



THE SUBALTERNIZATION OF A PROGRESSIVE LEGAL PROJECT: THE RIGHTS OF NATURE IN ECUADOR

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ABSTRACT: *In this note, the author uses the categories of subalternity and hegemony, proposed by Antonio Gramsci, in order to analyze the political process that emerged with the proclamation of the Rights of Nature in the Constitution of Montecristi, the new Constitution of Ecuador that came into existence in 2008. Out of the understanding that every legislative process arises from a political project within a historical bloc with specific interactions between forces, the Alianza País political project has searched for new ways of approaching the human-nature relationship through the “Revolución Ciudadana” in order to avoid the exploitation and commercialization of nature. Nonetheless, the Rights of Nature initiative has received much criticism from many fields: 1) the false distinction between nature and humanity; 2) the change from an obligation to take care of nature to rights of nature as a neoliberal danger; 3) the supposed liberation of nature within liberal market thinking. For that matter, the Rights of Nature can be understood as a political project that has been subalternized by the hegemonic political project within ecological thinking that goes hand-in-hand with neoliberal politics, the so-called Green Economy. This hegemonic project in the ecological field is working towards the continuance of the exploitation and commercialization of nature and has become more powerful than the Rights of Nature initiative by using it to give entrance to green neoliberal projects in Ecuador.*

KEY WORDS: *Subalternity; hegemony; Rights of Nature; Green Economy; Ecuador*

RESUMEN: *En este artículo se utilizan las categorías de subalternidad y hegemonía propuestas por Antonio Gramsci, para dar cuenta del proceso político que surgió a partir de la promulgación de los Derechos de la Naturaleza en la Constitución de Montecristi, la nueva Constitución ecuatoriana que nació en 2008. Se entiende que todo proceso legislativo concierne a un proyecto político*

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dentro de un bloque histórico con relaciones de fuerzas específicas, en ese sentido, el proyecto político de Alianza País a partir de la Revolución Ciudadana buscó nuevas formas de aproximarse a la relación humano-naturaleza para evitar su explotación y mercantilización. No obstante, las críticas a los Derechos de la Naturaleza pueden encontrarse en varios ámbitos: 1) la falsa distinción humano-naturaleza; 2) el paso de la obligación del cuidado de la naturaleza a sus derechos como un peligro neoliberal; 3) la supuesta liberación de la naturaleza dentro de un pensamiento liberal de mercado. En este sentido es que los Derechos de la Naturaleza pueden ser entendidos como un proyecto político que se ha subalternizado frente al proyecto político hegemónico dentro del ambientalismo contemporáneo, la llamada Economía Verde, que funciona dentro de los preceptos neoliberales, los cuales buscan dar continuidad a la mercantilización y la explotación de la naturaleza y que sobrepasa la idea de los Derechos de la Naturaleza haciendo uso de ésta para dar entrada a proyectos ambientales neoliberales dentro de Ecuador.

PALABRAS CLAVE: *Subalternidad; hegemonía; Derechos de la Naturaleza; Economía Verde; Ecuador.*

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In this note, I use Antonio Gramsci’s conception of “subalternity” to analyze the process by which the progressive political project headed by Alianza País in Ecuador, in particular the topic of the Rights of Nature contained in the Montecristi Constitution established in 2008, has been brought into the agenda of the current neoliberal hegemonic project.

I. ANALYTICAL CATEGORIES: HEGEMONY AND SUBALTERNITY

Gramsci’s theoretical framework is essential for the analysis of the interaction of forces, as well as for the study of a political project in a specific historical

bloc. Considering the fact that legislative processes are part of specific political projects, their analysis within a Latin-American context is fundamental because the first two decades of the 21st century have seen the emergence of many new progressive projects, such as the cases of Ecuador, Bolivia and Uruguay, among others.

In this note, we will specifically use the concept of subalternity, understood as both a process and a result of the interaction of specific forces in the context of a dependent country as in the case of Ecuador. To talk about subalternity, it is necessary to delve into the concept of hegemony, which refers to the ability one class has to build and reproduce a certain historical bloc, meaning a social, moral, political and economic construction which allows that class to direct or lead the whole society. A particular historical bloc sets or specifies a certain interaction of forces by which the leading class becomes hegemonic based on moral, ethical, political, ideological, and economical arguments.

Hegemony derives from the permanent construction of a force “capable of unifying the society, representing it with a coherent and rational design”¹ and when that representation “makes a distinction between dominant and dominated, it legitimizes the subordination of relationships.”² This subordination can be analyzed under the category of ‘subaltern groups’, which, according to Gramsci, are “at the edge of history.”³ Their history is “fragmented and episodic,”⁴ even though it tends toward unification:

...this tendency is continuously broken by the initiative of dominant groups, and therefore it can only be demonstrated when the historical cycle is accomplished, if it concludes with a triumph. The subaltern groups always suffer the initiative of the dominant groups, even when they rebel and revolt: only the permanent victory can break, and not immediately, the subordination.⁵

According to Massimo Modonesi, this concept acquired deeper theoretical meaning only with Gramsci’s thought, even though it had been previously used by Marxist authors like Engels, Lenin and Trotsky. This notion “allows avoiding the economic and ideological connotations of the exploited class, and also to broaden the notion of working class, including other forms of popular modalities.”⁶ The notion of subalternity allows one to “find a con-

¹ FABIO FROSINI, *LA RELIGIONE DELL’UOMO MODERNO. POLITICA E VERITÀ NEI QUADERNI DEL CARCERE DI ANTONIO GRAMSCI* 24 (Carocci Ed., 2010).

² *Id.* at 24.

³ ANTONIO GRAMSCI, *Tomo 6, Cuaderno 25*, in *CUADERNOS DE LA CÁRCEL* 173 (Valentino Geratana, Instituto Gramsci, Era ed., 1975).

⁴ *Id.* at 178.

