Int J Semiot Law (2016) 29:121–134
DOI 10.1007/s11196-015-9415-z

"The Right to Self-determination": Right and Laws Between Means of Oppression and Means of Liberation in the Discourse of the Indigenous Movement of Ecuador

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Published online: 28 February 2015

Abstract The 1970s and 1980s meant an ethnic politicization of the indigenous movement in Ecuador, until this moment defined largely as a class-based movement of indigenous peasants. The indigenous organizations started to conceptualize indigenous peoples as nationalities with their own economic, social, cultural and legal structures and therefore with the right to autonomy and self-determination. Based on this conceptualization, the movement developed demands for a pluralist reform of state and society in order to install a plurinational state with wide degrees of autonomy and participation for indigenous nationalities. A part of those demands was the double strategy to fight for legal pluralism while already installing it at the local level. Even if some degrees of legal pluralism have been recognized in Ecuador since the mid-1990s, in practice, the local de facto practice prevails until today. Another central part of the demand for plurinationality is the representation of indigenous peoples in the legislative organs of the state, developing since their first appearance in the 1940s in a complex way. This article will analyze the development of right-based demands within the discourse of the indigenous movement in Ecuador, the visions of the implied state-reform and the organizational and political background and implication they have. Based on an analysis of the central texts of the indigenous organizations, conceptualizations of rights and laws and their appropriation within an autonomist discourse and a local practice will be highlighted.

Keywords Indigenous movement · Social movements · Ecuador · Self-determination · Autonomy · Framing

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1 Introduction: International and National Laws on Indigenous Issues in Ecuador

Legal issues always have extra-legal impacts. Laws do not work only within a system of rights, but are political and discursive objects. And while laws may work perfectly well inside the legal system, they can be perceived as harmful or dangerous by certain groups in society. This common place turns urgent if the construction of laws and rights is marked by a harsh inequality—as it is the case with indigenous peoples. For a long time, the discourse on indigenous rights happened mainly between non-indigenous actors. International and national legal frameworks considered hardly the people those frameworks were directed to. This is reflected by the slow opening of international conventions on indigenous rights. While the first treaty, the ILO Convention No. 107 from 1957, was heavily criticized for being too state-centered [21], its revision, the ILO Convention No. 169 from 1989, already "recognized the right of Indigenous and tribal peoples to live and develop as distinct communities, elaborated on the provisions for land rights, and elevated participation rights as a key principle" [21]. The United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, is generally considered the most advanced convention—but one that is not necessarily legally binding.

This international panorama is reflected in most countries with a considerable indigenous population. Until the 1960s and 1970s, marked by increasing indigenous mobilizations, the approach of those States was generally inscribed in a paternalizing treatment of indigenous peoples as objects of state action—in Latin America, this was called Indigenism [24]. Then this paradigm broke, leaving a wide range of possibilities to integrate indigenous peoples in decision making processes. This development is to be found in the country of Ecuador, where a considerable part of the population has indigenous heritage. Following the data of the national statistics bureau, in 2010 there were more than one million persons that defined themselves as indigenous, around 7 percent of the total population of 14 million at that time [22]. Nevertheless, this data has been criticized. Many researchers refer to a proportion of up to 30 % of indigenous persons in the total population. This gap can be explained with another important social phenomenon: a harsh racism that makes the statement to be indigenous an act of courage. This racism is embedded in political thinking since colonialism and did not change with the independence of Ecuador in the year 1824. After the abolition of the last colonial laws concerning indigenous peoples in the 1850s, a formal state liberalism pretends to treat everyone the same—as individual citizen—, invisibilizing inequalities. This only changes with the appearance of state indigenism in the 1930s and 1940s [24], one expression of it in Ecuador being the Law of Communes of 1937. This law sought to incorporate indigenous settlements outside of the traditional *haciendas* where the indigenous were included in a semi-feudal structure called *huasipungo*. The newly created communes had some degree of political and economic autonomy and "were linked institutionally to local and central state structures" [26]. Nevertheless, the aim of this law was not to revive the indigenous cultures—something it actually did—but to promote a transformation of "the communities into cooperatives for

production" [26]—this is, an integration of the indigenous into *mestizo* society as peasants without ethnic background. The general tendency of this law marked the state actions until the 1980s,[1] when the pressure of a more ethnically oriented indigenous movement became undeniable. The ILO Convention 169, and with it a partially recognition of indigenous rights, was integrated into the national framework of Ecuador first with a Constitutional Reform in 1996 [28] and then with the new Constitution of 1998 [14]. This is the first time that not only the collective rights as ILO 169 states them are guaranteed by the Ecuadorian state but also the ability of the indigenous peoples to manage juridical matters in an autonomous manner. The following Constitution of 2008 [15], written with heavy participation of social movements, went one step further and declared Ecuador a plurinational state.

