

# Contentious politics and pragmatism in legal mobilization within environmental conflicts in Brazil

Par Cristiana Losekann  
e-legal, Volume n°5

Pour citer l'article :

Cristiana Losekann, « Contentious politics and pragmatism in legal mobilization within environmental conflicts in Brazil », in *e-legal, Revue de droit et de criminologie de l'ULB*, Volume n°5, février 2021.

Adresse de l'article :

<https://e-legal.ulb.be/volume-n05/la-mobilisation-du-droit-par-les-mouvements-sociaux-et-la-societe-civile/contentious-politics-and-pragmatism-in-legal-mobilization-within-environmental-conflicts-in-brazil>

La reproduction, la communication au public en ce compris la mise à la disposition du public, la distribution, la location et le prêt de cet article, de manière directe ou indirecte, provisoire ou permanente, par quelque moyen et sous quelque forme que ce soit, en tout ou en partie, ainsi que toute autre utilisation qui pourrait être réservée à l'auteur ou à ses ayants droits par une législation future, sont interdits, sauf accord préalable et écrit de l'Université libre de Bruxelles, en dehors des cas prévus par la législation sur le droit d'auteur et les droits voisins applicable en Belgique.

© Université libre de Bruxelles - février 2021 - Tous droits réservés pour tous pays - ISSN 2593-8010



**Abstract:** This contribution aims to verify whether Political Process Theory and Legal Mobilization Theory are promising analytical frameworks to study legal mobilization. Based on empirical research on environmental conflicts in Brazil, we first show how the benefits and deficiencies of those approaches. Then, drawing on John Dewey's pragmatist perspective and the concept of performance, we show how interactions between actors in these conflicts occur and how they can create large coalitions of struggle. Our argument is that within certain structures of legal opportunities, the interactions between the actors from inside and outside the legal field determine the legal mobilization.

**Résumé:** Cette contribution vise à vérifier si la théorie du processus politique et la théorie de la mobilisation juridique sont des cadres analytiques prometteurs pour étudier la mobilisation juridique. Sur la base de recherches empiriques sur les conflits environnementaux au Brésil, nous montrons d'abord comment les avantages et les lacunes de ces approches. Ensuite, en nous appuyant sur la perspective pragmatique de John Dewey et sur le concept de performance, nous montrons comment se produisent les interactions entre les acteurs de ces conflits et comment ils peuvent créer de grandes coalitions de lutte. Notre argument est que dans certaines structures d'opportunités juridiques, les interactions entre les acteurs de l'intérieur et de l'extérieur du domaine juridique déterminent la mobilisation juridique.

§1 Based on case studies related to environmental conflicts in Brazil, this contribution offers a theoretical discussion on how studies about collective action and law are produced in social sciences and formulates empirically informed reconceptualization. Theory of Legal Mobilization (TLM) is rightly identified as a successful initiative to tackle this issue, mainly through the Political Process Theory (PPT). However, some PPT problems remain in TLM adaptation: we here specifically address weaknesses in the understanding of interactions between actors and in the analysis of contexts which does not adequately consider the roles of subjects in political processes. In order to fill this gap and enhance the conceptual and explanatory refinement of these approaches, we rely on John Dewey's pragmatism and seek to adapt it to the analytical framework, drawing on the concepts of collaborative and confrontational performances. Those concepts are promising analytical categories for complex political processes that cross judicial arenas. It also leads us to conceive the mobilization of law as litigation interactions formed by cooperative performances and confrontation. These interactions connect multiple actors, institutions, and fields<sup>1</sup>. Considering the complexity of interactions and the possibilities of analysis, this article specifically attempts to identify the relevant mechanisms through which social movements carry over into the legal field, articulating a transgressive dimension and a confrontation dimension contained by confrontation<sup>2</sup>.

§2 Following authors such as McAdam, Tarrow, and Tilly, we argue that the construction of contentious repertoires can occur in a non-institutional or an institutional manner. When institutional contentious repertoires are formed, more or less formal links are established between the activists and the state actors responsible for the operation of these control institutions<sup>3</sup>. In this sense, the interactions between social movements and state actors are elaborated in collaborative performances that, paradoxically, form contentious repertoires.

§3 These processes become even more complex when we consider the State as multiple competing actors and institutions<sup>4</sup>. The heterogeneity that pluralizes decision arenas can open various political and legal opportunities for activists and social movements and produce different relational mechanisms and dynamics of collective action. Concerning mobilisation with environmental conflicts in Brazil, several legal opportunities are of interest, mainly the use of public civil action, in addition to less formal and contained performances that arise from interactions between actors in the field of law, such as state and federal prosecutors from the Public Prosecutor's Office, and social movements. In this sense, a symbolic and emotional dimension that is present in the mobilization of the law is also of interest.

§4 To understand this it is important to highlight some institutional specificities of Brazil. In this country, the Constitution of 1988 is an important milestone in the consolidation of both diffuse rights and forms of judicial control to promote these rights. This point in time is when the Public Prosecutor's Office gained independence from the executive to become the main agent responsible for defending collective rights, thereby channelling this type of conflict to the judicial sphere<sup>5</sup>. In addition, the environment was the inaugural issue in the regulation of diffuse rights through the National Environment Policy of 1981. Here, we highlight two new legal instruments: the legitimacy of the Public Prosecutor's Office in filing lawsuits for civil and criminal liability due to environmental harm; and the public civil suit, which can be brought not only by the Public Prosecutor's Office but also by the federal government, states and municipalities, regional authorities, public companies, joint foundations and societies, and, particularly for our purpose, associations with over one year of existence that include among their goals the protection of the environment, the consumer, and/or historical and cultural heritage.

§5 The theoretical framework from which this discussion develops draws from different areas of study: theories of collective action – particularly the contentious politics approach –, and specific discussions on the relationship between social movements and the law, as well as legal mobilization. In addition to broadening our understanding of collective action, this amalgam will introduce elements that may add some layers of complexity to the theory, enabling us to apprehend how institutional and non-institutional aspects interplay within mobilization processes.

We discuss how the relationship between law and social movements was dealt with in collective action theories, the revisions that were made from the legal mobilization theory, its limitations, and the possibilities of enrichment from of an interactionist and pragmatist approach. Our contribution highlights the less-studied interactions between social movements and state actors such as prosecutors and public defenders. The legal mobilization agenda is generally very focused on the social movements' use of legal instruments but does not address their interactions with actors in the legal field. Concerning environmental conflicts in Brazil, several organizations and local communities tends nowadays to let the Public Prosecutor or the Public Defender formally intervene in their action. They collaborate in other ways, remaining "in the territory", seeking evidence that supplies the promoter's action, and performing other complementary forms of action.

## Methodology

§6 This theoretical discussion is based on 15 years of empirical research on the environmental advocates movements in Brazil and to a lesser extent in Latin America. Throughout this time, I collected quantitative and qualitative data on the use of the Public Civil Action<sup>6</sup> instrument by environmental groups and on the links they have established with Prosecutors and Public Defenders. In addition, I continuously follow the mobilization of law as a repertoire of collective action in the struggles for environmental justice in Brazil, seeking to articulate the theoretical aspects presented here.

§7 In 2009 I completed my doctoral research on how environmentalists sought to influence environmental policy during the government of Luis Inácio Lula da Silva (Lula). This research used qualitative methodology, carried out with documentary research, observation, and interviews with environmentalists from 2005 to 2009. One of the findings was that the mobilization of the law started to constitute itself as a repertoire of collective action for Brazilian environmentalism from the 2000s<sup>7</sup>.