⁵ *Id.*

⁶ MASSIMO MODONESI, *SUBALTERNIDAD, ANTAGONISMO, AUTONOMÍA, MARXISMO Y SUBJETIVACIÓN POLÍTICA* 25 (CLACSO, Prometeo Libros, 2010).

ceptual correlate to alienation in the superstructural field”⁷ originated in this subordination. Nonetheless according to Gramsci, the subaltern groups are capable of having autonomous initiatives,⁸ which indicates a dialectic relationship “between the subordination and the resistance, avoiding the rigidity of dualist schemes”⁹ found in certain types of Marxism. It is important to note the negative aspect Gramsci gives to the notion of subalternity that operates within processes regarding the relation of forces between specific classes and groups. There are processes of subalternization, and even of re-subalternization, when there is a “downturn of the antagonistic activation and the autonomic practices, as a return to the subordinate condition.”¹⁰ Subalternity can be understood as demobilizing moments of groups and classes that lack autonomy, and the inability to sustain a revolutionary project even though the groups are indeed “capable of outlining a movement that threatens or that appears to put into discussion the hierarchical order.”¹¹ In other words, subalternity, as understood by Gramsci, means a condition of subordination of certain groups to the hegemonic class; a relationship of command-obedience inside the class struggle. Nonetheless, we should point out that subaltern groups can overcome this condition when they generate an autonomous thinking that leads to action, which could be characterized as the antagonistic principle towards political action.¹²

As mentioned above, the subalternity of certain classes and groups is the result of the relation of forces that denote moments and degrees of organization in the society and inside a specific historical bloc. The analysis of the relation of forces only acquires meaning “to justify a practical activity, an initiative of will,”¹³ and in this respect, “the decisive element of a whole situation is the permanently organized and predisposed force that can move forward over time when it judges the situation as favorable.”¹⁴ Therefore, it is important to generate alternative political projects in search of a hegemony that seeks to overcome subalternity.

Based on this theoretical framework, it should be of great interest to analyze the process of subalternization under which the progressive legal project of the Rights of Nature fell into. To do this, it is important to first review the history and context in which the Constitution was written.

⁷ *Id.* at 26.

⁸ ANTONIO GRAMSCI *supra* note 4 at 179.

⁹ MASSIMO MODONESI, *supra* note 7 at 38.

¹⁰ MASSIMO MODONESI, EL PRINCIPIO ANTAGONISTA, MARXISMO Y ACCIÓN POLÍTICA 13 (UNAM/Itaca, 2016).

¹¹ *Id.* at 115.

¹² *Id.* at 115.

¹³ ANTONIO GRAMSCI, *supra* note 4 at 40.

¹⁴ *Id.* at 40.

II. THE “REVOLUCIÓN CIUDADANA” IN ECUADOR AND ITS NEW CONSTITUTION

In 2005, the so-called “Revolución Ciudadana”, or citizen revolution arises, headed by many social movements and organizations like the Confederation of Indigenous Nations of Ecuador (CONAIE) and the Alianza Patria Altiva I Soberana (PAIS) movement. The social movement allowed the removal of the president at that time, Lucio Gutiérrez, who had until then given continuity to many neoliberal politics in the country. Lucio Gutiérrez was preceded by several that pursued the same neoliberal policies, like León Febrés Cordero, Abdalá Bucaram, Jamil Mahuad and Gustavo Noboa. Two of these presidents were likewise ousted by social movements that did not agree with their economic policies because these programs led to increased poverty and multiple social problems. In 2005, protests against Gutiérrez took place in many new, creative and peaceful ways;¹⁵ protesters rejected the president and demanded that the public sphere be reclaimed and the institutions transformed.¹⁶ In 2006, Rafael Correa became the democratically elected president. He represented the Alianza PAIS movement and, apparently, the majority of the mobilized sectors with their many demands.

When Alianza PAIS took power in 2007, one of the first actions was to elect a Constitutional Assembly to enact a new Constitution. This action can be understood as a means to restructure the State that, prior to 2005, seemed like a failed state.¹⁷ It would be a way to re-build the bond between the people and the government by introducing the new concept of a Plurinational State (*Estado plurinacional*) in the new Constitution of Montecristi.

Ecuador has a large indigenous population in comparison with other Latin American countries.¹⁸ The plurinationality project aims at recognizing the cultural, political and civil diversity in the country, and seeks to overcome the poverty of and discrimination against the indigenous population.¹⁹ In the same way, the new Constitution gave birth to the Rights of Nature that can be found throughout the entire document, the same as the idea of *Sumak Kawsay* (*Buen*

¹⁵ NATALIA CATALINA LEÓN GALARZA, ECUADOR: LA CARA OCULTA DE LA CRISIS: IDEOLOGÍA, IDENTIDADES POLÍTICAS Y PROTESTA EN EL FIN DE SIGLO 260 (CLACSO, 2009).

¹⁶ *Id.*

¹⁷ An important fact is that, regardless of society’s overwhelming acceptance of Alianza PAIS, many interrelated forces played along so that in 2010 the Ecuadorian Air Force and the National Police carried out a coup d’état. The attempt failed and Rafael Correa remained as President, with his mandate ending in 2017.

¹⁸ Considering that there are about 14 different indigenous cultures in Ecuador, it should be noted that Bolivia, with 32 indigenous nations and cultures, also has even more indigenous groups than Ecuador.

¹⁹ MARÍA ISABEL GONZÁLEZ TERREROS, MOVIMIENTO INDÍGENA Y EDUCACIÓN INTERCULTURAL EN ECUADOR 54 (CLACSO, UNAM, 2011).

Vivir or Good Living).²⁰ The Alianza PAIS government marked its entrance to power with a speech against imperialism and neoliberalism, in favor of redistributive politics based on social investment.²¹

Nonetheless, in the first years of Rafael Correa's government, in 2008, the political process of Ecuador experienced the effects of international crises, in which the government had to respond with determination and strength. First there was the illegal entrance of the Colombian army commanded by then president Alvaro Uribe in hopes of searching out and destroying FARC troops. This was followed by the threat of inflation and increased food prices, which originated as a government response towards an economic development policy under an agrarian mandate that profited industrialists, businessmen and the biggest national farmers, without benefiting poor peasants or promoting sustainability.

Pablo Ospina argues that by then, Ecuador was moving away from the "long neoliberal night,"²² and was advancing "progressively [advancing] toward a new version of development"²³ reflected in the new Constitution of Montecristi. It is important to note that this new Constitution was preceded by 19 previous Constitutions, written in the midst of great political instability. According to Ávila Santamaría, the 2008 Constitution is the first egalitarian one, after going through many liberal ones, as well as neoliberal neoconstitucionality.²⁴ In this sense, Alberto Acosta, the chairman of the Constitutional Assembly, stressed that the new government received a poor country and was cursed by the abundance of its natural resources.²⁵ By 2007-2008, the government's plan revived many claims of movements and left parties. One of the most important claims was the respect of nature. According to Acosta, it had been laid out a long time ago by the indigenous world under their concept of

²⁰ The concept of *Sumak Kawsay* refers to a good way of living in society. According to Edgar Isch, this idea proposes measurements of equilibrium and complementarity between human beings such as the "minga" (a form of community cultivation), the "cambia-mano" (a form of fair trade) and integration with Pacha Mama, "Mother Nature". This concept refers to a good way of living for all and not just for a small number of people. It can be found in indigenous philosophy and culture because they are more attuned to their territory and natural space than the people who live in Western civilization. See EDGAR ISCH, *EL BUEN VIVIR O SUMAK KAWSAY*, VOLTAIRENET.ORG, (July 24, 2008) available at <http://www.voltairenet.org/article157761.html>

²¹ ALFREDO SERRANO MANCILLA, ¡A (RE) DISTRIBUIR! ECUADOR PARA TODOS (CLACSO, Senplades, 2012).

