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DEMOCRACY TO AVERT ECOCIDE[1]

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Witnessing human beings destroy their natural and political ecosystems is painful. The material, juridical, and symbolic structures humans have created to sustain life and flourish as a species have allowed for great technological advancement and economic "progress," as well as the domination and exploitation of the many by the few and the plundering of the planet. Given this state of affairs, saving representative democracy—the political order the vast majority of people live in today, which has allowed for the legal pillaging of natural resources and the exploitation of people's labor—cannot be achieved with a few laws and reforms. Corporations and their superrich owners have grown too powerful to be reined in with a few new rules in a handful of countries. Corporations are global, having a "presence" in different territories where they can pollute and store their profits free from taxation. Consequently, securing a clean environment within the borders of advanced capitalist democracies does little to make the rest of the world cleaner. Quite the opposite, since it is always cheaper to move operations to places where there is no regulation, rather than to abide by new rules that will force the company to reinvent its operation, i.e., the bottom-line rules.

While democracy still works in most rich countries and for most citizens[2]—even if the advance of ethno-nationalism challenges this apparent success—the exploitation of peoples and resources has not been eliminated; predatory behavior has merely shifted to marginalized minorities or to "peripheral" countries. That humanity is ruled by oligarchic interests is clear, given how capital from greener and more egalitarian countries has dirty, exploitative origins. For instance, most of the Norwegian salmon industry and the Canadian mining sector operate in other countries such as Chile, where they have polluted the waters and destroyed unique ecosystems while remaining in full compliance with government agencies and backed by elected representative (Asche et al. 2009; Quiñones et al. 2019). In

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other places, such as Ecuador, oil exploitation in the Amazon is not only legally allowed, but also it is done through a mixed venture in which the State participates in the extractivist operations led by global corporations. Representative democracies have not only been unable to prevent companies from looting and polluting but also have actively courted dirty international capital, accommodating requests from transnationals for more lenient treatment in terms of environmental protection. To avert ecological collapse and revert the damage done to the planet, it is imperative for democracies to innovate and allow citizens and their deliberated decisions, based on their lived material experience of climate disaster and deprivation, to lead the way.

While common people need to be empowered in their territories to defend their rights and the ecosystems they inhabit, the oligarchic overgrowth that is strangling communities and destroying nature all around the world must be stopped. This cannot be achieved within the framework of current democratic regimes in which only representatives exercise binding political power and capital dictates the rules. The solution to the democratic and ecological crises is not yet another leaders' summit, where there is much talking and promises but no drastic action, but rather from the common people, organized at the local level and connected in a global network capable of setting limits to transnational elites and their corporations. Even if such an idea—a global grid of local assemblies in which common people can exercise political power to control transnational oligarchies—may sound unfeasible, ridiculous, or utopian, attempting to reform representative oligarchic democracies to "work better" and hoping that this time around things will change to benefit those who now are oppressed is no longer an option. The planet has imposed a countdown to control predatory oligarchs who keep consuming, exploiting, and polluting. Thinking outside of the constitutional box is imperative when political orders have become corrupt.

This chapter offers modern and contemporary approaches for how to save democracy by rethinking it from the point of view of popular power and the need to avert ecological disaster. In what follows, I first provide a diagnosis of the current state of representative democracy as a regime type that has corrupted into oligarchic democracy, followed by explorations of the institutional innovations offered by Niccolò Machiavelli and Nicolas de Condorcet to deal with the systemic corruption plaguing popular modern republics. Focusing on the overlap of oligarchic power and environmental destruction, I then highlight the new mechanisms and institutions that have attempted to protect the planet by giving power to the people in Canada, the United States, Ecuador, and France. I conclude by arguing that the only effective way to stop climate collapse is to give the common people at the local level the necessary political and juridical mechanisms to defend the ecosystems they inhabit. Organized communities are the first line of defense for the protection of nature against extractivist states and corporations that mine natural resources with little regard to the damage done to the ecosystems and the human communities that are part of them.

Systemic Corruption and Plebeian Institutional Solutions

Constitutional democracies—liberal representative governments authorized through competitive elections—are supposed to be "good" regimes, aimed at protecting the common welfare—or at least, the welfare of the majority. However, juridico-political structures such as legal codes, regulatory frameworks, and the institutions that uphold them have systematically and disproportionally benefitted the powerful few, who today control most of the wealth. Even in Europe, where most of the egalitarian countries are located and there is a robust middle class, the richest 10% owns about 58% of the wealth, while the bottom 50% only 4%. At the other extreme is Latin America, where the richest 10% controls 77% of the wealth and the bottom 50% only 1% (World Inequality Report 2022). These numbers are staggering, and what is even more so is that this is all legal and not the product of armed robbery. That this is how the system works, that gross inequality is simply the result of free and fair competition within the rule of law, does not mean it is inevitable, necessary, or "good," i.e., quite the opposite. The game is rigged, and oligarchs are served by laws that are supposed to be impartial, neutral, and aimed at advancing the good of the majority.