§8 In the continuity of my doctoral research, I first maintained a focus on this specific aspect (mobilization of the law in environmental conflicts). But then, after studying judicialized conflicts, I found out that an important part of the litigation was connected to the consolidation of the economic development policy based on large infrastructure projects and mineral extraction. At that time, specific research was carried out with the support of the main scientific funding agency in Brazil (called « Conselho Nacional de Desenvolvimento Científico e Tecnológico »). In these surveys, a database of lawsuits filed by environmentalists was created. In addition, dozens of interviews and a specific ethnographic study were carried out on conflicts involving the framing of collective action by “people affected by mining”. In this study, I learned about several cases of environmental conflicts involving permanent interactions with institutions and judicial actors. In this context, specific cases were studied more carefully: the conflict between fishermen from Bahia de Guanabara and Petrobrás, on the one hand, and the conflicts involving the communities affected by the activities of the mining company Vale, on the other<sup>8</sup>.

§9 Since 2015, after the disaster caused by the collapse of the Fundão mining dam in the state of Minas Gerais – considered one of the biggest environmental disasters in Brazil –, I have been analyzing the interactions between legal operators and social movements in the process of repairing this disaster. In this last front of investigation, I conducted 20 interviews with Defenders and Prosecutors and more than 40 interviews with the inhabitants of communities affected by the disaster<sup>9</sup>.

§10 Over the years, I have published articles presenting specific data and results of these studies in several Brazilian scientific publications. The objective of the present article is to carry out a theoretical analysis based on the accumulation produced throughout all these specific researches.

## The Law in Collective Action Theories

§11 In *Dynamics of Contention*, McAdam, Tarrow, and Tilly defined political contention as an episodic interaction between public and collective claimants, on the one hand, and the object in question, on the other. They differentiated “contained” from “transgressive” contention, preferring this distinction over institutional and non-institutional (or unconventional). The goal was to keep sight of the flows between “conventional” and “unconventional” forms of policy. We begin this section by addressing the legal mobilization using the design proposed by these authors.

§12 The proposed definitions of contained and transgressive contention share two necessary characteristics: the existence of at least one government as the object or part of the claims (a) and the fact that the claims affect the interests of at least one of the claimants (b). However, while in contained contention, all parties to the conflict must have been previously established as political actors ©, in transgressive contention, at least some of the participants should be political actors who recently self-identified as such (d). Finally, one feature further differentiates these two types of contention: the innovation factor (e). In transgressive contention, either party must produce innovative actions. According to the authors: “[a]ction qualifies as innovative if it incorporates claims, selects objects of claims, includes collective self-representations, and/or adopts means that are either unprecedented or forbidden within the regime in question”<sup>10</sup>. Therefore, transgressive contention is distinctive since it implies the formation of new political actors and innovation in politics.

§13 In the development and characterization of these two forms of contention, confrontation in court is explicitly viewed as “contained”. For the authors, short-term social change and policy are largely a result of transgressive rather than “contained” action, which, by combining elements of the system itself, tends to maintain the *status quo*. At first glance, this idea seems obvious because filing a lawsuit involves a series of pre-existing procedures and established actors. However, the links produced by activist lawyers or prosecutors have significant effects in empowering subjects usually marginalized by the system<sup>11</sup>. The latter must however not be seen as mere objects or puppets. They play an important role in the development of the confrontation, as some studies have shown<sup>12</sup>. Thus, we can certainly envision political actors who are established based on judicial repertoires, which somewhat blurs this aspect of the conceptual distinction between the two types of contention.

§14 The “innovation” factor also shows some ambiguities in cases of judicial repertoires. An important research agenda is guided precisely by the analysis of the uses and effects of these specific repertoires on institutional and social

change<sup>13</sup>. This aspect was later studied by Edelman, Leachman, and McAdam, who created an analytical model to consider “multi-institutional social environments” through which institutional changes could be conceived as “exogenous shocks” or “incremental endogenous shifts”<sup>14</sup>. However, what we want to call into question in the classification scheme of contained and transgressive contentions is whether the legal mobilization only includes conventional strategies.

§15 For example, Liora Israël examined the role of legal practitioners in the French Resistance between 1940 and 1944<sup>15</sup>. She shows that they moved between transgressive and legal action and combined activism with the profession, acting “despite the law<sup>16</sup>” and “through the law” — where law is used as an instrument and strategy and the privileged position in this field was used to contribute to the fights in question — and seeking to “redefine the law” by calling into question the principles underlying the legitimacy of the actions considered illegal<sup>17</sup>. Thus, from lawyers to judges, many sought to legally justify actions that were considered illegal, re-discuss rules and principles, and propose “counter-designs” of justice and legality<sup>18</sup>. In this sense, they innovated both by using unconventional mechanisms for unconventional goals and by changing the rules of the system.

§16 In this sense, we argue that historical contexts, social situations, and specific cultures can interfere in the categorization of contention, such that, as the authors cited above, we would have to consider some cases of institutional repertoires, such as judicial repertoires, as transgressors as well.

§17 That is what we observe about the current demands (with some partial achievements) of indigenous peoples in Latin America, who have sought to create constitutional innovations and have claimed legitimate unconventional methods for resolving conflicts or making collective decisions. The Munduruku indigenous people, who, along with the riverside inhabitants of the Montanha and Mangabal settlements in the Brazilian state of Pará, are being threatened by the impacts of the São Luiz do Tapajós hydroelectric plant, are such an example. In this context, they claim the right to prior consultation, as established by Convention 169 of the International Labour Organisation, but they go further, stating exactly how they want to be consulted. This protocol resulted from the affected communities’ initiative, with the assistance of the Federal Public Prosecutor’s Office. It represents an important innovation in the repertoires of such conflicts, although connected to the field of law<sup>19</sup>.

§18 The Munduruku group consists of about 13 thousand indigenous people who live in more than one hundred twenty villages along the Tapajós River basin, one of the main tributaries on the right bank of the Amazon River in Brazil. The Munduruku people from the region live in three designated indigenous lands (Sai Cinza, Munduruku and Kayabi) and are fighting for the designation of the Daje Kapap Eypi territory (Sawré Muybu Indigenous Land). The act of designation



represents the state's formal recognition of the territory's traditional occupation by indigenous people. For many years, they have battled against the federal government project to install seven hydroelectric plants in the Tapajós River basin, a development that threatens their territory and way of life. In 2016 the Munduruku won a historic institutional victory by not authorizing the planned hydroelectric plant<sup>20</sup>.

§19 Socio-environmental conflicts are marked by the limitation of social participation because what is projected in hegemonic fashion as economic development involves a relationship of the exploitation of nature, understood as a natural resource, and brutal interference with the environment. The conflict emerges specifically from the collision of this way of valuing the economy with other factors that are also involved in our relationships with nature, such as leisure activities, scenery, spirituality, and well-being. These conflicts also confront varied ways of life and different world views. Overall, powerful political/economic interests and socially vulnerable groups are in opposition.

§20 The Convention number 169 of the International Labor Organization (ILO), created as an international agreement between countries belonging to the United Nations (UN), formalized the right of indigenous and tribal peoples to participate in decisions regarding changes in and use of their territories. Consultations allow groups that might be affected into the decision-making process. Brazil is a signatory of this Convention.

§21 Following strong political mobilization endorsed by a court decision, the first consultation was to be performed with the Munduruku people, threatened by the construction of the São Luiz do Tapajós Hydroelectric Plant. However, performing a consultation does not in and of itself guarantee participation; it is necessary to open the decision-making process up and examine its precise terms.

