreasonable and discredited. Such conservative reactions were not only comprehensible, Stone argued, but symptomatic. Likewise in the historical disputes concerning whether slaves should or should not have rights, whenever there was a movement to amplify the system of rights beyond those already recognized, there was fierce oppositional views, for such proposals were seen as ridiculous in themselves as much as they were considered to threaten the established power structures that they helped to maintain.

Natural Hegemony

The philosophical and juridical debates that evolved from this discussion were key elements in the development of the articles that established the rights of nature in the Ecuadorian Constitution of 2008.²⁹ But even more crucial was the local historical-political context from which the law emerged. Ecuador, like the rest of Latin America, is a country whose history has been determined by the heritage of colonialism. An extremely unequal distribution of land and social relations dominated by racist ideologies conditioned every domain of the country’s political and economic structures, engendering a social order that was sustained by a double and entangled form of violence: the exhaustive exploitation of natural resources and the exclusion of native culture from political representation. The new Constitution established in 2008 was designed to break up that regime, reframing the role of the environment within the economy and opening up spaces of political participation for Ecuador’s large indigenous population.

The foundations of this new constitution can be traced back to the landmark indigenous uprising of 1990, when thousands marched from the Sierra and Amazonia to the capital Quito demanding territorial rights and proposing the reconstitution of the state as a “pluri-national” polity; i.e., formed by multiple cultures/nationalities. In parallel, ecological issues became increasingly important within Ecuadorian politics. The maintenance of a colonial-style economy, largely conditioned by the demands of the global market for natural commodities—cacao, bananas, and, since the mid ’60s, petroleum—and dependent on the subordination of Indians as a cheap labor force, generated a highly exclusionary, polarized regime. On the one side were concentrated patterns of primitive accumulation; on the other, spoliation and expropriation of indigenous lands, plunder of common resources, and endemic poverty. This context pushed territorial

and environmental issues to the center of political struggles. Furthermore, although territorially small, Ecuador is probably one of the most socio-biodiverse countries on Earth and has been the stage of one of the most devastating cases of petroleum-led environmental destruction ever recorded in history, the so-called Amazon Chernobyl mentioned above.

At the confluence between indigenous culture and modern environmentalism—the former characterized by carrying a powerful land ethics grounded on nonutilitarian relations to nature, and the latter informed by scientific visions of a living biosphere—the politics of the rights of nature were gradually forged in Ecuador. “When we approved the rights of nature in the Constitution, this process implied a reflection on what exactly nature is,” explained ecologist Esperanza Martínez:

For science it is one thing, for the indigenous people another, for law another one, and for capitalism yet another. For capitalism nature is environment: a place where one extracts resources within certain limits. The indigenous people have a distinct notion: nature is not only the ecosystem, but also spiritual beings. In the case of biological sciences, it depends from which scientific paradigm you depart: are human beings included inside nature or not? So we are not speaking about the same thing. When we decided to adopt the term *Pachamama*, it was foremost an act of acknowledging the wisdom of those who are so closely tied to the earth. It was also a critical act in relation to the classical notions of environment and nature.³⁰

Considering the “pluri-national” constituency of Ecuador, and therefore the diverse cosmologies nurtured by the different indigenous cultures and nationalities, it was necessary to take into account multiple forms of conceiving of and relating to nature—that is, to acknowledge by law the existence of, quite literally, different natural worlds. “It was an act of openness, of opening to diversity,” recounted Martínez, which required the introduction of a concept broad enough to allow for a certain mediation between the conflictive conceptions of nature that coexist within the geographical borders of the Ecuadorian state. *Pachamama*—usually interpreted as *Madre Tierra*, “Mother Earth,” a mythical deity entity that is omnipresent in Andean indigenous cultures—was the chosen concept to guarantee that Amerindian cosmologies were politically represented within constitutional law. “If modernity has adopted a single paradigm, one single rationality, one sole model of nature,” Martínez concluded, “what we are saying is that there is not only one but many, as many as there are cultures.”³¹

By radicalizing the “animist” condition of modern law, extending the notion of universal rights towards nature, the Ecuadorian Constitution could be interpreted as a pragmatic attempt to critically respond to the limits and flaws of what philosopher Bruno Latour has called “the modern constitution”—i.e., the foundational law of modernity, which is instituted by the

sectioning of reality in two great and separated poles, namely the world of objects and the world of subjects, nature and culture.³² While defining a common ground between humans and nonhumans, the rights of nature disrupts this border regime, projecting a form of social contract that seeks to break with the hierarchies and systems of domination between humans and nature upon which Western politics and culture are based.