Until here, the story is well known and has been studied by a number of researchers, for instance Clavero [5], González Casanova and Rosenmann [20] or Pásara [29]. However, there are only few works on the perception or 'framing' of laws and rights by indigenous peoples, more specifically, by indigenous social movements. This is what the present text will do. It will provide an exhaustive study of how legal issues are represented in the discourse of the indigenous movement in Ecuador. The method that will be used is the framing approach as defined, for instance, by Benford and Snow [3]. In this perspective, social movements are constantly engaged in "meaning work—the struggle over the production of mobilizing and countermobilizing ideas and meanings" [3]. This meaning work consists of framing, "an active, processual phenomenon that implies agency and contention at the level of reality construction" [3]. The result of this activity are collective action frames that provide things with meaning for the movement in question and guide action. The mayor frames in the case to be studied can be resumed in the opposition of an 'oppression frame', where legal issues are understood as an instrument of domination used by the elites against the indigenous peoples and their movement, and a 'liberation frame', where legal issues are understood as an instrument of the indigenous peoples and their movement to fight for their demands.

2 The Indigenous Movement in Ecuador and Its Discourse

In the 1970s happened a discursive break in the indigenous movement in Ecuador that was associated not only with a change of its demands, but also of its organizational base[2] [13]. Socialist and unionist organizations lost ground to more clearly ethnic organizations, usually founded and supported by certain groups of the Catholic Church. Therefore, the discourse of the movement was no longer based on a class platform, understanding the indigenous peoples as peasants, but on an ethnic one, understanding the indigenous peoples as unique groups with distinctive characteristics. The rather defensive framing of the situation of the indigenous

[1] With the exception of the Constitution of 1945 that included a functional representative for the indigenous peoples in the parliament—but was replaced already in 1946 by another Constitution [2].

[2] This idea has been developed in more depth in Altmann [1].

peoples as ethnic groups that prevailed until this break was replaced by demands for an ethnic "self-determination […] in a new concept of the pluralist Ecuadorian state" [17]. In the following time, certain political concepts appeared or reappeared. The most important key concept was that of indigenous nationalities, highlighting the proper social structures of those groups as opposed to Western culture. This concept has a Marxist background [26] and was used exclusively in the communist organizations in Ecuador until their decline in the 1960s and 1970s. It was restated in an ethnicized version in the early 1980s by indigenous intellectuals like Nina Pacari who claimed that the development of the Kichwa nationality "had as a result the emergence of state elements" [27]. This renewed concept was diffused quickly "because indigenous activists were able to insert it into movement, state, and international discourses" [26]. It is of special importance for this study because indigenous nationalities were, from the beginning, not only understood as bearers of distinct social, economic, political and juridical structures [27] but were also linked directly to their territory [27, 33] as the place where they can develop freely. This is why the demand for self-determination [27] receives a new dimension at this point. A local indigenous organization from the Amazon states these ideas in slightly different terms around the year 1985. For the UNAE,[3] the fights of the indigenous peoples "are fights of defense of the territory, of the survival of the group" [33]. It defines the discursive break that happened as a break between a conception of land as a means of economic production for peasants and territory as a means of cultural reproduction of the indigenous peoples and nationalities.

> The land for the native doesn't mean the lot that the law can assign to him, or the family patrimony […]. The land means a certain place where he lives and finds the reason for his existence. His concept of land is that of a territory, an extensive home country in which he mobilizes freely in relation to the other members of the group. A territory whose concept is basically integrated by the forest (*sacha pacha*). Inside the *sacha pacha* (forest) is everything, included, as a further element, the land (*allpa*). The *sacha pacha* (the forest) is an extensive territory that has preserved itself, that has defended itself for the group and in which can be found freely and roaming in all its scope, more than the ashes and bones of their ancestors, their souls, the powers and spirits that guide their life and their destiny [33].