²² PABLO OSPINA PERALTA, *Ecuador al ritmo de la iniciativa política del gobierno de la Revolución Ciudadana*, in ENTRE EL QUEBRE Y LA REALIDAD, CONSTITUCIÓN 2008 126 (Abya Yala Ed. 2008).

²³ *Id.* at 126.

²⁴ RAMIRO ÁVILA SANTAMARÍA, *El derecho de la Naturaleza: fundamentos*, in ALBERTO ACOSTA *et al.* LA NATURALEZA CON DERECHOS, DE LA FILOSOFÍA A LA POLÍTICA 83 (Abya Yala, Universidad Politécnica Salesiana ed. 2011).

²⁵ ALBERTO ACOSTA, *Los grandes cambios requieren de esfuerzos audaces, a manera de prólogo*, in ALBERTO ACOSTA, *et al.* DERECHOS DE LA NATURALEZA, EL FUTURO ES AHORA 16 (abya yala ed. 2009).

Sumak Kawsay: “life of human beings in harmony in the community, with the community, and between communities, between individuals and communities, between individuals and Nature, and in Nature.”²⁶

According to Ávila Santamaría, the new Constitution contained many contradictions and its work methodology was not the most appropriate because it was divided into thematic working groups that were completely separate from each other and from the final structure of the document. Moreover, many legal regulations were issued against constitutional rules, and the Assembly approved most of the document on the last month of planned for work in order to meet the established deadline.²⁷

Additionally, Alberto Acosta and his working group, the main promoters of the Sumak Kawsay, the Rights of Nature, and the Plurinational State, quit the Assembly unexpectedly on June 23, 2008, a month before the final delivery of the new Constitution. With 77 votes of the 120 assemblymen in favor, the irrevocable resignation was approved and the vice-president of the board, Fernando Cordero, took over Acosta’s pos. At first, Acosta explained that he did not agree with the government position of requiring final delivery by July 26th of that year because it would “imply sacrificing the quality and amplitude of the political debate.”²⁸ However, historian Pablo Ospina stated that the political bureau of Acuerdo País asked for Acosta’s resignation in order to accelerate the discussions.²⁹ After his resignation, there were many complaints from assemblymen reporting several misapplications in the legal procedures so as to obscure actions on and modifications to many articles in the final version of the document. According to Ospina, this was “a poor ending that left an unnecessary blemish on the legitimacy of an important process of political debate.”³⁰ The root of the problem was, then, a matter of political differences between Correa and Acosta that showed opposite stances on the economic, political, cultural and even ideological issues.

After Acosta’s resignation, the split between Correa’s government and several social groups that had previously supported him began to attract attention. On July 26th, Correa gave a public speech accusing many assemblymen of being infiltrated agents, and said that the main dangers were not coming from the opposition, but from the contradictions in the Assembly where certain people were endorsing childish leftist, ecological and indigenous positions.³¹ In a chronicle dated July 13, 2008, Kintto Lucas, Congressman Paco Veloasco’s advisor, reports that the approved documents suffered unexplainable modifications made by the commissions that followed the instructions

²⁶ Interview with Alberto Acosta, professor at FLACSO, Quito-Ecuador (Nov. 6, 2015).

²⁷ RAMIRO ÁVILA SANTAMARÍA, *supra* note 25 at 103.

²⁸ PABLO OSPINA PERALTA, *supra* note 23 at 131.

²⁹ *Id.* at 131.

³⁰ *Id.* at 131.

³¹ *Id.* at 133.

of the President's Legal Advisor, right wing Alexis Mera, who had previously been an advisor of ex-president León Febres Cordero, who was also from the right and neoliberal wing.³²

Despite all the discrepancies and controversies born out of the discussions and the drafting of the new Constitution, it was passed on September 28, 2008, after a referendum with 64% of the votes in favor.

III. THE RIGHTS OF NATURE

Esperanza Martínez was one of the Constitutional Assembly advisors in 2007 for the members that promoted the Rights of Nature. She recounts that there were several debates on the subject with the participation of many different groups, such as non-governmental organizations like Community Environmental Legal Defense Fund (CELDF) and Pachamama Alliance, as well as many well-known international personalities like Ciro Angarita and Eduardo Galeano,³³ wildlife organizations, and even representatives of previous governmental programs like the Environmental Strategy for the Sustainable Development in Ecuador approved by the Ministry of the Environment of Ecuador (MAE for its Spanish initials).³⁴

The main argument of the intellectuals promoting the Rights of Nature in the 2008 Constitution of Ecuador mainly resides in the Andean philosophy and world view that breaks with the Western paradigm. The Andean logic is based on four principles: "relationality, correspondence, complementarity and reciprocity,"³⁵ which led to many discussions inside the Assembly when drafting the Rights of Nature.

However, we can also track the inception of these rights in several international agreements. Silvia Jaquenod de Zsögön argues that the birth of the Rights of Nature can be seen since the beginning of Human Rights. In 1972, the Stockholm Conference recognized the fact that that a human being "has the duty to protect and improve the environment in which he develops his activities, it is a right of the person because it reflects the right of life and of

³² KINTO LUCAS, *Crónicas desde Ciudad Alfaro* in ENTRE EL QUIEBRE Y LA REALIDAD, CONSTITUCIÓN 2008 (Abya Yala ed. 2008).

³³ Ciro Angarita is a Colombian judge who promoted the idea of the Rights of Nature within the legal sphere over a decade ago. Eduardo Galeano, famous novelist and journalist, wrote in favor of the Rights of Nature. "It sounds strange, doesn't it? Nature having rights... Such a crazy thought, as if nature were a person! Instead it sounds quite normal for the largest corporations in the US to enjoy human rights" in EDUARDO GALEANO, *La naturaleza no es muda*, in ALBERTO ACOSTA *et al.* *Supra* note 26 at 27.

³⁴ Interview with Esperanza Martínez, active member of Acción Ecológica in Ecuador (Oct. 1, 2015).