The process by which a democratic order becomes increasingly oligarchic is what I have called *systemic corruption* (Vergara 2020). This type of structural corruption is not the aggregation of individual self-serving illegal acts, but rather the process through which the self-serving behavior of the most powerful in society is legally protected. In the current liberal and juridical conception of corruption, in which corruption is understood as individual illegal actions, we are unable to account for *legal* corruption, for laws and policies that promote the interests of a few against the common good, which was an evident sign of corruption for ancient thinkers. It is necessary to reinstate ethics into political thinking, which tends to justify and normalize rather than to question the "goodness" of current political orders and the type of society they protect. It is necessary to re-politicize inequality and consider it a symptom of systemic corruption. Wealth inequality is not merely the result of free competition within established rules, but it is a sign of pro-oligarchic regulation and the enabling of systemic corruption; wealth accumulation allows the powerful more influence while dispossessing and disempowering the common people.

Perhaps the biggest obstacle for implementing the structural changes needed to save democracy from oligarchy is, paradoxically, representative government. Instead of channeling the demands for structural reforms and the need to take sometimes drastic measures to address structural problems, elected officials have become the gatekeepers of a system that has disproportionally and systematically benefited the few over the many. Since the constitutionalization of the first modern representative government in the United States, the system had an anti-majoritarian or, more precisely, anti-plebeian focus. Only three months after Shays' veterans' rebellion against debt, dispossession, and imprisonment was quashed, the framers assembled in Philadelphia to design an order that would guard against new demands for the abolition of debt and the redistribution of property. For James Madison, it was clear

that "an increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, & secretly sigh for a more equal distribution of its blessings," and given that "the equal laws of suffrage" will allow them to have power, the republican constitution had to guard against the inevitable "leveling spirit" (Farrand 2008, 328).

Given representative democracy's elitist origins and anti-majoritarian design, it seems unlikely that societies will be able to eliminate the current oligarchic grip on power and consequently avoid ecocide. Reforms would, no doubt, make the system work a bit better but would not change the governing logic that subordinates the people to decisions made by elected representatives, who are mostly either part of the richest 10% that disproportionately benefits from the extractivist status quo or are coopted by oligarchic interests. If scholars are to propose creative solutions to the interrelated problems of oligarchy and the destruction of nature, it is necessary to look in the margins of the philosophical canon to consider alternative traditions of thought that developed prior to the birth of representative democracy and that focused on preventing systemic corruption in popular governments. Here I offer the insights and proposals of Machiavelli and Condorcet, who developed a plebeian republican strand of constitutional thinking in which the institutional power of the many is fundamental for keeping a republic free from oligarchic domination.

Within plebeian political thought, a republic is an order in which plebeians are free through institutions and mechanisms that allow them to exercise power to resist domination by the powerful few. Moreover, the republican political organization is inherently tied to the socioeconomic structure of society; relative socioeconomic equality is a necessary condition for republican government. If laws allow for the accumulation of wealth in the hands of a few and the destitution of the majority, the gradual transition from a free government into a corrupt and unfree regime is inevitable. According to Machiavelli, those "who without working live in luxury on the returns from their landed possessions" are dangerous for any republic; they are the beginners of "corruption and the causes of all evil" (*Discourses* I.55). However, despite the pernicious influence of the rich, the "powerful few" cannot be realistically eliminated or repressed—there is no permanent solution for oligarchy. Anti-corruption laws that make sure the influence of wealth "is kept within proper limits" are therefore necessary; unfortunately, they don't exist yet.[3]

Even if necessary to keep inequality from growing out of bounds, laws and procedural limits to wealth accumulation cannot contain oligarchic overgrowth. Machiavelli believed that popular institutions also need to actively enforce those boundaries, create new ones, and punish transgressors. Consequently, in a well-ordered republic, the common people need not only to actively participate in deciding on the law and empowering their delegates, the Tribunes of the plebs, to defend and enforce popular decisions but also to establish new institutions to control the powerful. To prevent plebeian laws from becoming "parchment barriers," mere aspirational norms, Machiavelli proposes establishing a Council of Provosts, a popular surveillance office aimed at overseeing government officials, taking away their power, and appealing their decisions if they act against the common good.

According to political theorist and Machiavelli scholar John McCormick, the Council of Provosts was meant to function as "popular agents of elite accountability," serving as "the people's eyes and ears in both the republic's executive committee and senatorial council and that explicitly wields veto or referral power over the policies proposed within them" (McCormick 2011, 106). Moreover, it is necessary not only to have all these anti-oligarchic rules, institutions, and procedures but also to trigger their enforcement periodically to avoid relying on reactions to domination. The constitution must undergo periodic renewals of its basic structure to avoid the overgrowth of inequality and the extreme violence necessary to check it (*Discourses* III.1). Therefore, a good republican order should codify, in addition to "ordinary" anti-oligarchic methods, instances of constituent power to create new methods of *adaptation* and *deterrence* to periodically curb corruption and ever-increasing oligarchic power.