§22 It is in this context that they drafted the Munduruku Consultation Protocol (initiated in Brazil by the Wajãpi people, in Amapá), in which they told the government how they want to be consulted. They emphasize that the consultation take place in their own territory, in villages of their choosing, and gathered in meetings with the participation of Munduruku people from all regions of the Tapajós. They also clarify that the decisions are to be made after a long debate, which shall take as long as necessary to achieve unanimous consent among the people<sup>21</sup>.

§23 The Munduruku had their territory recognized by the Circumstantial Identification and Delimitation Report in April 2016. Upon recognition that same year, they decided to demarcate their land on their own (self-marking).

§24 Although the Munduruku Protocol can be seen as an example of successful

interaction with the Prosecutors and as a kind of performance that innovates law even while acting on its margins, other factors in Brazilian politics have made the situation of this indigenous people still far from what they wish. This experiment nevertheless generated other new consultation protocols for traditional peoples and was incorporated as a standard of conduct for Prosecutors<sup>22</sup>.

§25 Even in the famous cases examined by the authors, especially the civil rights achievements in the United States, a confrontational trajectory may unfold in a contained and transgressive manner at different times. Although the authors do not make this connection, the Montgomery mobilization process — as part of a larger set of struggles against racial segregation in the United States — can easily be related to the legal dispute *Brown v. Board of Education*, which is considered the most important ruling of the twentieth century<sup>23</sup>. The decision was delivered in 1954, a year before the Montgomery mobilization, encouraging the struggle to end racial segregation<sup>24</sup>.

§26 In this sense, Jasper<sup>25</sup> argues that the effects of the *Brown* decision may be better understood when one observes the decision's symbolic effects and emotional impact on the mobilization and society. Thus, the emotional impact of a court ruling can lead to the establishment of new performances that occur outside institutions.

§27 But, what does it mean then to mobilize the law?

## Contained and transgressor repertoire and the field of law

§28 Generally, we can claim that mobilizing law implies moving a contentious process to litigation. However, this process is much broader than simply “filing a lawsuit”. The field of law is formed relatively autonomously<sup>26</sup> and produces its own set of opportunities, tools, and interpretive frameworks, and it has dynamics of relatively autonomous interactions. Because it is relative, this autonomy obviously implies between actors and external conditions, but it still requires a specific domain space, a space for practices and legal discourses that produce an effect on the repertoires and performances of social movements.

§29 Although there are fundamental differences between Bourdieu's concept of “field” and Tilly's concept of “process”, the first one cannot be overlooked. It provides important elements to understand the specificity in legal mobilisation, which presupposes a set of already-structured positions and relations that exist independently of the use that social movements can make of them. Thus, it creates what Bourdieu called “specific strength relations”. In this field, there are several positions: those who believe; those who operate; those who have more, or less, power; and those who are more closely linked to the internal forces of the field and are less susceptible to external forces and vice versa. The importance of

analytically considering the existence of different fields (including with a reference to Bourdieu) in the analysis of interactions between social movements and the law is also proposed by Edelman, Leachman, and McAdam<sup>27</sup>.

§Although the field of law has relative autonomy, there are zones of interpenetration with other fields or outside actors. When movements begin to interact with the field of law, they cause interferences, micro-breaks, and questions, thereby endangering the field's autonomy. As Edelman, Leachman, and McAdam<sup>28</sup> argue, "[...] rather than one field (e.g., law) influencing another (e.g., organizations), the logics tend to blur in a way that allows ideas to become simultaneously institutionalized in both fields". In other words, interactions are created from multi-institutional litigation and multi-actors who are energized by certain mechanisms, as suggested by the definition of McAdam, Tarrow, and Tilly.

§31 Although we understand that adopting an analytical perspective of "fields" is important for the mobilization of the law, we agree with certain critiques of the "fields" approach, in the sense that this approach pays little attention to actors and micro-foundational or relational aspects. In this sense, Rucht's<sup>29</sup> concept of multi-organizational fields emphasizes the relational aspect more strongly, further addressing mediations between fields. However, in addition to Edelman, Leachman, and McAdam, the author uses the "organizations" approach, which does not completely solve the problem of the lack of micro-foundational aspects. In addition, through their examples relating to interactions in courts, a very rigid and institutional perception of the field of law is shown. According to the author: "for example, access to and interactions in courtrooms are heavily regulated, and the rules are fairly strict and binding for all participants"<sup>30</sup>. This idea goes against our central argument. Nevertheless, Rucht's analytical framework is important because it provides a set of interconnections between various actors that are related due to cooperation or conflict.

§32 In litigation interactions formed within law mobilization processes, relationships between external and internal aspects of the field of law may be conceived as "mechanisms". Relational mechanisms would be tied to connections created between lawyers, activists, prosecutors, and demobilized subjects. Cognitive mechanisms may also be observed in this case. Andersen identifies, for instance, the creation of injustice feelings and the frameworks emerging from the use of the law and changing the law<sup>31</sup>. Environmental mechanisms may be surmised from the entire set of institutional aspects that create legal opportunities. Furthermore, the dispute junctures between powers can be perceived by actors as opportunities. The conjunctural protagonism of the judiciary in cases with great public impact contradicting the positions of the executive and the legislative can give social movements recognition in the courts, which can reverse the decisions made by the other powers.

§33 Legal mobilization has been understood as a claims process developed with the use of legal mechanisms<sup>32</sup>. In this sense, social movements use legal opportunity structures (LOS) to achieve their goals, as Vanhala analyses in the case of the United Kingdom<sup>33</sup>.

§34 The “political opportunity structures” approach was instrumental in the development of this line of analysis. The role of the judiciary, however, is only considered within that scheme in the 1980s, which defined « political » very narrowly. For example, Kitschelt<sup>34</sup> included litigation as a strategic resource for social movements. However, some scholars soon realized that there are specificities in judicial institutions that could not simply be equated to the characteristics of political institutions<sup>35</sup>. Thus, approaches emerged that specify “legal opportunity structures” as practically a separate field of study<sup>36</sup>.

§35 Another approach that also added to the analytical model of these authors is the approach taken by Sikkink<sup>37</sup>, who explained the broad legalization of human rights policies in Latin America. Sikkink adds “political opportunity structures” (POS) and “legal mobilization support structures” from Epp<sup>38</sup> and also adds an inter-scale aspect to research the extent to which the interaction between national and international scales facilitates the mobilization of the law. Thus, the author introduces “international opportunity structures” and “national opportunity structures”<sup>39</sup>.

§36 Similarly, Burstein<sup>40</sup> and Zemans<sup>41</sup> discuss “legal mobilization” by further emphasizing the legal aspect. Mobilization is therefore understood more as a tool, with other elements being left aside. Despite their merits, these approaches considerably diminish the relevance of collective actors. Consequently, the very elements of both symbolic and relational action were neglected for some time. McCann expands the definition and, by dialoguing with authors of “political contention”, has made important contributions that expanded the view of the law beyond its institutional and instrumental aspect. Redirecting the focus of analysis on what he called the “legacy phase”, McCann argues about the relevance of law’s symbolic dimension, which had already been discussed by Scheingold but within a different research agenda.

§37 In the expectation to reattribute a greater role to actors in the mobilization of the law, the concept of frame has also been introduced. Authors such as Hilson, Vanhala, Andersen, and Rootes show that such structures are not merely external impositions perceived by actors but also openings created by actors themselves. Thus, while still considering “legal opportunity structures”, collective actors, especially activists from social movements and civil society organizations, have gained importance in analyses of law mobilization processes.