³⁵ RAMIRO ÁVILA SANTAMARÍA, *supra* note 25 at 209.

physical integrity.”³⁶ Moreover, the Universal Declaration of Human Rights signed in Paris in 1948; the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly on December 16, 1996; the Pact of San Jose of 1969; the Convention on the Rights of the Child of 1990, and Principle 19 of the Stockholm Convention on Persistent Organic Pollutants that refers to education in environmental matters; the first part of the Resolution adopted by the UN for the United Nations Decade of Education for Sustainable Development (2005-2014); the Indigenous and Tribal Peoples Convention (1989-1991); the Convention on Biological Diversity of 1992; and the Millennium Development Goals of 2000, among many others. All of these treaties have successively been recognized as first, second and third generation rights,³⁷ clearly showing that the environment and nature has been progressively gaining more importance.³⁸

At the same time, Ecuador has made inroads in this idea by signing international treaties concerning environmental matters, as in the case of the Convention on Biological Diversity (CBD)³⁹ that became effective on December 29, 1993, during the Earth Summit held at Rio de Janeiro.⁴⁰

Based on all these precedents, it was possible to include an environmental viewpoint in the 2008 Ecuadorian Constitution. Many articles refer to environmental matters, including the sections on the Rights of Nature and the environmental rights of citizens, both of which were drafted under the *Buen Vivir* perspective,⁴¹ in a progressive style and pointing toward a battle for alternative hegemony.

Specifically, the Rights of Nature had been much disputed in Assembly discussions;⁴² nonetheless, an entire section on the topic was included in the Constitution: Chapter Seven containing Articles 71, 72, 73 and 74. These articles are based on the idea of not commercializing nature, of protecting and restoring it, of stopping its exploitation and of preventing private entities from appropriating its wealth.

³⁶ SILVIA JAQUENOD DE ZSÖGÖN, *Derechos humanos y recursos naturales*, in CARLOS ESPINOSA GALLEGOS-ANDA *et. al.* LOS DERECHOS DE LA NATURALEZA Y LA NATURALEZA DE SUS DERECHOS 139 (Ministerio de Justicia, Derechos Humanos y Cultos, Subsecretaría de desarrollo normativo, 2011).

³⁷ For a more detailed explanation on the three generations of rights, see MAGDALENA AGUILAR CUEVAS, LAS TRES GENERACIONES DE LOS DERECHOS HUMANOS *available at* www.juridicas.unam.mx/publica/librev/rev/derhum/cont/30/pr/pr20.pdf

³⁸ SILVIA JAQUENOD DE ZSÖGÖN, *supra* note 37 at 148.

³⁹ UNITED NATIONS *available at* <http://www.un.org/es/events/biodiversityday/convention.shtml>. (March 15, 2017, 23:07)

⁴⁰ *Id.*

⁴¹ EDUARDO GUDYNAS, EL MANDATO ECOLÓGICO: DERECHOS DE LA NATURALEZA Y POLÍTICAS AMBIENTALES EN LA NUEVA CONSTITUCIÓN (Abya Yala ed. 2009).

⁴² RAMIRO ÁVILA SANTAMARÍA *supra* note 25.

TABLE 1. THE RIGHTS OF NATURE⁴³

Art. 71	<p>Nature, or <i>PachaMama</i>, 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.</p> <p>Every person, people, community or nationality, will be able to demand the recognitions of rights for nature before the public organisms. The application and interpretation of these rights will follow the related principles established in the Constitution.</p> <p>The State will motivate natural and juridical persons as well as collectives to protect nature; it will promote respect towards all the elements that form an ecosystem.</p>
Art. 72	<p>Nature has the right to 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.</p> <p>In the cases of severe or permanent environmental impact, including the ones caused by the exploitation on non renewable natural resources, the State will establish the most efficient mechanisms for the restoration, and will adopt the adequate measures to eliminate or mitigate the harmful environmental consequences.</p>
Art. 73	<p>The State will apply precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.</p> <p>The introduction of organisms and organic and inorganic material that can alter in a definitive way the national genetic patrimony is prohibited.</p>
Art. 74	<p>The Persons, people, communities and nationalities will have the right to benefit from the environment and form natural wealth that will allow wellbeing. The Environmental services are cannot be appropriated; its production, provision, use and exploitation, will be regulated by the State.</p>

In the previous table, we can see that the Rights of Nature point at new perceptions of the environment and its relationship with human beings. However, in spite of its originality and the fighting spirit of its defenders, the legal project has been distorted in practice.

It is interesting to point out the cases in which this legislation has been used. According to Memorandum CJ-DNTICS-2015-1483 of the Information Technology and Communications department, complaints of possible violations to the Rights of Nature, or actions to protect these rights were requested by the author at the National Judiciary Board of Ecuador. As of 2015, there have only been five: three in the Manabí province reporting a crime against nature and two in the Bolívar province on “grazing beasts of

⁴³ ASAMBLEA CONSTITUYENTE, CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR (2008). (August 28, 2017, 16:26) available at <https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf>

any species at any time of the year in natural fields or artificial plantations, or in fruit tree plantations owned by others.”⁴⁴ The above quote shows that the alleged crime revolves around the private property (animal or territory) of some people and not around the rights that nature might have. The fact that there are so few references about the use of the Rights of Nature in the current legal sphere can indicate the law’s poor reception by civil society, or more likely that the government does not take up emblematic cases like Yasuni ITT to avoid legal and political controversies.⁴⁵

Nevertheless, according to the Global Alliance for the Rights of Nature, the Ecuadorian Coordinating Office of Organizations for the Defense of Nature and the Environment (CEDENMA by its Spanish initials) and the *Pachamama* Foundation won their first case in favor of the Rights of Nature, mostly in reference to Article 71, in 2011. The case was filed and sustained by two residents in the Loja province, Richard Frederick Wheeler and Eleanor Geer Huddle, whose lands were affected by a flood caused by construction work for a highway expansion near the Vilcabamba River. The Loja province government had to present environmental permits for the construction of the highway to the MAE, and the Peoples Defense Department was charged with overseeing the case.⁴⁶ Judgement on this case was presented on March 30, 2011, as Protection Action No. 11121-2011-00010, by the Criminal Court of the Loja Province Court. In this case we can see that, in spite of the application of Article 71 in favor of the Rights of Nature, the complaint was filed by two private entities whose private lands were affected by the construction. At the same time, Article 74 has been used extensively by the MAE to establish the Socio Bosque program (PSB). This program seeks to preserve green areas

⁴⁴ Lawsuit report, protective actions for the Rights of Nature in Ecuador. Report in response, *MEMORANDUM Cj-SG-PCj-2015-1712*. CONSEJO DE LA JUDICATURA DE ECUADOR (Dec. 22, 2015).