While Machiavelli was the first to write on a mixed constitution in which the people had the final say on law, policy, and punishment, Condorcet was the first to write a full-fledged plebeian framework constitutionalizing the power of the many and giving them constituent power. Condorcet's 1793 constitutional plan for the French republic, *Le plan de Constitution Girondine,* was built on village assemblies—old participatory structures convened for the elections of the Estates-General to draft lists of grievances (Jones 1988; Crook 1993; Johnson 1997)—and the self-governing experience of the communes, to establish a "popular branch": a decentralized network of inclusive local assemblies with the power not only to elect officials, but also to initiate and veto legislation, as well as to exercise periodic constituent power. Condorcet's proposal institutionalizes the power of the many within the framework of the modern state. Consequently, his proposed popular institution does not share *in* government as a branch alongside the executive, legislative, and judiciary but is conceived as exerting control *over* government through political judgment. Because "nothing could be easier than to devise forms which would create and then preserve bad laws," representative constitutions need a non-ruling power from outside of government to periodically judge and resist law and policy (Condorcet 2007, 316). The constitutionalization of this no-rule, protest power appears for Condorcet as the only reasonable guarantee against systemic corruption and oligarchic domination. Representative government, without a proper surveillance power auditing it, is for Condorcet equivalent to trading one form of despotism for another, or "suffering under several types of oppression rather than fearing just one" (Ibid., 169). Even if not all of those in power have oligarchic tendencies, having a few good leaders does not guarantee the dismantling of structures of domination.

From a critical engagement with the Constitution of Pennsylvania, which instituted a checking power in the Council of Censors in its Article 47, and the plan of local assemblies for France designed by French economist Anne Robert Jacques Turgot,[4] Condorcet proposed a republican organization of political power aimed at addressing the inevitable erosion of law and its democratic foundations. As an alternative to the liberal constitution established in the United States, Condorcet proposed a mixed constitutional framework in which the ruling power making laws

and decisions about administration and foreign affairs is concentrated in a government that is constitutionally bound to obey decisions reached in local assemblies. By giving the administration of the state to representatives, he made "the sovereign [people in assemblies] unencumbered and thus the best candidate to be the judge of government and its agents" (Urbinati 2008, 217). While the American First Amendment gives citizens the individual right "to petition the Government for a redress of grievances," it does not provide any enforcement mechanism to see that petitions are taken into proper account in governmental action. In contrast, Condorcet's popular branch would constitute an institutionalized collective popular power aimed both at electing members of government as well as monitoring and sanctioning their decisions. Rather than embracing the idealist position of trusting elites' virtuous governing, Condorcet makes local assemblies the site for the people's institutionalized form of appeal, a "legal means of protest which could cause any law to be re-examined" (Condorcet 2007, 192). This "right of censure" could be exercised by any citizen who, after collecting 50 supporting signatures, could request that his primary assembly review an existing law or consider proposing a new one (Ibid., 197; *Le plan de Constitution Girondine*, Title VIII, Art. 3; Title IX, Arts. 5 and 6).

Any system in which government legitimately makes law must consider people's right to resist a law that is "clearly unjust," even if procedurally sound. For Condorcet, only the assembled people—not their representatives—are the "primary political power" and therefore only the "direct majority of the people, limited only by the laws" can legitimately judge if *legal* injustice is real (Condorcet 2007, 204). Because the probability of approximating the best judgment increases in proportion to the number of people deciding on an issue within appropriate rules of engagement, decisions reached in a majority of primary assemblies would have the highest probability of being "correct," increasing public welfare (Ibid., 131–138). Following this premise, Condorcet devised a constitutional plan in which legal, policy, and constituent change could originate at the neighborhood level. If a resolution passed in one assembly, that assembly would have the right to convoke all other assemblies in the district to decide on the particular motion. If there is enough agreement, then the national representative assembly must either write the motion into law or call all primary assemblies in the republic to decide on the question. If the view of the majority of primary assemblies contradicts that of the representative assembly, then the latter "would seem to have lost the nation's trust and must be replaced" immediately by new representatives who would carry out the popular will (Ibid., 197; *Le plan de Constitution Girondine*, Title VIII, Arts. 22–26). In this way, Condorcet builds into the lawmaking process an enforcement mechanism. If the legislature writes a law that does not reflect the people's will, then the people can recall it without having to wait for the next electoral cycle. Therefore, representatives have a strong incentive to track views articulated in primary assemblies.