§38 In Brazil, Maciel and Prata show how frames’ construction and modification —

in addition to structural opportunity factors and social organization — were important in the mobilization process leading to the drafting of the Maria da Penha Law.

§39 Although we have already found a connection with the agenda of “political contention”, most studies that relate “law” and “social movements” within the dynamic explanatory model of political contention still strongly emphasize legal opportunities aspects, whereas relational and cognitive mechanisms remain poorly explored in the analyses.

§40 To understand this type of repertoire from the actors’ perspective, it is necessary to observe the nuances that characterize the use of legal strategies by social movements. Strategic litigation or “proactive litigation strategies”<sup>42</sup> is the form most emphasized in studies on the subject. However, according to Vanhala, there is still a lack of complexity regarding the existing variations in this type of mobilization. One question that remains is: Why do activists use legal strategies even if a general understanding prevails in society that this strategy is expensive, uncertain, and time-consuming?

§41 One way to answer this question is the observation that the determining factor in the decision that this strategy is worth using does not lie only in the analysis of legal decisions. It is necessary to observe the symbolic effects on mobilization and make more complex classifications for the mobilization of law. The mobilization of law can be much more than the use of law as an open opportunity to access certain rights. There is the possibility of mobilizing the law — in defining for instance “reactive litigation strategies” — to expose a rule as unjust or immoral or to publicly expose another situation that involves the unethical conduct of authorities<sup>43</sup>. There is also the situation where an organization or individuals who advocate for a cause are defendants in a lawsuit, which, according to Vanhala, would constitute “passive” participation but which can easily be transformed into an opportunity to strengthen their goals and defend their causes, making it a strategic lawsuit. Thus, there are various forms of interaction with the field of law that imply different types of performances in the mobilization of law.

§42 We thus propose that legal mobilization for specific performances can be understood through its own sequences of causal mechanisms, appearing as weak, strong, or rigid repertoires, depending on the mobilization process in question. For purposes of differentiation and a better understanding of the different types of manifestation of the interaction between social movements and the law we propose the following classification:

Absence of repertoire of mobilization of law	Actors that do not develop judicial performances, not establishing interactions with the legal field.
--	---

Absence of repertoire of mobilization of law	Actors that do not develop judicial performances, not establishing interactions with the legal field.
Weak repertoire of mobilization of law	Actors who eventually develop judicial performances by establishing punctual interactions with the legal field, but prefer other forms of action.
Strong repertoire of mobilization of law	Actors who establish frequent interactions with the legal field which considerably affect their performances changing strategies and framing.
Permanent Directory of Mobilization of law	Actors who specialize in judicial performances. Although they may use other performances, these are the standard of collective action. The nature of the interactions is different since they are largely actors in the legal field itself, such as militant lawyers.

Table 1: Own elaboration.

§43 The paths that constitute the mobilization of law are diverse and not all social movements interact in the same way with the legal field.

§44 Alexandre Anderson, an internationally recognized fisherman and advocate for this cause, told us of his partnership with lawyers and prosecutors in a court case seeking to blame an oil company for sea pollution (Petrobras in Guanabara Bay of Rio de Janeiro). In his narrative as important as the prosecution's action was the act of fishermen (accusing parties in the process) who brought the fish killed by the company's pollution to court. Similarly, during the discussions in a forum of militant lawyers held in 2014 in São Luís, in the state of Maranhão, it was reported the importance of holding camps in front of the courts, with the presence of women and children, when militants are on trial landless movements (MST in Portuguese). These are performances that produce « exogenous shocks » with the arena constituted by the legal field, introducing emotional arguments that can arouse unusual reactions and convince through a « moral shock » capable of moving the actors in question.

§45 There are large organizations that specialize in advocacy (such as the *Instituto de Defesa do Consumidor*<sup>44</sup>), and those that are cautious about the use of judicial instruments, as analyzed by Bissoli<sup>45</sup> in the contested campaigns against GMOs in

Brazil. This is because filing a lawsuit implies making an opposition explicit and taking a confrontational stand against governments or businesses. If for some organizations this is important to mark the conjunctural antagonism or ideological stance, for others direct confrontation can undermine other aspects depending on the situation game into these sectors. This is the case, for example, of ASPTA<sup>46</sup>, which, although opposed to GMO policies (proposing some lawsuits), is a partner of the government sector responsible for agroecology policies. In this sense, it may be detrimental to the organization to confront the government, preferring to use judicial strategies only after all other resources have been exhausted, or preferring another actor to be the author of the dispute<sup>47</sup>.

§46 Therefore, it is difficult to analyse “effects” when isolating a specific type of confrontation. As noted in the empirical analysis, the social and political changes created by social mobilization processes result from both transgressive and contained contention. In the indigenous struggles noted above, the creation of alternative institutions occurs in conjunction with the use of existing legal opportunities and from direct confrontational actions that are clearly non-institutional.

§47 We choose to understand that the “mobilization of law” implies the formation of a specific collective action repertoire that involves institutional and non-institutional aspects, the mobilization of legal resources, instrumental rational strategic action, and an emotional dimension. The mobilization of the law, in this sense, is both contained and transgressive.

§48 Still, it is necessary to advance understanding of how social movements combine different strategies and create links with different actors including those in the field of law.

## The pragmatist contribution and the role of interactions and actors

§49 As Andersen argues, one cannot analyse legal opportunity structures (statically) without agency<sup>48</sup>. The implication is that legal opportunity structures only become relevant when triggered by movements. In addition, mobilizing the law is broader than using law strategically. The formation of a repertoire for the mobilization of the law involves building litigation interactions that interrelate various actors from movements and actors established in the field of law (lawyers, prosecutors, judges, advocates, bureaucrats, etc.).

§50 In structuring legal opportunities, many actors who are in confrontation and collaboration act. There are relational mechanisms that enable us to observe that even confrontation is based on certain patterns of coordinated interaction. Given

the subtle contingent elements present in these mechanisms, the concept of “performance”<sup>49</sup> can be valuable for understanding the operation of such mechanisms in the mobilization of the law. Indeed, in formulating a dynamic model of analysis, these authors produce a conceptual shift, suggesting that an understanding of repertoires as performances would introduce the dynamism necessary for their explanation. In their words:

[...] we can think of the repertoire as performances – as scripted interactions in the improvisatory manner of jazz or street theater rather than the more repetitious routines of art songs or religious rituals. Such performances group into repertoires, arrays of known possible interactions that characterize a particular set of actors.

Performances innovate around inherited repertoires and often incorporate ritual forms of collective action. Innovative contention is action that incorporates claims, selects objects of claims, includes collective self-representations, and/or adopts means that are either unprecedented or forbidden within the regime in question<sup>50</sup>.

§51 In *Contentious Politics*<sup>51</sup>, Tilly and Tarrow seek to differentiate performances from repertoires of contention. The distinction is very subtle: performances are specific forms of claims whereas repertoires are sets of performances, linking one form to the other. According to Alonso<sup>52</sup>, in *Repertoires and Regimes*, Tilly builds on the meaning of performance as part of a repertoire. According to Alonso: “For Tilly, meanings are inseparable from practices, so the best access to them is in the analysis of performances – not discourses”. The latter meaning interests us because it admits the praxis and contingency that are derived from interactions. Thus, the concept of performance involves creativity, which brings us closer to a praxeological perspective that gives greater relevance to actors and, particularly, the interaction between actors<sup>53</sup>.

§52 The concept of performance acts as an analytical tool for understanding micro-sociological aspects of collective action, including the analysis of elements that extend beyond the structural aspects of legal opportunities to recognize the importance of agency. However, it is important to clarify how we use this concept.