⁴⁵ The Yasuní-ITT initiative was filed in 2007 as a proposal by the Ecuadorian government, born out of the struggle and resistance of indigenous peoples and other inhabitants against Texaco activities. The proposal consisted of leaving the underground oil in Yasuní, which is the Amazon Basin’s most bio-diverse tropical forest in the fields of Ispingo, Tambococha and Tiputini (ITT), located in the Ecuadorian Amazon. Not extracting 846 million oil barrels would prevent the emission of 407 million tons of CO₂, and would be an action towards the respect of the Rights of Nature. Nonetheless, in 2013, Correa announced the end of the project in order to start with the extraction of oil. Under the Yasuni ITT initiative, many legal contradictions were debated, such as the case of Article 407 that can open the door to the exploitation of resources in protected areas. This article contradicts the Rights of Nature. Organizations like Yasunidos appealed to hold a popular vote on the case, to stop extraction in Yasuní, but were unsuccessful. In MARIO AGUILERA BRAVO *et al.* *La iniciativa Yasuní-ITT como materialización de los derechos de la naturaleza*, in CARLOS ESPINOSA GALLEGOS-ANDA *et al.* *Supra* note 37; and see also YASUNIDOS at <http://sitio.yasunidos.org/es/> (March 15, 2017, 23:17)

⁴⁶ GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, (MARCH 15, 2017, 23:17) available at <http://therightsofnature.org/celebran-el-primer-caso-exitoso-de-exigibilidad-de-los-derechos-de-la-naturaleza-en-ecuador/>

all around the country, as well as to begin the implementation of the UN Reducing Emissions from Deforestation and Forest Degradation (REDD) and REDD+ programs that contribute to the sustainable management of forests, the conservation and enhancement of forest carbon stocks. The PSB seeks to preserve large forest areas through economic incentives for the inhabitants of these territories, mostly peasants and indigenous populations. In its regulations, this program discusses forest environmental services, one of the most important of which is carbon storage. This program instigates settlers to stop hunting, cutting down trees, fishing, or growing food in the protected areas. It is important to notice that all of the documents related to the PSB ministerial agreements signed by the MAE expressly cited three articles from the Rights of Nature: 71, 72 and 74.⁴⁷

At first glance, conservancy can appear completely related to the Rights of Nature. Nonetheless, if we inspect the introduction of programs like REDD and REDD+ closely, we can see that they imply the commercialization of the natural resources of determined territories in the form of so-called environmental services.

Programs like REDD+ endeavor to introduce themselves in developing countries with an agenda that claims the protection of natural resources and the improvement of their management through the implementation of Payment for Forest Environmental Services, mostly used for carbon storage and based on the sale and purchase of carbon bonds (carbon credits). This program does not reduce carbon emissions from factories or from the countries that buy these credits. On the contrary, it encourages the continued existence of these emissions. Under the idea of forest conservation, they eliminate inhabitants' autonomy over their natural resources. The program encourages a form of eco-imperialism, in the words of John Bellamy Foster⁴⁸ that allows central countries and transnational enterprises to gain control over the natural resources of other regions.

At several international meetings, the MAE has brought up the Rights of Nature in a way that legitimizes signing agreements and entering into these types of programs. Examples of this are found in the 2014 COP11 on Biological Diversity where the High Level Ministerial Panel on "Uniting the Rights of Nature and the Green Economy: Finding Solutions to Protecting International Wildlife";⁴⁹ the first UN Environment Assembly (UNEA), where the Sumak Kawsay perspective was explained in terms of sustainable development;⁴⁸ and in the promotion of the Socio program that aims at becoming the basis for the implementation of REDD in Ecuador.

⁴⁷ MINISTERIO DEL AMBIENTE, PSB, ACUERDO MINISTERIAL (since 2008).

⁴⁸ *Id.*

⁴⁹ MINISTERIO DEL AMBIENTE DE ECUADOR (MARCH 15, 2017, 23:17) available at <http://www.ambiente.gob.ec/ministra-lorena-tapia-presidio-panel-ministerial-de-alto-nivel-sobre-derechos-de-la-naturaleza/>

In an interview with Germán Mosquera, the coordinator of the Forest Conservation Program and REDD at the MAE, he mentions that it is through the UN-REDD-Ecuador program that a series of studies have been carried out to allow the implementation of the REDD mechanisms in the PSB over a short period of time. In this sense, the PSB could be an opening for REDD because it too is based on the payment of compensations or for conservation results.⁵⁰ Mosquera assures that the commercialization of forest carbon under the REDD does not contradict the Rights of Nature and, besides, it is linked to these rights as seen in the final part of Article 74 where it sets forth that environmental services will be regulated by the State for their production, delivery, use and development: "...then the State, calmly, can make a legal analysis of the terms of provision, delivery, use and development, delimit its range with legal instruments and adjust it to the needs of the REDD program, then the safeguards are there but the State has legal authority over them, that would be the answer."⁵¹

With these examples, it is possible to see that the use given to the Rights of Nature has benefitted private land owners more than Nature itself, known as a subject of rights. With programs like PSB, REDD, and REDD+, it is clear that the Rights of Nature often work as a discourse that legitimizes new forms of territorial dispossession and new ways for the commercialization of nature even though the real statement of those rights and their search for new legal paradigms may be quite different. The fact that these rights are being used incorrectly suggests that the idea of a truly progressive legal project has not become hegemonic, meaning that on the level of ethics, politics, economics and ideology, the project has not been consolidated as a permanent construct that represents the society in its entirety. This is the result of multiple factors and the relationship of forces that must be analyzed from a critical point of view.

IV. THE RIGHTS OF NATURE IN SUBALTERNITY FACING NEOLIBERAL HEGEMONY

As explained at the beginning of this note, in order to understand the subaltern character of a political project, which is completely bound to specific classes and groups, it is essential to analyze it in relation to the ruling classes and the groups that hold the hegemony. In the case of the Rights of Nature,

⁵⁰ Interview with Germán Mosquera, Coordinator of the Forest Conservation Program and REDD in the MAE (Oct. 2015).

⁵¹ *Id.* Translated from: "...entonces el Estado, tranquilamente, puede hacer un análisis jurídico de los términos y prestaciones, uso y aprovechamiento, delimitar su alcance con instrumentos jurídicos y acomodarlo a las necesidades del tema REDD, entonces de pronto el candado está pero el Estado tiene la potestad de, esa sería la respuesta."

it is necessary to set them in the context of their origin through the characterization of geo-politics in the Latin-American region.