In addition to this built-in accountability mechanism in representative government, Condorcet proposes a surveillance institution that would monitor the government, making sure that the popular will is properly followed. The task of Condorcet's Council of Overseers is to examine the laws approved by the legislature

and see that they are applied for the benefit of the people. Since sometimes the best way to neutralize a decision is to make a declaration, pass a law, but never enforce it, or enforce it in a discriminatory manner, the people must remain vigilant that their decisions are carried out properly. While the Council as an institution is an enforcer of the law, its members are "agents of the legislature" and thus subordinated to "those with legislative power" (Ibid., 206). However, despite the subordination of the *members* of the council to the legislature, which "must be able to force council members to obey the law and to curb their deviations,"[5] the office itself is not the tool of the legislature but acts independently to enforce the national will emanating from primary assemblies. Moreover, members of the Council would be elected not by the legislature, but by the assembled people, since they are "officers of the people and not of the representatives" (Ibid).

Condorcet's Council of Overseers appears as a potentially strong popular accountability institution, playing the role of liaison between the people and government and of enforcer of the people's will against the corrupting tendency of the few. While primary assemblies are conceived as *sovereign* organs of political judgment that direct representative government, the Council of Overseers is a *delegate* censorial institution tasked with making sure popular judgments get codified into law and are properly applied by the executive and administrative organs. Condorcet's "popular branch," comprising a network of primary assemblies and an oversight council, would be a powerful and democratic counterpower to representative government, especially given its ability to prevent systemic corruption and the gradual decay of the republic into an indirect despotism. Unfortunately, after the Jacobins took power by force, Condorcet's constitutional proposal for institutionally empowering the common people was never implemented. Today democratic constitutions also lack popular institutions with binding power.

The common people in democratic countries today can only protest corrupt laws and resist domination through the courts and with popular mobilization. Both the legal and extra-legal routes for redress are time-consuming, costly, and uncertain in their results. Compared to the institutional arrangements and proposals of the past, contemporary constitutional structures are ill-equipped to prevent systemic corruption and push back against oligarchic domination, which has increased wealth inequality around the world. And while the struggle of ancient and modern plebeians against oligarchy was ongoing, in the modern era, people are also fighting against time; they must not only resist oligarchy and its ills without adequate legal tools but also protect the planet from destruction—a by-product of an economic system that maximizes profit and accumulates wealth in few hands. The herculean task of saving the planet from the self-serving logic of the superrich and their corporations can only be done by giving the common people the proper legal and institutional equipment to defend themselves and their habitats. In what follows, I review three legal cases against the fossil fuel industry in the Americas to show the legal tools, mechanisms, and repertoires of contention that people have at their disposal to defend nature. I then briefly introduce a recent participatory innovation to

bring "common sense" into climate legislation in France to demonstrate the limits of non-binding participatory mechanisms.

Non-Binding Power Cannot Protect the Planet

It is not by chance that indigenous peoples are at the forefront of the struggle to protect the planet. Settler states in the Americas have often ignored indigenous rights to allow transnational corporations to continue polluting in "unchartered" territories, such as the Artic and the Amazon, for the sake of economic growth. By maintaining an economic *status quo* based on burning fossil fuels, despite promises to cut emissions in the future, states have been complicit in the destruction of the planet with bureaucracies that rubberstamp projects that pollute the environment, courts that safeguard contracts and profits over people and their habitats and criminalize legitimate popular resistance, and law enforcement that protects oligarchs. The most effective popular strategy to defend the environment has been until now a combination of direct action and judicial struggle, based on the protection of individual rights to live in a healthy environment as well as indigenous rights.

The rights of indigenous peoples are a combination of individual rights guaranteed to all people and rights specifically granted to indigenous peoples as collective subjects: in particular the rights to self-determination and to the control over territory and natural resources. In 1971, the Inter-American Commission determined that indigenous peoples needed special legal protection due to their history of discrimination: "for moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the States." Convention 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples, established in 1989 and adopted by the UN General Assembly in 2007, reaffirmed these principles in 46 articles that establish the minimum standards of respect for the rights of indigenous peoples. One of these basic criteria, which has been crucial in the legal battles over the protection of nature, is the right of indigenous peoples to prior consultation "whenever consideration is being given to legislative or administrative measures which may affect them directly" (Art. 6.1). Moreover, this prior consultation must be undertaken "in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (Art. 6.2). Even if only 24 countries have ratified C169, guidelines for prior consultation have been adopted in the Americas with the development of standards by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The battle against the fossil fuel industry and its pipelines in the Americas are an example of the limited possibilities that the current juridico-political structures offer to common people to protect the environment. This applies to developing as well as advanced representative democracies. In Canada, the Coastal GasLink pipeline transporting natural gas to the west coast, owned by TC Energy, a transnational corporation with infrastructure in Canada, the United States, and Mexico, plans to pass through traditional indigenous lands. While the elected leadership

of the First Nations—a representative structure put in place under the 1876 Indian Act—approved the project with the hope that their communities would share in the gains from resource extraction, traditional hereditary chiefs of the Wet'suwet'en people rejected it on ecological grounds due to potential damage to the waterways and ecosystems. Even if Canada has not ratified C169, a 1997 juridical decision recognized aboriginal title as an indigenous right and imposed the standard of prior consultation with indigenous communities and their hereditary chiefs (*Delgamuukw v British Columbia* [1997] 3 SCR 1010). Between 2012 and 2014, TC Energy consulted the communities that would be impacted by the Coastal GasLink, but agreement was not reached. The project was nevertheless approved by indigenous elected representatives and granted permission for construction by the State in 2016. Claiming that only traditional leadership has sovereignty over traditional lands, Wet'suwet'en chiefs from five clans, together with environmental activists, organized blockades to obstruct the construction. The British Columbia Supreme Court has granted so far two injunctions against the blockades, while the chiefs have responded by issuing their own eviction notice against Coastal GasLink. The construction is underway and the struggle against it continues (Reuters 2020, 2021).