The indigenous nationalities develop their social structures in a tight relationship with their territories which are "historically united with the reason of being of these people" [33]. This is why the logical next step, the fight for a pluralist, "multinational" [27] or plurinational state, where the indigenous nationalities can live in an autonomous and self-determinated manner in their territories—as opposed to the general trend towards an integration [27]—came almost at the same time, first in Pacari [27]. In 1986, the indigenous organizations engaged in this discursive

[3] Unión de Nativos de la Amazonía Ecuadoriana, in English: Union of Natives of the Ecuadorian Amazon. It should be remarked that the concept of territory is of more importance for the Amazonian organizations, given that it is -with few exceptions- only there where ethnically defined territories do still exist.

innovation created a national indigenous organization, the CONAIE.[4] This organization identified itself from the beginning with the demand for a plurinational state that allows for territorial autonomies for the indigenous nationalities [7, 8]. Its first public expression, the proposal for a law of indigenous nationalities, elaborated in cooperation with other indigenous organizations and the Socialist Party [6], detailed how a regime of territorial autonomies within a plurinational state is supposed to work. This law defined indigenous lands as "indivisible, non-forfeitable and untouchable, preserving their communitarian logic" [6]. Therefore, any public work or exploitation of natural resources could only happen with the consent of the community in question [6]. Furthermore, in the proposal for a law appear two topics that would mark the discourse of the actors in the following years: the establishment and recognition of indigenous forms of jurisdiction was demanded and the role of indigenous peoples as conservers of nature[5] was distinguished [6].

This set of demands was further concreted in the following years, above all, in the Political Project of the CONAIE, published in 1994. Here, the relationship between indigenous nationalities, their territory, and the project of a plurinational state, is made explicit:

> The territory understood as a defined physical-geographic space, where a people lives and develops, has been the base for the survival and economic, political and cultural development of the Indigenous Nationalities where we have exercised the Autonomy through the proper authorities which has guaranteed the pacific coexistence and living together with the Indigenous Nationalities that live in the actual 'Ecuadorian Nation' [8].

In this sense, the CONAIE wants to run a vast state program of territorial recuperation, reconstitution and defense that would revise the distribution of land marked by colonialism and racism [8]. By this, "the right of the nationalities to their territory, internal political-administrative autonomy" [8] would be guaranteed.

As a result, the existing state is framed as illegitimate and its laws as part of the structures of oppression that are to be overcome by the plurinational state. The colonial and republican political structures "imposed the private property of land and applied a legal system alien to our reality" [8]. CONAIE goes further in the development of its oppression frame, declaring that "the Uninational Bourgeois hegemonic white-mestizo state is in its juridico-political and economic nature exclusive, antidemocratic, repressive and pro-imperialist" [10]. It is a mere instrument of the dominant classes and has been used systematically to deny the indigenous peoples and the poor masses their individual and collective rights. For CONAIE, the only way for the indigenous peoples to free themselves from the "cruel systems of exploitation and oppression" [10] maintained by the uninational state, is to build up the plurinational state with a new type of society. So, the liberation frame developed by CONAIE sees the plurinational state as the actor that guarantees a real democracy and an effective application of laws in a new political,

[4] Confederation of Indigenous Nationalities of Ecuador, Confederación de Nacionalidades Indígenas de Ecuador.

[5] This argument re-appears regularily, for instance in CONAIE [8].

cultural, economic and juridical order [10]. In this liberating sense, the refoundation of the state and its juridical and political structures would allow for a full participation of all in the processes of decision making. The central piece of this change of state structures would be a new constitution and complementary laws [10].