Since colonial times, Latin America has functioned as a region that provides raw material to global powers. The international division of labor has suppressed our region into dependency and its population, with its natural resources, has been systematically exploited in many ways. Bellamy Foster's concept of eco-imperialism, as well as Lenin's ideology, can give us clues to understanding how geo-political and economic relations in the world have influenced global powers' abuse of Latin America. The dominant and ruling classes that control the means of production are the ones that have hegemony and that oppress the other classes and groups. In the case of our region, in the current neoliberal context, the central nations with financial elites and transnational enterprises are the ones that are hegemonic.

Because of that, several groups in the region have challenged the hegemony and demand that it no longer be subaltern. This would be the case, to a certain extent, of the progressive political projects in countries like Ecuador, Bolivia and Uruguay. As seen in the historical walkthrough, Alianza País in Ecuador developed a political project that, among other things, promoted a new vision of the relationship between humans and nature. Nonetheless, the internal contradictions of the project, such as the adverse conditions of the capitalist and neoliberal context, led a project like the Rights of Nature to be transformed into a subaltern project ideal for legitimizing the dispossession of natural resources and territory.

Next, I present three points that seem fundamental to understand the roots of such subalternization processes.

1. *The False Distinction Between Human and Nature*

Regarding this distinction, we first have to address the concept of Nature, which for authors like Erik Swyngedouw, does not exist.⁵² This denotes that it is a very relative concept, an ideology that only acquires meaning depending on the use given to it:

...the uses of Nature simultaneously imply an attempt to determine its unstable sense and, at the same time, to present it as the fetishized 'other' that reflects, or at least, operates as a symptom in which our desires and repressed fears are expressed. The concept of Nature becomes an ideology and works ideologically, meaning that it extinguishes thought, evades the elusive character of the term and ignores its multiplicities, inconsistencies and incoherencies. In other words, this conceptualization eclipses the political moment involved in the pro-

⁵² ERIK SWYNGEDOUW, *La naturaleza no existe: La sostenibilidad como síntoma de una planificación despolitizada*, 1 *URBAN*, (2001).

cess of giving sense to Nature. Any attempt of suture, of exhaustively fulfilling and colonizing the sense of Nature responds to intrinsically political and hegemonic motivations, which are not recognized for what they are.⁵³

From this perspective, the debate towards the concept of Nature it's a piece in the process of hegemony that is used inside the institutional debate in a global sense, facing the current environmental crisis that affects, in part, transnational extractivist enterprises. Swyngedouw proposes that the current concept of nature should be abandoned because if a set of "human and non-human things" exists in the world, this world is drawn from "hybrids of nature and culture", which allows us to understand that there is no such thing as a natural state of things "but on the contrary, a wide variety of different historical natures, relationships and environments subjected to continuous changes and transformations."⁵⁴

Authors like Bruno Latour⁵⁵ and Philippe Descola⁵⁶ criticize and reject the rift between nature and culture. From these perspectives and as a historical-political result, the concept of nature turns out to be a rejected idea that ends up in a depoliticized action and the non-comprehension of the existing relations between the individuals and their environment.

In this way, the hegemonic discourse about nature as something unconnected to humanity ends up being another way to expose domination-exploitation relations.

Under the same perspective, José Sánchez Parga, an Ecuadorian Marxist who dedicated his last years to making several critiques about the trending discourses of the last decade, called the attention to the opposition between nature and society, saying that a universal concept has not been achieved. In fact, he described the Quichua/Quechua and Aymara indigenous cultures as societies that do not set their culture against nature so the latter can be dominated; instead, they see nature as an extension of their own culture.⁵⁷ According to Descola, Sánchez Parga explains that the dualism between culture and nature "establishes when the culture stops being the mediation between cultured nature and human nature,"⁵⁸ in a context where technology and

⁵³ *Id.* at 42.

⁵⁴ *Id.* at 46.

⁵⁵ BRUNO LATOUR, *NUNCA FUIMOS MODERNOS* (Siglo XXI ed. 2007).

⁵⁶ PHILIPPE DESCOLA, ESCOLA, Philippe, *Más allá de la naturaleza y de la cultura*, in LEONARDO MONTENEGRO, *CULTURA Y NATURALEZA, APROXIMACIONES A PROPÓSITO DEL BICENTENARIO DE LA INDEPENDENCIA DE COLOMBIA*. (Alcaldía Mayor de Bogotá y Jardín Botánico de Bogotá José Celestino Mutis, ed. 2011).

⁵⁷ JOSÉ SÁNCHEZ PARGA, *ALTERNATIVAS VIRTUALES VS. CAMBIOS REALES. DERECHOS DE LA NATURALEZA, BUEN VIVIR, ECONOMÍA SOLIDARIA. ESTUDIOS Y ANÁLISIS 51-52* (Centro Andino de Acción Popular-CAAP ed. 2014)

⁵⁸ *Id.* at 53.

capital, in what we can call amplified metabolism,⁵⁹ suggests new productive forces. This exacerbates the actual neoliberal time because the duality human-nature becomes more polarized when technology and financial capital have a devastating effect on the conditions of the mediation.

It is important to observe the contradictions into which the ideologues of the Rights of Nature themselves fall into when they criticize the distinction between humans and nature. At the same time, they reproduce this duality in conceptual and practical terms in the new Ecuadorian legislation.

Eduardo Gudynas, for example, describes the Montecristi Constitution as a biocentric mandate that seeks to dispossess the anthropocentric vision, for which the Rights of Nature has been a very important step.⁶⁰ These rights attempt to overcome anthropocentrism by making use of the Andean indigenous worldview, but it ends up extricating nature from humanity, creating extensive political, economic, social and cultural confusion because of the search for development based on different kinds of extractivism while questioning the Rights of Nature.

The Rights of Nature, Good Living and the Plurinational State are included across the Constitution. In this document, we can also find terms referring to economic growth; that is, in the operations of the market and private companies. Such is the case of Title VI of the Constitution,⁶¹ with the heading “Development Structure”. For example, Article 276 says that, in a healthy environment people need access to the benefits of subterranean resources and of the natural patrimony, as well as “to boost strategic insertion into the global context.”⁶²

As the above mentioned authors say, the Rights of Nature in the Ecuadorian Constitution generates political and economic confusion that does not get to the root of environmental problems. These rights come about as contradictory by promoting the false human-nature dichotomy. Sánchez Parga would say that it “is not the anthropocentrism of the today’s human society, but the conditioning of capitalism that devastates much of the human relationship with nature.”⁶³

⁵⁹ Authors like Fischer-Kowalski and Haberl refer to socio-economic metabolism as a continuous exchange of energy and materials between humanity and the environment, which allows the function, growth and reproduction of social systems. The authors use this concept to make an analysis of society that identifies different types of civilizations according to the relations of exchange with nature to then determine their metabolic profiles. It is interesting to note that we are now faced with an amplified metabolism due to the extraction and utilization of non-renewable resources that are exploited at a faster pace than the natural recovery rate of the environment, resulting in environmental degradation. In MARINA FISCHER-KOWALSKI *et al.* *El metabolismo socioeconómico*, in ECOSISTEMAS HUMANOS Y BIODIVERSIDAD (19-2000).