In the United States, the Dakota Access Pipeline (DAPL), a 1,172-mile-long underground oil pipeline that transports crude oil and passes through the Standing Rock Sioux's territory close to the indigenous community's water source, has been opposed on both environmental and indigenous collective rights grounds. In April 2016, youth from Standing Rock and other indigenous communities organized to stop the construction of the pipeline and, together with the Indigenous Environmental Network, they established a water protectors' camp at the site. While an environmental claim against the pipeline was being studied by the judiciary, indigenous activists used their collective rights to block the construction. Given that the United States has not ratified C169, there are no uniform consultation procedures across administrative agencies (Mengden 2017) and thus no cause of action to challenge the approval of the project on procedural grounds. Consequently, indigenous communities resorted to the 1851 Treaty of Traverse des Sioux and the 1868 Treaty of Fort Laramie, both ratified by the US Senate, which recognize Sioux's national sovereignty.[6] Indigenous peoples argued that the land where the pipeline would be constructed was rightfully theirs and that by occupying it they were claiming eminent domain. The response of the State was to send the National Guard to forcefully remove protestors to protect private property and continue the construction of the pipeline. The brutal repression, which included water cannons in 28°F (−2°C) weather, teargas, rubber bullets, and concussion grenades, did not end the occupation; however, protestors left voluntarily in January 2017 due to weather conditions to continue the battle through the courts. While challenges seek to shut down the construction site while the environmental impact on the water supplies was reassessed, the Federal Court ended up allowing the construction to continue and incarcerated six indigenous activists on civil disorder charges, with sentences ranging from 16 months to almost 5 years in federal prison.[7] The pipeline

is still running and transports 570,000 barrels of oil per day, according to the DAPL official website.

While in Canada and the United States the struggle for protecting nature against the fossil fuel industry has been framed by individual rights and treaties with "dependent nations," in Ecuador, the protection of nature has been incorporated into the Constitution. One of the recent innovations in Ecuadorian constitutional law has been to conceive of nature not only as an object of protection, but also as a subject with the right to live, develop, and regenerate. This has led to demands for changing the constitutional approach from one centered on the supremacy of human beings over nature[8] toward one pivoting on biocentrism, which conceives of human beings as part of the ecosystem.[9] According to the biocentric worldview, the well-being and development of human societies must be determined both by human and environmental considerations, which demands a constitutional framework with an ecological approach directed not only to protect the environment, but also to repair it so human beings can flourish within thriving ecosystems. Instead of domesticating and exploiting nature for the benefit of human communities, a biocentric focus moves beyond ascribing mere instrumental value to nature and sees human benefit in natural balance, which introduces new limits and possibilities determined by nature's regenerative processes. Under this new paradigm, profit is displaced as the primary variable driving human economic production and consumption, and human activity is conditioned by its negative and positive short- and long-term impact on ecosystems, closing current paths of development based on fossil fuels and opening new clean and regenerative ways of fulfilling human needs.[10]

The first UN Conference on the Human Environment in 1972 produced the Stockholm Declaration, the first international document recognizing the right to live in a healthy environment and the responsibility of states to ensure that "the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems" are safeguarded "for the benefit of present and future generations" (Principle 2). In 1992, the Rio Declaration reaffirmed these commitments and established the Agenda 21 action program to guide governments and non-state actors in environmental protection. In 2008, the Constitution of Ecuador was the first in the world to recognize not only the need to protect the environment, but also nature as a subject of right. Its Preamble articulates the biocentric principle that seeks to "build a new form of citizen coexistence in diversity and harmony with nature, to achieve good living."[11] A section and four articles are also dedicated to recognizing: (1) the right of nature to maintain and regenerate "its life cycles, structures, functions and evolutionary processes" and the duty of citizens to demand that the State protect this right; (2) the right to ecosystem restoration; (3) the duty of the State to protect ecosystems; and (4) the right of inhabitants to "benefit from the environment and the natural resources that give them good living."