While CONAIE is clearly the biggest and most influential national indigenous organization, it is not alone with its development of a clear conceptualization of state and laws. The second biggest national organization, FENOCIN,[6] answered the leading concept of plurinationality with which the CONAIE marked the discourse of the whole movement with its proposal of interculturality. The oppression frame of FENOCIN sees a project "of power, of exclusion, of strictness and submission to international debtors" [19] that "intends to reduce the rights of indigenous and afro-ecuadorian peasants under the concept of 'ethnic minorities'" [19]. Opposed to this project is the liberating project "of the Ecuadorians of the people, of the movement, participation, inclusion and hope" [19] that wants to "build in our country an intercultural social context, flexible and democratic, that gives support to the identities and rights to all citizens" [19]. The main idea of this liberation frame is a restructuring of society that allows at the same time spaces of autonomy for the different groups and intercultural spaces to build relations between them [18]. This would be based on a "massive and complete program of legalization of ancestral lands" [18] that leads to pluriethnic "indigenous and black circumscriptions at the level of communal territories" [18]. While the approaches of CONAIE and FENOCIN share certain ideas, the liberation frame of interculturality of FENOCIN is different from—and at times opposed to—the liberation frame of plurinationality of CONAIE. FENOCIN sees the relationship between an indigenous people and its territory much more liberally, rejecting the strict understanding of CONAIE as "an idea of ethnic cleansing" [18]. Instead, it fights for "multiethnic territorialities" [18], representing the interests of its non-indigenous members. As FENOCIN is competing with CONAIE within the indigenous movement, this refutation has a strategic value for the organization [3]. For FENOCIN, indigenous autonomies are understood as part of the decentralization of the state and would be integrated directly in intercultural political structures [18]. A part of these structures would be the juridical plurality that is imagined by FENOCIN equally liberally: "In the juridical field, for example, an indigenous or a mestizo can have the freedom to choose, if he or she has to be judged, between the laws and an indigenous tribunal or a conventional one…" [18].

This disagreement between the two major organizations of the indigenous movement led to a weakening of the position of the movement before the State, especially concerning the Constitution of 2008 where the liberal ideas of FENOCIN were preferred over the more radical ones of CONAIE. As a result, one organization was played off against the other, leaving little space for the common ground in those opposing ideas.

[6] Confederación Nacional de Organizaciones Campesinas, Indígenas y Negras, National Confederation of Peasant, Indigenous and Black Organizations.

3 Rights and Laws in the Discourse of the Indigenous Movement

Both frames developed above—oppression frame and liberation frame—cannot be reduced to political demands like that of a new constitution that would create a plurinational or intercultural state. They outline the understanding of rights and laws by the indigenous movement as something created to oppress them and/or—sometimes at the same time—something that can be an instrument of self-liberation. And actually, rights play a central role in the discourse of this movement, at least since the discursive change in the 1970s. As the existing liberal democracy did never apply central democratic principles [8], but rather worked as an instrument of the elite, both indigenous peoples and the lower classes became "victims of the deficient organization and functioning of the state apparatus" [8]. Therefore, the fight for plurinationality is a fight that "intends to re-establish the political and economic collective rights denied by the dominant sectors through all institutional means or using the last recourse of self-defense allowed by international organisms and the constitution in effect" [8]. A part of this fight would be the "re-arrangement of the juridico-political structures" [8] in order to allow "for each Nationality to strengthen its legal system that will work within the exercise of the right to autonomy of the Nationalities and in the process of integral development of the Plurinational State" [10].

So, there is a multiple strategy at work: on the one hand, the indigenous movement fights for territorial autonomies that include legal plurality, on the other hand, they fight for equalitarian representation within the state structures. At least since 1990, the political aims of the indigenous movement oscillate between "two options: integration or political autonomy" [4]. The option of integration tries to "conquer power or widen the fields of action within the existing political structures" [4]. While this strategy is clear enough, the opposition—even as ideal types—of integration and autonomy will not help to understand the political work of the indigenous movement. What Büschges—and with him many others—describes as integration is the construction of independent state institutions under the control of the indigenous organizations. This started with the creation of the DINEIB[7] in 1988 as an autonomous office within the Ministry of Education [25], managing most indigenous schools, and went on with the creation of a state development agency for indigenous peoples in 1997 [28] that was later renamed in CODENPE.[8] Both institutions, even if institutionally flawed and scarcely funded, were spaces of indigenous autonomy within the official state structures—a point of self-liberation within the structures of oppression. This partial and autonomous integration was changed after 2009 with several reforms that ended the autonomy of both DINEIB and CODENPE [32]. The strategy of autonomy tries to—following, again, Büschges—build up political structures based on an ethnically understood territoriality [4]. It moves in line with the ideas of collective human rights and

[7] National Direction of Intercultural Bilingual Education, Dirección Nacional de Educación Intercultural Bilingüe.

[8] Development Council of the Peoples and Nationalities of Ecuador, Consejo de Desarrollo de los Pueblos y Nacionalidades del Ecuador.

the protection of indigenous cultures within their territories. The Constitutions of 1998 and 2008 are marked by this idea of autonomy [4]—adapting it to the framework of the liberal nation state of the Western model. On a legally unclear level, there has been a *de facto* (and not necessarily *de iure*) system of local territorial autonomy at work since the early 1990, above all in the Amazon [4]. A part of this zone of unclear autonomy would be the more than one million hectares of land that were given to the indigenous organizations of the Amazonian province of Pastaza in 1992 [28].