⁶⁰ EDUARDO GUDYNAS *supra* note 42.

⁶¹ RAÚL LLASAG FERNÁNDEZ, *Derechos de la naturaleza: una mirada desde la filosofía indígena y la constitución*, in CARLOS ESPINOSA GALLEGOS-ANDA *supra* note 37 at 88.

⁶² ASAMBLEA CONSTITUYENTE *supra* note 44 at 135-136.

⁶³ JOSÉ SÁNCHEZ PARGA *supra* note 58 at 103.

2. *From Obligations to Rights, the Danger of Neoliberalism*

Several authors that support the creation of the Rights of Nature in Ecuador recognize that the positive right frequently lacks imagination. Throughout history, the struggle for the recognition of the rights of women, children and minorities have had to overcome several prejudices based on new arguments and world visions.⁶⁴ From this perspective, the main argument for the Rights of Nature forms part of this same struggle, the recognition of invisible subjects. Nonetheless, we have to speculate about which entity or type of person or community would be in charge of defending these rights, the rights of a subject like the nature that cannot talk or even define itself, as people themselves cannot define nature very accurately.

In talking about the Rights of Nature, Swyngedouw says that there is no such thing as nature that “requires salvation in the name of nature itself or from a generic humanity.”⁶⁵ To think the contrary would suggest a political incapacity to question and rethink socio-natural configurations and the social metabolism that form part of the capitalist mode of production.

On the other hand, authors like Antonio Elizalde Hevia,⁶⁶ or even Eduardo Galeano, argue that holding rights to legal fictions such as companies, is now recognized: “It sounds strange, doesn’t it? Nature having rights... Such a crazy thought, as if nature were a person! Instead, it sounds quite normal for the largest corporations in the US to enjoy human rights.”⁶⁷ In this sense, it would be logical that nature could be equally subject to rights. However, it could lead to the idea that nature is a kind of company that can sell its services, what are now known as environmental services.

Under this logic, Sánchez Parga understands the Rights of Nature as a result of a neoliberal society that seeks to eliminate obligations and public and social responsibilities to favor the market economy because these rights are synonymous to individual necessities and private interests, which contribute in the long term to a new capitalist spirit.⁶⁸ Along this line of thought we should recall the first case of the application in favor of Rights of Nature in Ecuador, the case against the expansion of the Vilcabamba-Quinara highway that was allegedly damaging the rights of the Viacabamba River, but it actually referred to the property damages of the complainants, Richard Wheeler and Eleanor Geer Huddle.

⁶⁴ ALBERTO ACOSTA *supra* note 26 at 15.

⁶⁵ ERIK SWYNGEDOUW *supra* note 53 at 49.

⁶⁶ ANTONIO ELIZALDE HEVIA, *Derechos de la Naturaleza ¿Problema jurídico o problema de supervivencia colectiva?*, in ALBERTO ACOSTA *et al.* LA NATURALEZA CON DERECHOS, DE LA FILOSOFÍA A LA POLÍTICA 71 (Abya Yala, Universidad Politécnica Salesiana ed. 2011).

⁶⁷ Eduardo Galeano *supra* note 34 at 27.

⁶⁸ JOSÉ SÁNCHEZ PARGA *supra* note 58 at 38.

According to Sánchez Parga, the frenzy over these rights aim at replacing social links and relegating democracy to just rights. It substitutes political issues for legal ones “but with aggression: when the idea of the rights extends that much, rights lose their theoretical substance, political force and quality of citizenship.”⁶⁹ The Rights of Nature should be human obligations toward the environment for a more efficient relationship. On the contrary, if Nature is recognized as a subject of rights, it only ends up disguising exploitative relations, mostly between men.

Thus, taking the leap towards the recognition of the rights of a figure that is not even well defined and whose very own existence is doubtful leads to the elimination of mankind’s obligations towards the environment. It creates a confusion of legal notions and aggravates the political void of several discourses that try to be progressive by not pointing out the essential cause of the environmental crisis: the capitalist production and reproduction system.

Going back to Gramsci, the rift between the State (legality) and civil society (reality)⁷⁰ in an organic crisis of the comprehensive State, and in this case, in the environmental crisis, can give us a clue to understanding why the Rights of Nature in Ecuador have not been implemented, or even become functional because the actual causes of the crisis are not being presented in a way for in-depth understanding in the new legislation.

3. *The Emancipation of Nature, Liberalism and Market*

Several authors, like Alberto Acosta, speak about the emancipation of Nature from its condition as a “subject without rights or a simple property”.⁷¹ With the new decree in which Nature is now a subject of rights and, therefore, freed, it is no small thing to wonder what the recognition of freedom inside a capitalist society mean.

In the book “Liberty and Capitalism”, Milton Friedman, an American economist famous for defending the free market doctrine, says that emphasis was given to the concept of liberty by intellectual liberals in the early 19th century. The idea was that freedom would be the aim of modern society to be taken up by the most important entity: the individual. His arguments disregard State intervention and encourage the so-called *laissez faire* for the purpose of liberalizing borders to facilitate free markets activities.⁷² Therefore, under capitalism, which is now in its neoliberal phase, individuals can ideally be free to choose the products they consume, and companies can be free to compete and take their products worldwide. Nonetheless, something

⁶⁹ *Id.* at 102.

⁷⁰ ANTONIO GRAMSCI *supra* note 4 at 175.

⁷¹ ALBERTO ACOSTA *supra* note 26 at 19.

⁷² MILTON FRIEDMAN, *CAPITALISM AND FREEDOM*. (The University of Chicago Press ed.1962).

that Friedman does not explain is that there has to be a series of conditions for the trade of merchandise to occur.

Karl Marx argued that products cannot be traded by themselves in the market; commodity owners have to voluntarily reciprocate in order for the trade to be accomplished. For this to happen, both individuals have “to treat each other as private owners”⁷³ in a legal relationship under the form of a contract. In a capitalist system, there are relations of production where the bourgeois class uses part of its capital to buy labor-power as a commodity. For the capitalist money owner, in order to find labor power as a commodity on the market, it is necessary that “its possessor —the individual whose labor power it is— offers it for sale or sells it as a commodity.”⁷⁴ For that to occur, the worker must have it at his disposal as the untrammelled owner of his capacity for labor. Both the capitalist and the worker have the same rights, they are equal in the eyes of the law, and “with this difference alone, that one is buyer, the other seller.”⁷⁵ In this way, the capitalist has to find free workers on the market: “...free in the double sense that as a free man he can dispose of his labor-power as his own commodity, and that on the other hand he has no other commodity for sale, is short of everything necessary for the realization of his labor-power.”⁷⁶

Therefore, the concept of freedom in capitalism does not turn out to be as idyllic as the neoliberal intellectuals suggest. The worker, the owner of the labor-power, is only capable of using it as a commodity, as an exchange value and not as use value. This is what liberalism called freedom.