§53 As Taylor explains, performances can mean either an exercise of normativity or resistance to normativity<sup>54</sup>. In protests, many performances seek to create “empathy networks” among the demonstrators against their antagonists<sup>55</sup>. However, the performative act is present both in actions through institutions and in the denial or deconstruction of institutions. Performance as a structured,



deliberate, and pre-designed symbolic act must be distinguished from a broader sense of this concept as an experience that was not necessarily prepared. That is how the concept of performance can contribute to our analysis, allowing us to analytically develop a micro-dimension of interactions between actors who mobilize the law.

§54 Rucht provides the example of courtrooms as a highly regulated, formal space that imposes limits and restrictions on action. Nonetheless, analysing these situations from the perspective of interpersonal performances gives another meaning to spaces such as public hearings, trials, interrogations, or public consultations. Instead of seeking institutional design or analysing the effectiveness of these spaces through the direct achievement of demands, they are understood as situations or arenas that bring together multiple stakeholders and place these actors in interaction. According to the argument of Edelman, Leachman, and McAdam: “Actors in one field who are simultaneously accountable to constituencies in another field tend to transport ideas, rituals, and scripts between fields”<sup>56</sup>. Although the authors make a great contribution in conceptualizing hybrid interaction spaces that can combine aspects of institutional breakdown with subtler aspects of institutional change, they still pay little attention to the individual elements.

§55 As Jasper notes, judicial arenas are mobilized as “symbolic trials” where emotions must be taken into consideration<sup>57</sup>. That is, litigation interactions also involve emotional and contingent aspects that can be understood as collaborative performances. The experiences of interaction involve various mechanisms that are able to change interpretive frameworks, establish linkages and ties between individuals, and foster hostility.

§56 The concept of performance allows us to analyse aspects of corporeality, symbolic elements that are reassessed in interaction. Agreeing with Fuentes: “[...] the field of studies on performance provides the analytical tools necessary to prevent the superficial anaesthesia of culture and, instead, to focus on the implications and political effects caused by the use of aesthetic elements by protesters and activists”?

§57 Daniel Cefaï’s contribution on public arenas is also important for this debate<sup>58</sup>. According to this author, Political Process Theory disregards important questions that form proposals through John Dewey’s notion of “public”. In this sense, the starting point of a pragmatist perspective of collective action would be not in a vision external to the political process it describes, but, differently, it would seek to “accompany the actors ‘experiences’ and ‘perspectives’”. That is, there is a methodological and epistemological change from which the action context, from the actors, becomes relevant. Thus, only by examining the concrete experiences established between these actors can we understand the ongoing process. Here,

Dewey's idea of "publics" is promising because it tries to understand that people build publics and problems that are directed to audiences, acquiring the most varied contours, entering different fields and domains and crossing different institutional structures. According to Cefai: "More than being coerced by structures of political opportunity, the public redefines the horizon of possible". This is what we call a 'public arena'. Thus, we understand that the performances are the interactions in their empirical forms, energized by the concrete experiences of the people in interaction.

§58 We thus argue that, within certain structures of legal opportunities, the interactions between the actors determine the mobilization of law. From observations in some spaces of performatisation of these conflicts<sup>59</sup>, the collaborative performances of law mobilization occur, first, through interpersonal interactions of greater or lesser intensity. Secondly, it necessitates the existence of specific characteristics, which present a variation according to the content of the claim and the type of actors. These performances create ways of diffusion and flow, as suggested by Edelman, Leachman and Mcadam, through which actors of diverse positions are brought into interaction by influencing each other.

§59 In general, the legal mobilization agenda is focused on the social movements' use of legal instruments themselves, but it did not address the interactions these actors produce with actors in the legal field. It is important to note the approximation with the sociology studies of the professions where lawyers have been much studied. However, studies on interactions with state actors such as prosecutors and public defenders are almost absent.

§60 In our studies, the relevance of multiple actors is evident. Among the actors involved, we find actors from the legal field (prosecutors, public defenders and lesser bureaucratic technicians and politicians), challengers (NGOs, small fishermen and residents' associations, environmental associations and transnational environmental networks), subjects who perceive the injustice before or during the process), and still, a figure that we don't want to fit into the other categories, that is, the lawyer.

## Interactions between actors in environmental conflicts in Brazil

§61 We have argued so far that the interactional mechanisms of the law mobilization process are characterized by collaborative performances that connect bureaucrats and various members of the political system with challengers, external political actors, and actors. As we analysed in other work, the transformation of dissatisfaction into demands for justice and the referral of claims to judicial institutions has been occurring in Brazil in a way that passes through the Public

Prosecutor's Office and Public Defender's Office<sup>60</sup>. In cases linked to environmental demands, the existence of more or less institutionally inserted legal operators, sensitive to the causes of the challengers and willing to act, seems to be a fundamental aspect for this relational mechanism.

§62 The Brazilian legal system is based on "civil law" which, in theory, presupposes an institutional model less conducive to the use of legal strategies. However, there are legal instruments and institutional characteristics that allow strategic litigation, which is widely used in the conflicts analysed. The instrument of "Ação Civil Pública", in general compared to the Class Action of the United States, can be used by civil society organizations in the defence of various subjects, including environment and human rights. But it is two institutions with very specific characteristics that are the most present in this context: the "Ministério Público" (Public Prosecutor's Office) and the "Defensoria Pública" (Public Defender's Office). These institutions have very specific characteristics in Brazil. The deputy has functional autonomy. For example, promoters and prosecutors can act in their profession in an autonomous way, even if there are opposing pressures. The two institutions have the competence to defend human rights even against the State.

§63 Although civil associations in Brazil have the right to take public civil action in cases concerning environmental protection, environmentalists prefer to bring the complaint to the public prosecutor to propose the dispute. The Public Civil Action and the creation of the Public Prosecutor's Office with its institutional characteristics that give it extreme autonomy of action and the possibility of acting in defence of human and environmental rights, even against the State, are clear legal opportunity structures. It is thus not difficult to believe that this structure is a sufficient incentive for environmentalists, as found by McAllister<sup>61</sup>. However, configuration of litigation interactions in environmental conflicts in recent decades in Brazil, and the increase in the number of cases, is also related to certain mechanisms that dynamize actors and structures.

§64 The relevant presence of the Public Prosecutor's Office as part of the litigation has already been observed in other works<sup>62</sup>. Nevertheless, there is neither sufficient explanation as how this institution and its actors assume such protagonism, nor the progressive emergence of other actors with similar characteristics such as the Public Defender's Office. The prosecutor, at different levels, has a constitutionally determined responsibility and autonomy in Brazil. In addition, the law requires the Public Prosecutor's Office to monitor all public civil actions, including those not of its own. Prosecutors are scattered throughout Brazil, participating in public hearings in large and small municipalities, monitoring environmental conflicts, conducting investigations, and promoting, in addition to lawsuits, terms of conduct adjustments.

§65 It is important to stress that, due to the Brazilian federative structure and the legal thematic division, there is a huge heterogeneity in the performance of different prosecutors. One of the differences is in the civil and criminal areas, another difference is in the regions of Brazil (one prosecutor in the north of the country may act in favour of social movements while another in the south may act against the interests of social movements). Therefore, this analysis is not valid for all prosecutorial activities, but is typical of environmental issues.

§66 These promoters and defenders of justice can be understood as mediators, between communities, businesses, and governments, in conflicts linked to extractivism.