The argument here is that both integration into the state with institutional autonomies and territorial autonomies with the attempt to an institutional integration are inseparable parts of the same political strategy—a strategy that moves between what has been developed as oppression frame and liberation frame and that is directed towards an abolition or at least reduction of oppressive structures and the establishment of structures that allow for great degrees of self-determination. It is within this strategy that right and laws are conceptualized or framed in new and creative ways, always having in mind the contradiction of integration and autonomy that—following both CONAIE and FENOCIN—has to be overcome in the sense of a unity in diversity. In this perspective, the central problem of the fight of the indigenous movement is the compatibility and harmonization between the communitarian logic of the indigenous peoples and the national logic of the state.

3.1 Legal Plurality

A main issue in the attempt to solve this contradiction—at least locally—is the question of legal plurality. As has been outlined above, the indigenous movement has spent a long time fighting for autonomy, including the "legal competence over the administration of internal affairs" [34]. The indigenous peoples claim to possess their own traditional legal structures, resumed, for example, by Nina Pacari as the harmonic relationship between family norms, social norms and legal norms of the whole people (*Ayllu Camachic*, *Llacta Camachic* and *Mama Ayllu Camachic*) based on the moral principle of *Ama Quilla*, *Ama Llulla*, *Ama Shua* (Don't be lazy, don't lie, don't steal) [27].[9] Those legal norms have co-existed for a long time with the formal legality of the state. Nevertheless, until the integration of ILO 169 into the state constitution in 1996, the norms detailed by Pacari were not "legally recognized as 'sources of law'" [34]. This led to the effective existence of a contradiction of traditional indigenous law and state law, or "a kind of internal 'legality', constructed before the state legality" [34]. It seems that at times, both legal systems are antagonistic and cannot be reconciled easily. For instance, the indigenous system does not know the neutral instance of a judge from outside of the community [34] or the existence of a legal system as something separated from social live [34]. That leads regularly to acts of collective disobedience against state justice if its decisions do not meet the expectations of the indigenous group in question [34]. As the state system is obviously stronger, this inequality between two systems of right tends to go

[9] A much more detailled presentation of the legal structures of the indigenous peoples can be found in Pérez [30].

towards an integration of the weaker system—once again, converting the indigenous into non-ethnic citizens [34]. The Constitution of 1998 [14] did change this panorama somehow, recognizing the property of the indigenous nationalities over their territories and their traditional forms of social and political organization (Article 84). In its Article 191, alternative procedures for the resolution of conflicts are recognized, made explicit in the case of the indigenous peoples:

> The authorities of the indigenous peoples will exercise functions of justice, applying their own norms and procedures for the solution of internal conflicts in agreement with their customs or customary law, always, if they are not contrary to the Constitution and the laws. The law will make those functions compatible with that of the national juridical system [14].

However, the application of this article was never completely successful, leaving indigenous justice in a sphere of informality. The Constitution of 2008 goes further, recognizing the right of the indigenous peoples to "Create, develop, apply and practice their own or customary law, that cannot violate constitutional rights" [15]. The article that defines the relationship between indigenous and ordinary law seems quite advanced and in tune with the ideas of a plurinational state:

> The authorities of the indigenous communities, peoples and nationalities will exercise juridical functions, based on their ancestral traditions and their proper right, within their territorial area, with the guaranty of participation and decision of women. The authorities will apply proper norms and procedures for the solution of their internal conflicts and that are not contrary to the Constitution and the human rights recognized in international instruments. The State will guarantee that the decisions of the indigenous jurisdiction will be respected by public institutions and authorities. Those decisions will be subject to the control of constitutionality. The law will establish the mechanisms of coordination and cooperation between indigenous jurisdiction and ordinary jurisdiction [15].