There are of course many unsolved questions that emerge together with the idea that nature should be granted rights that had previously only been attributed to humans. The most important of these, perhaps, concerns the way that, while it attempts to break with the divisions established by “modern constitutionalism,” the law seems simultaneously to be reinforcing them. By granting exclusive rights to nonhuman natural elements it risks drawing even stronger borders between one domain and the other, thus contributing to the reaffirmation of the validity of nature as an epistemic category when the reality on the ground constantly points to its obsolescence. And this at a moment when, given the historically unprecedented anthropogenic impact over the whole planet, nature, once and for all, is definitely “over.” But it is also true that nature has been declared over many times before. And yet we have never felt its presence so strongly, bursting over shores, flooding cities, disrupting agricultural cycles, and triggering large-scale human catastrophes.

The concept of the rights of nature is above all a tactical tool, a political instrument, as perhaps all laws are, either in the hands of those who oppress or of those who resist oppression and domination. On which side does it stand in the current order of things? The Ecuadorian Constitution must be interpreted as part of a larger historical process of reformulating the state apparatus which, together with the new Bolivian Constitution of 2009, represents what Brazilian jurist Carlos Marés de Souza has called “the second moment” of Latin America’s “new constitutionalism.”³³ The first moment emerged in the context of the constitutional reforms of the late 1980s/early '90s amid the paradoxical conjuncture between the process of transition toward democracy after the long period of military dictatorships that ruled most of the continent during the Cold War, and the subsequent consolidation of the neoliberal order. During this period there were significant advancements in relation to the rights of the so-called minority groups, chiefly indigenous and Afro-descendent peoples. This led to the introduction of a set of legal measures aimed at including linguistic, ethnic, and cultural diversity as part of the reformulation of the national polity, a movement that followed a broader cultural turn in the definition of civil rights. In many different ways, the “exclusive rights” that were implemented by these constitutional reforms came as a form of reparation; that is to say, they functioned as a legal instrument designed to guarantee the transformation of a social order that had been built upon structural cultural violence.

This politicization of culture was fundamental to breaking with the homogenizing authoritarianism inherited from the former regimes and for responding to the demands of marginalized groups to whom access to legal

and political representation has been historically denied. Nevertheless, as multiculturalism gradually became a useful engine within the managerial logics upon which neoliberal forms of power were formulated and deployed in the following decades, the agenda of political transformations that was put forward at this crucial moment, which implied a radical and broad reconfiguration of the whole state apparatus, came to be absorbed into the localized and specific demands of particular communities: merely culture, no longer politics.

Whereas cultural homogenization is certainly intrinsic to modernity's foundational law, alterity is fundamental to modernity, even if only in the form of a domesticated or repressed imaginary or as a subjected position that functions to legitimize hierarchies of power. Rather than cultural difference, what escapes the framework of modern constitutionalism is a "different nature"—that is to say, dissident political-ecologies that implicitly challenge the objectified idea of nature upon which the multi-cultural universalism of modernity was constructed. As anthropologist Eduardo Viveiros de Castro has insisted on different occasions, modernity is fundamentally "mono-natural."³⁴ This is neither an innocent nor a merely symbolic construction. Thus when considering the global hegemony of modernity's constitutional laws, we must take into account the history, the methods, and the means by which mono-naturalism was enforced on the ground and the latent violence that was implicit in that process. Not in the sense, or not only in the sense, of forms of epistemic violence that attempt to subjugate or eradicate alterity in forms of knowledge and practice, but in terms of the proper material, geophysical dimension of that violent process through which nature was confined to the position of an object of human mastery and possession. Alongside cultural domination, the enforcement of a natural order has been one of the most powerful instruments of power and domination in modern/colonial history. Subjective and objective violence—violence against cultures and violence against nature, ethnocides and ecocides—have often come hand in hand. The "new constitutionalism" of the '90s created legal codes that should limit and restrain the former; the recent new constitutionalism represented by the Ecuadorian Constitution addresses the latter.