It is in relation to this that the matter of the freedom of nature in capitalism arises. First, under the *Pachamama* discourse, the Rights of Nature appear in an idyllic form to the ecologists who in good faith generally hold the indigenous world vision of respect and equality towards nature and try to defend nature from harm caused by human beings. Yet, what underlies this legal idyll? If we go back to Marx’s criticism of legal equality and a worker’s freedom to sell his labor-power as a commodity—because it is the only thing he possess after the social nature and the use value of his work was taken from him, nature (or natural and animal resources) with legal equality before capitalists (who own the money to buy labor-power as a commodity) obtains its legal freedom to sell its labor-power. We know that in the Marxist theory this is impossible because labor-power can only be offered by human beings since only they can increase the value of other commodities through their human work. However, nowadays, as explained above, the notion of Payment for Environmental Services emerges as a sort of payment for the work of nature. As regards the Ecuadorian case and the entry of projects like REDD and REDD+, we can see that these aim at the commercialization of nature

⁷³ KARL MARX, *Capítulo II, El proceso del intercambio*, in *EL CAPITAL* 103 (Siglo XXI ed. 1975).

⁷⁴ *Id.* at 203.

⁷⁵ *Id.* at 204.

⁷⁶ *Id.* at 205.

through environmental services by using the original legislation of the Rights of Nature. From this consideration on the legal freedom of nature we can infer that a political and legal project like the Rights of Nature, despite its good intentions and libertarian convictions, can be associated with capitalist reproduction and accumulation, and this not simply because it was originally intended to be useful for capital, but because of its lack of theoretical precision from a political-economy point of view, which ends up being partially in favor of the imperialist and neoliberal hegemonic model.

V. CONCLUSIONS

The analysis of the relationship of forces in the current historical bloc is fundamental in order to understand the risk that a progressive environmental project can have by legitimizing a destructive project that promotes capitalist accumulation in its modern neoliberal form.

We can frame the Rights of Nature, and all the progressive matters included in the Montecristi Constitution, as part of a project that has been subalternized by the fact that it was the result of a disperse struggle that lost the battle at a very early stage. The fact that Alberto Acosta's group and various members of social movements quit the Constitutional Assembly in 2008 is an important event for understanding the contradictions of the Alianza PAIS administration and the lack of organization between the Ecuadorian political and civil societies.

The schizophrenia exhibited in speeches, as well as the conflicts in the Assembly and many government actions, were reflected in the Constitution. The diversity of concepts like nature, natural resources, natural heritage, a healthy environment, and so on, end up causing much confusion and many ambiguities regarding their uses. Even though it is true that the new Constitution differs from the previous one (of 1988) by not explicitly opening the doors to neoliberal privatization policies, there are certain articles, such as Article 316 that allows the State to make exceptions to delegate participation in strategic sectors and public services to private enterprise.⁷⁷ As said before, the same articles of the Rights of Nature, mostly Article 74, can lead to the State's permission to decide on the regulation of these rights without refusing entry to the private sector.

Therefore, the subalternity of the projects proposed by social groups in favor of indigenous rights or the Rights of Nature has presented itself in the text itself of the new Constitution. The ruling groups' scheme, in this case those represented by Alexis Mera and those backed by immense amounts of financial capital, is made apparent by the fact that Mera was appointed Legal Secretary in Correa's administration. In the words of Esperanza Martínez,

⁷⁷ PABLO OSPINA PERALTA *supra* note 23 at 136.

Ecuador is part of a “mutant neoliberalism that strengthens the State, but in a partnership with transnational business interests.”⁷⁸

So now we have found ourselves faced with political projects that do not stop being subaltern, even though they wish they were, because they are subjected in many ways to the neoliberal hegemonic project. At this point, it is interesting to bring up Gramsci’s thoughts on overcoming subalternity by taking power in the form of historical unity as a leading class in the State, as “a result of organic relations between the State or political society and civil society,”⁷⁹ known as the comprehensive State. In this sense, the fact that Alianza PAIS, as a left wing and anti-neoliberal grassroots movement, has arrived to power, does not mean that it has political hegemony. As Gramsci points out:

The political direction turns into a position of dominance, to the extent that the incorporation of the elites of the enemy classes leads to their decapitation and to their powerlessness. There can, and must be, political hegemony even before the arrival to government and one should not only count on power and the material force has to exercise direction or political hegemony.⁸⁰

In such a way, it may be that before its arrival to government, Alianza PAIS had political hegemony. However, the process that followed could not achieve an effective unification between political and civil societies. A visible example of this is the division within the Constitutional Assembly. Moreover, it did not absorb the enemy classes in an alternative hegemonic project and, surely, by trying to do so through alliances and specific treaties, it ended up succumbing to the devastating neoliberal project, although in less violently than other countries like Mexico, Chile and Colombia. One example of the hegemonic neoliberal project’s assault on Ecuador is the continuance of subalternity in environmental projects like the Rights of Nature.

As we have seen, under neoliberalism the dispossession and privatization of land and resources can be carried out through new discourses, like the ones referring to conservation. Nonetheless, it must be pointed out that the dispossession of territory and capital hegemony has not only existed now and under these terms. This is why a real solution to environmental problems like deforestation and resources extraction cannot be solved under a welfare capitalist State.

Projects that seek for a real solution to the problems of ecocide, dispossession, and the environmental crisis need to be clear about that in order to achieve it. Good intentions and marvelous legal initiatives are not enough. The underlying political issues are much bigger and much more complex

⁷⁸ Interview with Esperanza Martínez *supra* note 35.

⁷⁹ ANTONIO GRAMSCI *supra* note 4 at 182.

⁸⁰ *Id.* at 107.

than a simple decree or speech. To make a real change in the socio-economic metabolism, it is necessary to set out an alternative hegemonic project that aims at overcoming resistance and suggests new bonds between the political class and civil society. It is necessary to establish a new historical bloc that can overcome the current crisis by creating new ways of social reproduction and always starting with a criticism of the current exploitation system, the exploitation of man-by-man, capitalism.

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