This advanced piece of legislation has been applicated in a flawed manner, at least following the organizations of the indigenous movement. On a workshop on indigenous right held by CONAIE and several of its member organizations in December 2013 in Quito,[10] the fact was highlighted that the application of this coordination of indigenous and ordinary jurisdiction depends, de facto, on the ordinary judge in the region in question. While some judges actually do accept indigenous right as a means of resolution of conflicts, others reject it and demand an ordinary, Western-style trial for all infractions or crimes committed in indigenous communities. Furthermore, the indigenous leaders at this workshop highlighted that felonies such as murder or rape are never admitted as cases resolved by indigenous justice—while, obviously, indigenous justice is able to do so and has done so for a long time. Another important point of the discussions there and in general within the indigenous movement is the usual misunderstanding of traditional justice as the lynching of people without trial—a practice that actually is to be found in the

[10] The author participated in this workshop. The following information is taken from his field diary.

Ecuadorian countryside, but not necessarily related to ethnicity.[11] The fact, that those lynchings are understood in the mass media as a type of indigenous justice is highly harmful for the real indigenous justice, reducing its legitimacy.

It seems that, especially concerning the role of territory for the indigenous nationalities, the State inclined more towards the proposal of FENOCIN—that of a liberal system of low-scale autonomies—than towards that of CONAIE—where territorial autonomy is understood as a far-reaching self-determination. In a proposal for a law of territorial circumscriptions in 2010, CONAIE made explicit its political ideas concerning legal plurality. Following this proposal, the indigenous peoples should have a structure of self-government in their territorial circumscriptions, led by their customs and traditions and, above all, "regulated by their own norms and their custom law" [13]. The experiences outlined above show clearly that the reality is far from this proposal.

It is worth mentioning that there is hardly any reference to international legislation or treaties by the indigenous movement in Ecuador. The movement did not refer at all to the convention ILO 169 in the early nineties—the only exception being some texts that were published around the Constituent Assembly in 1997/1998, that is, the event that led to the final integration of ILO 169 in the legal framework of Ecuador. It almost seems that the indigenous organizations did not care about this kind of international treaty. This general trend seems to change lately due to the end of several indigenous institutions that would be protected following ILO 169. One important step in the growing importance of international references is the proposal of a law of territorial circumscriptions by the CONAIE in 2010 that bases its argumentation mainly on the Constitution of 2008, but also includes references to ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples of 2007 [13].

3.2 Participation in State Politics

Another interesting strategy of the indigenous movement is the active participation in State politics. This participation has had different forms that almost always were at the same time part of strategies of integration and strategies of autonomy. In the strategy of participation, state structures are conceptualized as structures of oppression—but structures of oppression that can be used for liberation. This strategy is visible in the constant proposal of laws by indigenous organizations, with the support of non-indigenous and later indigenous political parties. The already quoted Law of Indigenous Nationalities, submitted to the Parliament in 1988 by the Socialist Party and elaborated by the mayor indigenous organizations of the country [6], did not only propose for the first time publicly the construction of a plurinational state with territorial autonomies for the indigenous nationalities, but marked a way of communicating concrete demands by the submission of proposals for laws. Another important example would be the project for an integral agrarian reform, submitted in 1994 [16], at a time when the agrarian reform that was running since 1964 was revised and finally ended [28]. The rather unknown proposal of a

[11] This has been studied in depth by Krupa [23].

law of biodiversity [11], containing, once more, the central demands of a plurinational state with territorial autonomies, proves that the submission of proposals of laws is an ongoing tool of contention. The already quoted proposal of a law of territorial circumscriptions [13] challenged the lengthy negotiations over a law of lands that seem to come to a conclusion in early 2015. The proposals for the constituent assemblies in 1997/98 [9, 28] and 2007/08 [12] are probably the most important cases of this strategy of usage of legal structures. Nevertheless, all those attempts have clearly an extra-legal aspect: not one was accepted and most were not even discussed in parliament, turning the strategy of legal proposals in a frustrating experience of legal provocation directed, at least in part, to the movement and its allies outside of the structures used. So, it is no wonder that most of the proposals discussed above were followed or preceded by mayor mobilizations, combining political pressure from the streets with political pressure from within the system.

This strategy of participation in (and with that, recognition of) state structures via the proposal of laws was made continuous with the creation of a political party of the indigenous movement in 1996. The Movement of Plurinational Unity Pachakutik—New Country[12] (MUPP-NP) changed the rules of political engagement of the indigenous movement—above all CONAIE and its allies that run this party. While the indigenous movement as a social movement applies political pressure from the streets, the communities and the countryside, Pachakutik represents this movement in the national parliament—and engages in attempts to "conquer local power" [4], building up areas of formal indigenous control. The experience of Pachakutik has been quite successful—in the eventful political panorama of Ecuador, it is nowadays one of the oldest still existing political parties and the most active party of the oppositional block.