§67 We could converge with Andersen and conclude that Public Prosecutor's Office and Public Defender's Office are aspects of the legal opportunity structure that was constituted in Brazil after the 1988 constitution. Nonetheless, the critique produced by Vanhala leads us to another analysis. Regarding the third and fourth dimensions in Andersen's categorization, the author suggests that there is too much "structure" in interpretation. Vanhala's critique is particularly relevant to the analytical proposal presented here.

§68 I argue that the problem with opportunity structure approaches is that they tend to black box organizations in one of two ways. They are single-organization case studies and hence treat the collective actor as *sui generis*. Alternatively, they are multiorganization studies that treat organizations as static, homogenous entities and push characteristics of the groups themselves or the broader social movement environment, which may condition strategy choice, into the background of their analyses.

§69 In our empirical research, we have been able to observe a broader set of actors. Among the non-state actors observed, there are not only well-organized and resource-intensive groups for mobilization, but also actors who have almost no resources (money, time, training, etc.) and little organizational structure. These groups appear as perpetrators or as parties to the conflict supported by engaged lawyers, the prosecutor, or the public defender. It is not exactly the organizational factor and the ability to store resources that explains the process of building a right mobilization repertoire, but the interactions between these multiple actors.

§70 In this regard, Maia's research on the process of mobilization of fishermen in Guanabara Bay with the Public Prosecutor's Office corroborates our argument<sup>63</sup>. The author points out that the previous mobilisation built by these fishermen was as important as the participation of NGOs specialized in advocacy, independent lawyers or the prosecution itself. Highlighting the precariousness of resources and the extremely socially fragile situation experienced by them, she argues that there was already a strong mobilization process before entering the legal field. This was

only intermediated by lawyers who built the complaint that was to be taken to the prosecutor. However, in our own field observation in this same case, even the entry of lawyers was a result of the relationships established first because of the interpersonal affinities, perspectives of struggle between fishermen, and an environmentalist who was also a lawyer. Having built these ties, the legal technical support of the environmentalist, lawyer, was established for the fishermen.

§71 Our argument, then, is that within certain structures of legal opportunities, interactions between the actors determine the mobilization of the law. From participant observations in some spaces where these conflicts are performed, we note that the coordinated performances of mobilization of law occur via interpersonal interactions of greater or lesser intensity and in the existence of specific characteristics, which vary according to the content of the claim and the type of actors. These performances create routes of diffusion and flow, as suggested by Edelman, Leachman and McAdam, through which actors from different positions are put into interaction, influencing each other<sup>64</sup>.

§72 Among the types of actors, we find actors from the judicial institutional field (prosecutors, public defenders and to a lesser extent technical bureaucrats and politicians), challengers (NGOs, small associations of fishermen and residents, environmentalist associations and traditional communities, and transnational environmental networks), subjects (people who perceive injustice before or during the process), and yet, a figure that does not fit perfectly into the other categories, namely, the lawyer.

§73 This may be more or less engaged in the causes in question or in militant networks such as the *National Network of Popular Lawyers and Advocates*<sup>65</sup>. The lawyer may occupy a somewhat broker position between the challengers and the justice institutions. In the case of Brazil, in addition to our research, Mcallister also showed that the role played in other countries by the so-called “cause lawyers” is here massively attribute to prosecutors and public defenders, that are part of the institutional structure of the State. However, we perceive at least two cases — the fishermen’s conflicts in Rio de Janeiro and the conflicts against Aracruz cellulose in Espírito Santo — where a lawyer act as a broker to attain the Public Prosecutor’s Office, which participation was nevertheless fundamental to the litigation. Therefore, it is evident that such protagonism by state actors does not diminish the relevance of lawyers since they act in other relevant roles such as the provocation of awareness for rights.

§74 It turns out that while on the one hand the lawyer and the prosecutor bring patterns and performances of action from the field of law to social movements, their presence in these disputes is only sustained because they also change, assuming typical performances of a particular social movement. Thus, it is the experience built on this relationship in a given situation that creates the

possibilities for the performances in play to be coordinated and to lead, as in the cases in question, a type of confrontation that problematizes and defends social and environmental rights.

§75 The way in which these elements are combined into interactional mechanisms points to different experiences and consequently different effects on the flow of the political process, which may enter and exit judicial arenas or combine simultaneous entry into several arenas of different types.

§76 The challengers (political actors already constituted who challenge the status quo) carry out evaluations on the best strategies to be taken (logic-rational aspect). In addition, they also suffer / feel the consequences that certain actions can generate on their personal relations (affective aspect). Thus, the attitude that prevails among several organisations nowadays is to let the Public Prosecutor or the Public Defender formally intervene in the action and collaborate in other ways: remaining “in the territory”, seeking evidence, evidence that supplies the promoter’s action, and performing other complementary forms of action.

§77 In any case, for this coordination between actors to take place, the strongest experiences capable of mobilizing strong-resisting rational-affective efforts are built in the field of face-to-face interactions. These coordinated performances depend on several factors. Ties can arise by sharing common environments and spaces that foster the formation and perception of affinities, trust, respect, etc. In our observations, we find that certain legal actors are more in demand than others. This indicates that individual and interpersonal factors are indeed relevant to performance. Although collaboration is always subject to review, there is no commitment to partnership between these different actors. Precisely for this reason, we are constantly witnessing the exercise of spontaneous evaluative practices, functioning as practice control, for instead, the vigilance of the attorney’s attitudes. In general, when a promoter proposes or supports an agreement (commonly in the form of « Termo de Ajustamento de Conduta ») with a polluting company, the existing rational-affective bond may be broken, and the interaction may even be disrupted. This often happens because other relational mechanisms operate in tangles of collective action and other political processes that cross the course of action. That is, new links created can break old ties.

§78 The certification mechanism as described by McAdam, Tarrow and Tilly — « Certification refers to the validation of actors, their performances, and their claims by external authorities » — can be observed in both directions: social movements and NGOs can find in the Public Prosecutor’s Office and Public Defender’s Office a source of legitimation for their claims, as prosecutors and defenders seek in the actors who mobilize fierce struggles to certify that they are fulfilling their obligations « in defense of the unavailable social and individual rights of juridical order and the democratic regime » provided for in the Brazilian

Constitution. For the prosecutor or defender, it is essential to have evidence of the society's support in their actions.

§79 The biographical factor and the way in which each actor constitutes the interactions as an internal experience to himself are defining elements for coordination or not. It is important to note that experiences are continuous processes and that, therefore, people can enter and leave a process of protest, that is, they can change their trajectories. This does not mean a change in the course of processes itself.

§80 These trajectory changes can be illustrated in two cases of prosecutors interviewed. One of them in his early career recently arrived in a new position and coming from the north of the country where he worked in quilombola and indigenous issues, has a profile of high commitment to the causes of challengers. He maintains this pattern in different places where he works and in different interactions that constitute maintaining as standard the adherence to the causes of the challengers in environmental conflicts. The other prosecutor we had the opportunity to interview twice over a two-year interval also initially had a strong bond with challengers, but as we begin the second interview the prosecutor immediately warns, "I have changed a lot, you will see, " indicating that he does not support it. more like the obstinacy of the challengers' claims, attributing this to the need to ensure their institutional « survival » and in relation to a number of things they have learned over the years. In this sense, he began to evaluate more the causes and forms of his adherence to them.

§81 In summary, although there are many aspects that complicate coordinated performances of mobilization of the law since they are contingent on experiences and interactions, the point is that there are recurrent aspects observed in the processes of political confrontation. Above all, in cases of legal mobilization, because it is confrontation through a field constituted with relative autonomy and difficult access, it is fundamental for its realization that the challengers and subjects establish links and provoke mechanisms that produce a shared experience of the problem in question. Thus, coordinated performances capable of building large confrontational coalitions can emerge.