Following the commitments imposed by C169, ratified by Ecuador in 1998, the 2008 Ecuadorian Constitution recognizes in its Article 57 the collective right

of indigenous peoples to "prior consultation, free and informed, within a reasonable time, on plans and programs for the prospecting, exploitation and commercialization of non-renewable resources found on their lands and which may affect their environment or culture." This right was also recognized in the previous 1998 Constitution (Art. 84.5) but is further developed in the 2008 Constitution. However, the State has consistently violated these rights. Indigenous communities have used the courts to oppose extractivist projects in their territories, going as far as the Inter-American Court on Human Rights to protect ecosystems. The Sarayaku people case, in which an indigenous community opposed oil drilling in their territory, attests to the lack of enforcement of the constitutional provisions that are supposed to protect indigenous communities and their lands, and the need for a stronger international institutional structure to guarantee enforcement of indigenous and environmental rights *before* rights are violated.

The exploration of oil reservoirs in Ecuador dates to 1969, when the first reserves of crude oil were discovered in the northeastern region. Since then, oil drilling has become a state business, resulting in large-scale environmental costs such as crude oil spills, contamination of water sources, and the burning of natural gas in the open air, as well as health risks for the inhabitants of the oil-producing areas (San Sebastian and Hurtig 2004). After intense indigenous mobilizations in 1992, the Ecuadorian State recognized 135,000 hectares of the tropical forest area of the Amazonian region of Ecuador, one of the most biologically diverse areas in the world, as belonging to the Kichwa people of Sarayaku. However, this land grant excluded the subsoil natural resources, which were later declared in the 1998 Constitution as "the property of the State, which may exploit them without interference provided that environmental protection standards are observed" (Art. 247). Four years later, 65% of these lands were part of the 200,000 hectares included in a joint contract between the State Oil Company of Ecuador and the Argentine oil company CGC for drilling oil in the Amazon. Despite the project requiring the planting and detonating of hundreds of explosives, it passed the environmental assessment and was given green light. While the Sarayaku people engaged in direct and legal action to block oil-seeking activities, the companies resorted to offering them "development packages" to gain the consent of indigenous communities (*Sarayaku People v. Ecuador*). CGC offered US$60,000 for development projects and 500 jobs for the men of the community in exchange for consent to drill on their lands. Some tribes did sign these meager compensation agreements.

That was the first but hardly the last pact between the State and oil companies. In 2001, the Ecuadorian Ministry of Defense signed an agreement with national oil companies in which the State agreed to "ensure the safety of oil facilities, and of the persons who work in them" (Cooperation Agreement on Military Security 2001, clause 2). In 2002, members of the oil company forcibly entered the Sarayaku territory, guarded by both the military and private security forces. The Sarayaku people fought back through the courts, demanding constitutional protection. They also organized six "Peace and Life Camps" on the borders of the territory to protect against trespassing.[12] Despite the Human Rights Committee of the Ecuadorian

Congress visiting the territory and declaring that the collective rights of the Sarayaku people were being violated, as well as the evidence of multiple cases of violence against the Sarayaku, the government allowed the oil venture to continue, guarded by military personnel.[13]

Even if the Ecuadorian Constitution of 2008 codified the "individual and collective right to live in a healthy and ecologically balanced environment" (Art. 397), forcing the State to consult the community about "any decision or state authorization that may affect the environment" (Art. 398) and "prohibiting extractive activity of non-renewable resources in protected areas" (Art. 407), it did not help the Sarayaku's case against oil drilling projects in their territory. After exhausting all national avenues of redress, in 2010, the case was brought to the Inter-American Court on Human Rights, which finally ruled in 2012 that the Ecuadorian State had violated the rights to consultation, to indigenous communal property, and to cultural identity. The Court demanded the exploration of oil reservoirs to be stopped, for the explosives buried in the territory and all other waste to be removed, and for the Ecuadorian State to pay the Sarayaku people US$1,340,000 in damages.

Despite the international victory of the Sarayaku, who were able to assert their collective right to self-determination and in this way protect their territory, the "win" required 15 years of struggle that involved human suffering and loss of biodiversity. Also, while the judicial decision was a triumph, it only referred to the violation to the right of consultation and the damage this caused to the indigenous community, and not to the damage done to the ecosystem. The Court likely would not have sided with the Sarayaku if the Ecuadorian State had properly consulted the indigenous communities beforehand but still decided to go on with the exploration if "environmental protection standards are observed." Since indigenous communities do not have unilateral veto power over extractivist projects in their territories, the Court would have had no grounds to force the State to comply with the result of the indigenous consultation. The Court can only enforce the compliance of the State to engage in prior consultation with the indigenous communities, which despite all the requirements to be considered valid, is ultimately non-binding. The pecuniary cost to the State for the violation of indigenous rights for over a decade was relatively minor, and the private company was only mandated to remove their explosives and all other waste. If this is the case for a country that has signed C169 and has indigenous rights, as well as rights of nature in its Constitution, what can one expect in all the rest of the countries where these rights are not entrenched, where there are no indigenous communities able to use the judicial system to struggle against extractivist ventures, and where there are no binding international agreements to rely on?