A final point of interest are the proposals for institutional representation in parliament elaborated by the indigenous movement. Beyond a simple opposition of strategies of integration or autonomy, those demands offer another perspective on the representation of the different—in other words, it is part of the liberation frame that tries to use the existing oppressive and exclusive structures in order to fight for indigenous rights. The first time, a "functional representative for the indigenous organizations" [2] appears is in the Constitution of 1945. This was an improvement of the corporative indirect representation of indigenous peoples—amongst other social groups—in the previous Constitution of 1929, a flawed instrument that was constantly misused [31]. As the Constitution of 1945 had a lifetime of only 1 year, the institution of functional representation could not develop traction. Nevertheless, the idea of an institutionalized representation did not disappear. After the discursive change in the 1970s, it is formulated in other ways. Nina Pacari demands in her already quoted text "Functional Indigenous Senators in the National Congress, so that, through them, our voices, suffocated for almost 500 years of oppression, humiliation, have an echo, are heard" [27]. In her vision, the institutional representation should go well beyond some members of parliament. She also demands the creation of an "Autonomous Indian Council that groups all the Councils of each one of the nationalities, with voice and vote within the organisms

[12] In Spanish: Movimiento de Unidad Plurinacional Pachakutik—Nuevo País.

of the State" [27]. CONAIE offers its own vision in its proposal for the Constitution of 1998. It wants one third of the congress to be representatives of the indigenous peoples, elected by them through a proper electoral system defined by them [9]. These demands for a simple representation changed in the proposal of CONAIE for the Constituent Assembly in 2007/2008. Instead of a fixed number of representatives, CONAIE proposes a profound change of the "model of liberal and hardly representative democracy that has been imposed on us" [12]. In its place, CONAIE wants to exercise popular sovereignty in a participative way, via local assemblies and citizens' initiative, in a representative way, maintaining the central principles of liberal democracy while strengthening minority rights, and in a communitarian way, designating authorities by proper local systems [12]. This proposal seems like a well-advanced combination of the strategy of integration and the strategy of autonomy, trying to build a bottom-up democracy with spaces of (not necessarily ethnically defined) self-determination and structures of interconnection. It is clearly part of the liberation frame that understands state structures, changed in the appropriate manner, as instruments of a liberation of not only the indigenous peoples but of all citizens of Ecuador. Sadly, none of those proposals has been seriously considered by state institutions, turning all those ideas in less more than wishful thinking—and political action.

4 Conclusion

Law is seen by social movements as a double-edged sword—on the one side, it is conceptualized or framed as a means of oppression in the hand of just that elite one is fighting against, on the other one, it can be a means of liberation, using the legal structure built up to protect the status quo in order to change it. In the present text, this opposition of understandings has been described as the opposition of an oppression frame and a liberation frame. In the concrete case of the indigenous movement in Ecuador, both frames have been active and influenced action and discourse of this movement interchangeably or, sometimes, at the same time. While it does conceptualize the existing state as exclusive, oppressive, elitist and badly managed, with a series of racist and classist laws (that would be the oppression frame), it does utilize laws and rights, both on a national and (to a lesser degree) an international level, in order to fight for the self-determination of indigenous peoples in their ancestral territories. Of course, the liberation frame is much more complex, as it contains different strategies that move between the poles of integration and autonomy for indigenous communities. It has to offer an elaborated and applicable alternative to the existing situation in order to be accepted as something worth the fight—it would be part of a prognostic framing, defining the changes that are to be made [3]. The oppression frame is simpler and easier to communicate because it belongs largely to diagnostic and motivational framing [3], that is, it offers something to fight against in order to mobilize members and sympathizers of the movement.

Through the creative and innovative combination of those approaches, the indigenous movement in Ecuador succeeded in integrating legal issues in its discourse in a way that surpasses local conflicts and could be converted in a topic of

national contention. By this, the conceptualization of law did not stick to local land conflicts that are virtually impossible to communicate on a national level, but did turn law and the State into instruments of generalized oppression—instruments that could be used in a next step to liberate the indigenous peoples. The discursive basis that did allow this wider conception of law and rights was the ethnicization of the demands of this movement—law does appear as an instrument of repression if it does not recognize indigenous social, legal, political structures.

Conflict of interest The author declares that he has no conflict of interest.

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