## Final considerations

§82 In this article, we propose to carry out a theoretical revision of the main studies that combine the examination of collective action and the dynamics of the legal field. Thus, we revisit the central studies of Political Process Theory and Legal Mobilization Theory, pointing out the promising analytical frameworks of these two approaches, but also observing the problems and absences of these theories from the observations we have learned from our fieldwork on environmental conflicts. Thus, we propose the introduction of John Dewey's pragmatist perspective and the deepening of the concept of performance to understand how the interactions between actors in these conflicts occur and how they can create large coalitions of confrontation. Thinking about the interactions of litigation from the key coordinated performances constituted by shared experiences of the problem can be useful to understand the accomplishment of the confrontation through relational mechanisms that create important contestation processes in Brazil in the last decades<sup>66</sup>.

- 
1. Rucht D., « Movement allies, adversaries, and third parties », in Snow D., Soule S, and Kriesi H. (eds.), *The Blackwell Companion to Social Movements*, Malden, Blackwell, 2004, pp. 197-216. ←
  2. McAdam D., Tarrow S., and Tilly, C., *Dynamics of contention*, Cambridge, Cambridge University Press, 2001. ←
  3. Hanagan, M., Moch L., and Te Brake, W. (eds.), *Challenging authority: The historical study of contentious politics*, Minneapolis, University of Minnesota Press, 1998. ←
  4. Rucht D., « Movement allies, adversaries, and third parties », see *supra* note 2. ←
  5. Arantes R., « Direito e Política: o Ministério Público e a Defesa dos Direitos Coletivos », in *Revista Brasileira de Ciências Sociais*, vol. 14, no 39, 1999, pp. 83-102. ←
  6. "Ação civil pública" is a Brazilian kind of class action, as understood in the United States. ←
  7. Losekann C., « Participação da sociedade civil na política ambiental do Governo Lula », in *Ambiente & Sociedade*, vol. 15, n° 1, 2012, pp. 179-200. ←
  8. Losekann C., « Mobilization of law as a repertoire of collective action and institutional critique in the Brazilian environmental field », in *Dados*, vol. 56, n° 2, 2013, pp. 311-349; Losekann C., « The politics of people affected by extractivism in Latin America », in *Revista Brasileira de Ciência Política*, n° 20, 2016, pp. 121-164; Losekann C., Bissoli L. D., « Law, Social Mobilization and Institutional Change », in *Revista Brasileira de Ciências Sociais*, vol. 32, n° 94, 2017, pp. 1-24. ←
  9. Losekann C., « 'It was no accident!' The place of emotions in the mobilization of people affected by the collapse of Samarco's tailings dam in Brazil », in *Vibrant: Virtual Brazilian Anthropology*, vol. 14, n° 2, 2017, pp. 1-25. ←
  10. McAdam, Tarrow, and Tilly, *Dynamics of contention*, see *supra* note 3, p. 8. ←
  11. *Ibid*, p. 13. The authors define "subjects" as "persons and groups not currently organized as constituted political actors". We follow this definition. ←
  12. Burstein P., « Legal mobilization as a social movement tactic: the struggle for equal employment opportunity » in *American Journal of Sociology*, vol. 96, n° 5, 1991, pp. 1201-1225; Maciel D., « Ação Coletiva, Mobilização do Direito e Instituições Políticas: O Caso da Campanha da Lei Maria da Penha », in *Revista Brasileira de Ciências Sociais*, vol. 26, n° 77, 2011, pp. 97-111; Scheingold S., *The politics of rights: Lawyers, public policy, and political change*, Ann Arbor, University of Michigan Press, 2010. ←



13. Vanhala L., *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*, Cambridge, Cambridge University Press, 2011; Rosemberg G., *The Hollow hope: can courts bring about social change?*, Chicago, The University of Chicago Press, 1992; McCann M., *Rights at Work: Pay equity reform and the politics of legal mobilization*, Chicago, University of Chicago Press, 1994; Sikkink K., « La dimensión transnacional de la judicialización de la política en América Latina », in Sieder R., Schjolden L., and Angell A., *La judicialización de la política en América Latina*, Bogota, Editorial Universidad Externado de Colombia, 2011, pp. 17-37; Barclay S. and al., « Two spinning wheels: studying law and social movements » in Sarat A. (ed.), *Special Issue: Social Movements/Legal Possibilities*, Bingley, Emerald Group Publishing Limited, 2011, pp. 1-16. ←
14. Edelman L., Leachman G., and McAdam D., « On law, organizations, and social movements », in *Annual Review of Law and Social Science*, vol. 6, 2010, pp. 653-685. ←
15. Israël L., « Resistir pelo direito? Advogados e magistrados na Resistência francesa (1940-1944) », in *Prisma Jurídico*, vol. 10, n° 1, 2011, pp. 61-92. ←
16. Here, there is a reference to the emotional component proposed by Jasper to explain why professionals imbued with the legal *ethos* became involved in the Resistance. Jasper J., *The art of moral protest. Culture, biography, and creativity in social movements*, Chicago, University of Chicago Press, 1997 ←
17. This aspect will be reconsidered in the next topic based on a discussion of other authors. ←
18. Benford R., and Hunt S., « Cadrages en conflit. Mouvements sociaux et problèmes sociaux », in Céfaï D., and Trom D. (eds.), *Les formes de l'action collective*, Paris, Éditions de l'École des hautes études en sciences sociales, 2001, pp. 163-194. ←
19. The *Munduruku Protocol* is available in [<https://fase.org.br/wp-content/uploads/2015/01/Protocolo-de-Consulta-Munduruku.pdf>], consulted on 27 October 2021. For more details on this specific case; see: Losekann C., and Oliveira R., « Deciding how to decide: the Munduruku Indigenous Group and political participation in Brazil », in *Open Democracy* (2 June 2015), last consulted 27 October 2021 in [<https://www.opendemocracy.net/en/deciding-how-to-decide-munduruku-indigenous-group-and-political-/>]. ←
20. For more in-depth information on the Munduruku see: Loures R., « The Karodaybi Government and its Invincible Warriors: the Munduruku Ipereğ Ayü Movement versus large construction projects in the Amazon », in *Vibrant: Virtual Brazilian Anthropology*, vol. 15, n° 2, 2018, pp. 3-23. ←
21. At another time we wrote specifically about this case: Losekann C., and Oliveira R., « Deciding how to decide: the Munduruku Indigenous Group and political participation in Brazil », see *supra* note 20. ←
22. *Protocolo de Consulta Prévia*, consulted on 21 October 2021 in [<http://www.mpf.mp.br/atuacao-tematica/ccr6/documentos-e-publicacoes/protocolos-de-consulta-dos-povos-indigenas>]. ←
23. In the decision of the case *Brown v. Board of Education of Topeka*, the Supreme Court of the United States declared that segregation between black and white students in public schools was unconstitutional. ←
24. This decision has had such a large impact that many works have already been written that use it as evidence of the successful use of judicial mechanisms, although others have sought to review the enthusiasm produced by the decision and argue in the opposite direction, advising social movements against seeking judicial strategies. Rosemberg G., *The Hollow hope: can courts bring about social change?*, see *supra* note 14. ←
25. Jasper J., *The art of moral protest. Culture, biography, and creativity in social movements*, see *supra* note 17. ←
26. Bourdieu P., « La force du droit », in *Actes de la recherche en sciences sociales*, vol. 64, n° 1, 1986, pp. 3-19. ←
27. Edelman, Leachman, and McAdam, « On law, organizations, and social movements », see *supra* note 15. ←
28. Jasper J., *Protest: A cultural introduction to social movements*, Cambridge, Cambridge University Press, 2014. ←