The colonial and postcolonial histories of the process through which modernity's "constitutional law" became globally hegemonic have been criticized primarily because of their intrinsic cultural violence; i.e., because the diffusion of modernization has been largely guided by the destructive intent of modeling and homogenizing other cultural formations according to occidental paradigms of civilization. The emerging practices around the concept of nonhuman rights might allow us to frame that process from a different and complementary perspective, one according to which it is not only the question of cultural hegemony, but also that of the imposition of a "natural hegemony," that is politically crucial. While the modern constitution has been increasingly tolerant in relation to the cultural pole, it has remained firmly grounded in the perpetuation of mono-naturalism. Perhaps the most relevant question therefore is not so much how culturally tolerant the enlightened,

Western-based category of universal humanity can be, but precisely the opposite: how modernity, together with its laws and politics, might accommodate "different natures" besides and beyond the monolithic version upon which it was constituted. This is arguably the crucial political and ethical imperative whose time has come.

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August 15, 2013. Working in my office in the old colonial center of Quito, rereading this text and making final adjustments, it feels necessary to add some extra closing remarks. Though short, and somewhat misplaced, these final notes are so relevant to the current political situation here (and elsewhere in the world, I believe) that, if not left to the bottom margins, the entire text would probably have to be changed completely. I recall Eduardo Galeano's famous axiom, "in the outskirts of the world the system reveals its true face,"³⁵ hoping that this marginal conclusion can shed new light on what was written above.

From 2008 to 2013, the situation in Ecuador has significantly changed. The revolutionary hopes that were attached to the new Constitution—the product of what has been named the "citizenship revolution" or "twenty-first-century socialism"—have dissipated under the resurgence of an aggressive and authoritarian neo-extractivist politics. Fueled by the demands of the Chinese market, much of the Ecuadorian Amazon is being opened up for large-scale oil-drilling and mining operations. In parallel, peasant and indigenous leaders and environmental activists who are fighting under banners such as "rights to water" are being constantly harassed by an increasing policing apparatus. Despite the hopes raised by the constitution of a radically new "civilizational pact," old schemes of power are being reinforced: human rights violations and violence against nature operating entangled within a single political engine. Perhaps nothing is more expressive of this process than the executive legal decree that was launched today by the government to halt the Yasuni-ITT project, the utopian initiative of leaving large reserves of oil underneath the Amazonian soil. The current conflicts that ensued reveal much about the coming into being of a new logic of geo-power—one which will attempt to enclose large tracts of the seabed, plunder the earth's deep crust, appropriate lands that are surging below melting glaciers, and colonize the last realms of tropical forests. It is, however, within this context that the law of the rights of nature has proved to be a powerful instrument of political action, within and outside formal courts of law, all the way down to the streets of Quito.

1 Michel Serres, *The Natural Contract*, trans. Elizabeth MacArthur and William Paulson (Ann Arbor: University of Michigan Press, 1995), 3.
2 Information drawn from the forensic engineering and risk analysis report published in March 2011 by an independent research unit based at the University of California. See Deepwater Horizon Study Group (DHSG), *Final Report*

on the Investigation of the Macondo Well Blowout (Berkeley, CA: University of California, 2011), available at http://ccrm.berkeley.edu/pdfs_papers/bea_pdfs/dhsgfinalreport-march2011-tag.pdf.
3 By early June, clean-up operations involved approximately forty-seven thousand people and seven thousand vessels. See Jonathan L. Ramseur and Curry Hagerty, Cong.