An interesting but partially failed experiment to address the climate crisis in the absence of indigenous communities' rights and pro-nature jurisprudence was the Citizen Convention for the Climate in France.[14] In the aftermath of the *gilets jaune* or "yellow vests" protests in 2018, President Emmanuel Macron established a 150-member citizen assembly to define proposals to achieve a reduction of at least

40% of greenhouse gas emissions by 2030. He promised to submit the "unfiltered" proposals of this participatory democratic experiment to parliament or directly to a referendum. Members were chosen by lottery based on six criteria of representativeness: gender, age, level of qualification, socio-professional category, type of territory, and geographical area. On the basis of hearings of experts with different opinions and summaries of work by researchers, international organizations, and civil society organizations, the members of the Citizen Convention proposed 149 recommendations in June 2020, including making ecocide a crime, banning short domestic flights, and establishing a new autonomous control body—the Defender of the Environment—to receive and review complaints of rights violations and recommend legislative action to address them. In addition, the Citizen Convention proposed two constitutional amendments: an addition to the Preamble that "the reconciliation of rights, freedoms and resulting principles cannot compromise the preservation of the environment, the common heritage of humanity," and an Article 1 addition to include the duty of the State to guarantee "the preservation of biodiversity and the environment and the fight against climate change" (Convention Citoyenne pour le Climat 2020).

Despite the success of the Citizen Convention in proposing an array of measures to fight global warming, only about 40% of the Convention's proposals became part of President Macron's climate bill, which then was further watered down by Parliament. There is increasing expert and popular opposition to what is seen as a diluted project that is inadequate to meet France's climate commitments (Report of the High Council for the Climate 2021). President Macron had initially promised to call a referendum for the people to decide on the two proposed constitutional amendments, but he finally backtracked to avoid a protracted fight with the conservative wing in parliament, which needs to agree on the amendment's language before putting it to a referendum. In other words, even if a popular assembly was called to decide on the appropriate measures to protect the environment, the people's decisions would have to be approved by representative a government instead of being put directly to a popular vote. Non-binding participatory mechanisms are therefore too weak to save the planet. It seems necessary then to create procedures to bypass the oligarchic gatekeepers of production and consumption strategies that increase the wealth of the few while exploiting humans and wrecking nature.

Democratic Innovations for People's Power

Humanity is ill-equipped to face the climate crisis, largely because humans are ill-equipped to resist oligarchic domination. While ancient popular governments had institutions through which plebeian citizens could veto oppressive laws or government actions and even impose new laws or courses of action, 21st-century citizens have given up their legislative power to representative institutions over which they have little control. Elections—an aristocratic mode of selection—have proven not only to be a poor mechanism of accountability,[15] but also a vehicle for corruption.

The government by proxy that was conceived in the era of revolutions quickly became oligarchic and today societies are as unequal as those from the *Ancien Régime* (Piketty 2014). Half of the population in every continent owns less than 4% of the wealth. Most are propertyless, especially in the Global South, where most of the ecological damage is being perpetrated by transnational corporations from the Global North, and where climate disaster is already hitting hard.

Historically, the "remedy" for oligarchic power has been to rein it in with people's power, and therefore it seems imperative to think of *democratic* solutions to the oligarchic-led climate crisis. To find the adequate array of popular remedies to oligarchic domination and its ecocidal tendencies, it is necessary not only to bring the political and juridical wisdom of demonized plebeian thinkers such as Machiavelli and Condorcet to bear on how to deal with the current conjuncture, but also to deepen and expand the tools that are already in place in the most progressive constitutions. From the proposals of Machiavelli and Condorcet, we can take two crucial pieces of the anti-oligarchic constitutional puzzle: (1) the need to institutionalize channels of resistance and protest by giving common people the prerogative to oppose law and to impose legal change, without the authorization of the few, and (2) the need to establish a popular surveillance institution to enforce plebeian law. These institutional innovations could be incorporated into representative structures and in this way give the common people binding power to resist oppressive laws and to set the way for transformative change when representatives are unwilling or unable to find consensus.

To give legal form to constitutional ideas, following Machiavelli and Condorcet, I have proposed to reconceptualize popular sovereignty and conceive "the people" as the assembled many who engage in political action (Vergara 2020, chapter 9). The sovereign is not an atomized people but a network of local assemblies that makes decisions based on the aggregation of decentralized and autonomous collective judgments. Common people, gathered in neighborhood assemblies, could deliberate and decide on resolutions brought to them by other assemblies, or propose new resolutions, which become binding through aggregation when reaching a certain threshold, either directly forcing institutions to act or triggering a referendum to convoke the people to decide on the matter and direct government action. Regular folk could not only exercise binding power but also enable a more "intelligent" society in which crucial information—such as the destruction of habitats—could be shared from the original source, quickly, triggering fast responses without compromising deliberation, which could take place in multiple spaces at the same time.