29. Rucht D., « Movement allies, adversaries, and third parties », see *supra* note 2. ←
30. *Idem.* ←
31. Andersen E., *Out of the closets and into the courts: Legal opportunity structure and gay rights litigation*, Ann Arbor, University of Michigan Press, 2006. ←
32. Epp Charles R., *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*, Chicago, University of Chicago Press, 1998. ←
33. Vanhala L., « Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the UK », *Law & Society Review*, vol. 46, n° 3, 2012, pp. 523-556. ←
34. Kitschelt H., « Political opportunity structures and political protest: Anti-nuclear movements in four democracies », *British journal of political science*, vol. 16, n° 01, 1986, pp. 57-85. ←
35. Kriesi H. (ed.), *New social movements in Western Europe: A comparative analysis*, Minneapolis, University of Minnesota Press, 1995; Rubin E., *Abortion, politics, and the courts: Roe v. Wade and its aftermath*, Westport, Praeger Pub Text, 1987 ←
36. Wilson B., and Cordeiro J., « Legal Opportunity Structures and Social Movements The Effects of Institutional Change on Costa Rican Politics », *Comparative Political Studies*, vol. 39, n° 3, 2006, p. 325-351. ←
37. Sikkink K., « La dimensión transnacional de la judicialización de la política en América Latina », see *supra* note 14. ←
38. Epp C., *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*, Chicago, University of Chicago Press. 1998. ←
39. The explanation of the “boomerang effect”, as described by Keck and Sikkink, would be expanded to the “spiral model”, as described by Risse and Sikkink, of explanation, which integrates the boomerang effect in a conceptualization of five dynamic phases of national-transnational effects and links to national policy change to explain legalization. Keck M.E. and Sikkink K., *Advocacy Beyond Borders: Advocacy Networks in International Politics*, Ithaca, Cornell University Press, 1998; Risse T. and Sikkink K., « The socialization of international human rights norms into domestic practices: introduction », in Risse T., Ropp S.C., and Sikkink K., *The Power of Human Rights: International Norms and Domestic Change*, Cambridge, Cambridge University Press, 2009, pp. 1-38. ←
40. Burstein P., « Legal mobilization as a social movement tactic: the struggle for equal employment opportunity », *American Journal of Sociology*, vol. 96, n° 5, 1991, pp. 1201-1225 ←
41. Zemans, F., « Legal Mobilization: The Neglected Role of the Law in the Political System », in *American Political Science Review*, vol. 77, n° 3, 1983, pp. 690-703. ←
42. Vanhala L., *Disability Rights Activists and Legal Mobilization*, Cambridge, Cambridge University Press, 2011. ←
43. *Idem.* ←
44. Organization formed to defend the interests of consumers in general. ←
45. Bissoli L., *A rotulagem dos transgênicos como ganho institucional via mobilização do direito*, Final Paper (Bachelor in Social Sciences), Federal University of Espírito Santo (Ufes), Vitória-ES, 76f, 2014. ←
46. Organization that promotes agroecology and acts against transgenics in agriculture in Brazil. ←
47. To know these cases in depth see: Losekann C. and Bissoli L.D. « Law, Social Mobilization and Institutional Change », in *Revista Brasileira de Ciências Sociais*, vol. 32, n° 94, 2017, pp. 1-24. ←
48. *Idem.* ←
49. Tilly C., *Contentious Performances*, Cambridge, Cambridge University Press, 2008; Tilly C. and Tarrow S., *Contentious Politics*, London, Paradigm Publishers, 2007. ←
50. McAdam, Tarrow, and Tilly, *Dynamics of contention*, see *supra* note 3, p. 53. ←

51. *Idem.* ↵
52. Alonso A., « Repertório, segundo Charles Tilly: História de um Conceito », in *Revista Sociologia & Antropologia*, vol. 2, n° 3, 2012, pp. 21-41. ↵
53. Cefai D., « Como nos mobilizamos? A contribuição de uma abordagem pragmatista para a sociologia da ação coletiva. Dilemas », in *Revista de Estudos de Conflitos e Controle social*, vol. 2, n° 4, 2009, pp. 11-48; Pleyers G., *Alter-globalization: Becoming actors in a global age*, Cambridge, Polity Press, 2010; Jasper J., *The art of moral protest. Culture, biography, and creativity in social movements*, Chicago, University of Chicago Press, 1997. ↵
54. Taylor D., *The Archive and the Repertoire: Performing Cultural Memory in the Americas*, Durham, Duke University Press, 2003 ↵
55. Fuentes M., « Performance, politics and protest », in Taylor D. and Steuenagel M., *What is performance studies?*, Durham, Duke University Press, 2003, consulted on 20 October 2021, in [<http://scalar.usc.edu/nehvectors/wips/table-of-contents-eng>]. ↵
56. Edelman, Leachman, and McAdam, « On law, organizations, and social movements », see *supra* note 15. ↵
57. Jasper J., « Book Review: A Theory of Fields », *Cultural Sociology*, vol. 8, n° 2, 2014a, p. 212-213. ↵
58. Cefai D., « Como nos mobilizamos? A contribuição de uma abordagem pragmatista para a sociologia da ação coletiva. Dilemas », *supra* note 54. ↵
59. We specifically discussed litigation between fishermen against large enterprises (most of them related to oil extraction and production) in the city of Rio de Janeiro, and litigation related to the mobilizations against a pulp industry in the state of Espírito Santo involving several actors (NGOs, traditional communities, indigenous peoples, etc.). ↵
60. Losekann C., « Mobilization of law as a repertoire of collective action and institutional critique in the Brazilian environmental field », see *supra* note 9. ↵
61. McAllister L., *Making Law Matter: Environmental Protection and Legal Institutions in Brazil*, Stanford, Stanford University Press, 2008. ↵
62. Arantes R., « Direito e Política: o Ministério Público e a Defesa dos Direitos Coletivos », see *supra* note 6; Maciel D.A., *Ministério Público e sociedade: a gestão dos conflitos ambientais em São Paulo*, PHD Thesis, University of São Paulo, 2002; Sadek M.T. (ed.), *O Ministério Público e a Justiça no Brasil*, São Paulo, Sumaré/Idesp, 1997; Viana L.W. (dir.), *A Democracia e os Três Poderes no Brasil*. Belo Horizonte/Rio de Janeiro, Editora UFMG/IUPERJ/FAPERJ, 2002; Viana L.W. and Burgos S. M., « Entre Princípios e Regras: Cinco Estudos de Caso da Ação Civil Pública » *Dados*, vol. 48, n° 4, 2005, pp. 777-843. ↵
63. Maia A., *Ministério Público, megaempreendimentos e conflitos socioambientais: a atuação no litígio entre pescadores artesanais e a indústria do petróleo na Baía de Guanabara - RJ*, Master's thesis, Postgraduate Programme of Social Sciences in Development, Agriculture and Society, 2014. ↵
64. Edelman, Leachman, and McAdam, « On law, organizations, and social movements », see *supra* note 15. ↵
65. The National Network of Popular Lawyers (RENAP) is a decentralized articulation, of national scope, created in 1996 to provide legal advice to social movements, and “and the rescue of the utopia of advocacy focused on the interest of popular causes”. See more in: [<https://www.renap.org.br/>] ↵
66. This article was made with the support from “Conselho Nacional de Desenvolvimento Científico e Tecnológico” of Brazil. ↵