Similar to the neurobiological structure of plants, in which there are "brains" in every root, local assemblies would operate as a bounded system, gathering information, processing it, and sending political signals through the network. And the same as a plant "decides" in what direction to deploy its roots or leaves after gathering responses to the environment from its sentient parts (Pollan 2013), the people could decide to initiate or oppose political actions based on local responses to domination spreading through the decentralized system. Approved motions would work

as a "signaling" mechanism to bring awareness of domination to the network and prompt a response to it.[16] In the case of the threat to nature and the protection of the environment, communities could respond fast to stop the degradation of the ecosystems by bringing awareness about sources of pollution and dangerous extraction in their early stages, and passing binding resolutions to halt them. This local-level resistance can be scaled up to pass laws to limit the power of national oligarchies—such as a wealth tax and the nationalization of natural resources—which can serve as exemplary measures to follow for plebeian citizens in other countries as well as to pressure international institutions to adopt new regulations that could rein in global capital.

In addition to granting the assembled people lawmaking power, our constitutional orders need a surveillance and enforcement office similar to Machiavelli's Provosts and Condorcet's Council of Overseers. This office should be subordinate to the sovereign network of local assemblies, making sure mandates coming out of the assembled people are properly and promptly carried out. Following the model of mini-publics enacted in the recent participatory experiment in France, which brought together 150 randomly selected citizens to propose recommendations to tackle the climate crisis, this popular enforcement office could be staffed in the same manner, adding rotation mechanisms to avoid oligarchization and corruption. Through random selection and rotation, such a delegate office would be independent from political parties and representative government and bound to defend popular decisions.

It is necessary as well to expand the few mechanisms that currently exist for the people to defend the ecosystems, namely the indigenous right to prior consultation and the rights of nature, as well as to more explicitly connect to direct forms of democracy that can give communities decision-making power on any plan or action that threatens their habitats. The right to prior consultation that today is granted only to indigenous communities should be expanded and granted to every community, independently of their ethnic origin. Moreover, the result of this consultation must be made explicitly binding, either directly or by triggering a referendum. The rights of nature that have been constitutionalized in Ecuador should not only be introduced in all constitutions to limit the extractivist and predatory tendencies of national and transnational oligarchies that see the exploitation of nature as a business opportunity, but also need to be linked to forms of democracy at the local level, giving everyone the duty and the means to protect the rights to life, reproduction, and regeneration of nature. Finally, following the recommendation of the Citizen Convention in France, a new autonomous institution, a Defender of the Environment, should be established and given ample powers to investigate complaints of pollution and habitat degradation, and direct government agencies to effectively deal with them. Random selection and rotation of members, with the adequate technical support, seems a great way to staff this office and keep it free from oligarchic pressures.

To avert ecocide, it is necessary to make structural changes to constitutional orders, which have enabled extreme inequality and the exploitation of the planet for the

sake of profit. Establishing an institutional infrastructure through which common people can make binding decisions, as well as establishing independent popular institutions to make sure the popular will is carried out quickly and adequately, is necessary to deal with an oligarchic power that has grown out of bounds. Climate crisis is here, and humanity cannot solve it until effective mechanisms exist to control the superrich who profit from extraction and pollution. The fates of democracy and the planet are intertwined. To save both, humanity needs to give power to the people.

Notes

1 I am grateful for the support of the Marie Skłodowska-Curie Fellowship and the SA UK Bilateral Research Chair in Political Theory, Wits, and Cambridge.
2 Europe, East Asia, and North America are the only regions where the income share of the middle 40% is 40% or more of total income, reaching 45% in European countries. However, when we look at the income share of the bottom 50%, it does not even reach 20% in Europe. World Inequality Report 2022.
3 Instead, there are "transparency laws."
4 Among the many departures Condorcet took from Turgot's plan was the latter's endorsement of property as a requirement for active citizenship.
5 The legislature has the right to impeach council members, but only a national jury, selected at random from the people, can decide "whether or not the accused should be dismissed from office."
6 Even if the treaty has not been upheld in the past. For a historical overview of collective rights and the defense of the environment, see Lewis (1995).
7 For updated information on the incarceration of indigenous activists and other water protectors, see the Water Protector Legal Collective <https://web.archive.org/web/20200304172140/https://waterprotectorlegal.org/water-protector-prisoners/>
8 For an analysis of normative anthropocentrism, see Mylius (2018).
9 For a review of biocentrism in American environmental thought, see Taylor (2021, chapter 5, "Biocentrism").
10 For regenerative agriculture and holistic management, see Gosnell, Grimm, and Goldstein (2020).
11 For *sumak kawsay* as a constitutional principle, see Barie (2014).
12 There were 60–100 people in each camp, including men, women, and young people. *Sarayaku People v. Ecuador*, paragraph 100.
13 For an analysis of Ecuador's extractivist politics, see Riofrancos (2020).
14 For a detailed analysis of the Citizen Convention, see Landemore (2020).
15 For a critical analysis of elections, see Landemore (2020, chapters 1 and 2).
16 Plants of a same species signal each other to alert of pests by producing chemicals that work as neurotransmitters.

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