

**TARGETS, FIELDS, AND TACTICS: MULTI-INSTITUTIONAL  
LEGAL MOBILIZATION IN THE CAMPAIGN OF THE U'WA  
PEOPLE IN COLOMBIA**

---

*Pablo Rueda-Saiz*

TABLE OF CONTENTS

|   |    |
|---|----|
| INTRODUCTION.....   | 38 |
| <i>Organizational Fields and Frames: Key Concepts for Understanding<br/>    Multi-Institutional Legal Mobilization</i> .....  | 41 |
| <i>Structure of this Article</i> .....  | 43 |
| LEGAL MOBILIZATION WITHIN CORPORATE<br>CAMPAIGNS: THE LIMITATIONS OF THE LITERATURE<br>ON LAW AND SOCIAL MOVEMENTS.....   | 44 |
| <i>When do Social Movements Resort to Law? Limits and<br/>    Possibilities of the Concepts of 'Legal Mobilization' and<br/>    'Legal Opportunity Structure'</i> ..... | 45 |
| <i>Multi-Institutional Approaches to Social Movements:<br/>    Organizations and Field Theory</i> .....   | 48 |
| LEGAL MOBILIZATION IN A MULTI-INSTITUTIONAL<br>CONTEXT .....  | 50 |
| <i>Legal Mobilization as a Means of Disrupting Human Rights<br/>    and Environmental Organizational Field Frames</i> .....   | 50 |
| <i>Legal Mobilization as a Means to Subvert a Corporation's<br/>    Organizational Field Frames</i> .....   | 52 |
| <i>Changing Targets and Venues</i> .....  | 53 |
| <i>The Two-Way Street Between Corporations and Activists' Fields</i> .....  | 54 |
| METHODS .....   | 54 |
| THE TRAJECTORY OF THE U'WA CAMPAIGN .....   | 56 |
| <i>The First Stage: From Domestic Litigation to the Mobilization<br/>    of International Dispute Resolution</i> .....  | 57 |
| <i>Claims-Making in the Organization of American States:<br/>    The Inter-American Commission of Human Rights and<br/>    the OAS-Harvard Project</i> .....            | 60 |
| <i>The Second Stage: Shifting Targets, Changing Tactics</i> .....   | 66 |
| <i>Engaging Shareholders as a Corporate Insider</i> .....   | 67 |
| <i>The Global Search for Capital as an Opportunity to<br/>    Disrupt the Organizational Field of a Corporation</i> .....   | 72 |
| <i>From Corporate Activism Back to International Litigation</i> .....   | 74 |
| <i>Discussion</i> .....   | 76 |
| CONCLUSIONS .....   | 79 |

---

## TARGETS, FIELDS, AND TACTICS: MULTI-INSTITUTIONAL LEGAL MOBILIZATION IN THE CAMPAIGN OF THE U'WA PEOPLE IN COLOMBIA

---

*Pablo Rueda-Saiz\**

*This article contributes to the literature on law and social movements by analyzing legal mobilization against both state and non-state targets. It focuses on the campaign of the U'wa indigenous people in Colombia as a theory-generating study to explain why changes in campaign targets can promote variations in the areas of law that social movements mobilize, the arenas or venues where they choose to mobilize, and the forms of legal mobilization they deploy. It shows that state and corporate targets provide different opportunities for legal mobilization because they operate within different fields of political, social, and economic life, each with their own field frames, defined as internal sets of norms and values.*

*Activists have different ways of interacting with field frames. They can use human rights or environmental frames to target corporations. But this strategy may not always work since corporations are not necessarily vulnerable to attacks within human rights or environmental fields. Alternatively, as this article shows, activists can also target corporations by subverting corporate field frames, using corporate norms, values, and institutions for their own purposes.*

*Importantly, however, this article also illustrates how the counter-hegemonic use of field frames is a two-way street, used by both activists and corporations. Corporations also interact within activists' fields, subverting human rights or environmental norms in order to block activists from using certain venues, and co-opting their potential allies.*

### INTRODUCTION

In 1995, media outlets around the world reported that the U'wa<sup>1</sup> people, an indigenous group living in the northeastern slopes of the Colombian Andes, had threatened to commit collective suicide.<sup>2</sup> At a press conference, their

---

\* Associate Professor, University of Miami School of Law. I am indebted to many people who have commented on and greatly helped improve previous drafts of this Article. I am especially thankful to Charlton Copeland, Alexandra Huneus, Tamara Lave, Gwendolyn Leachman, Alejandro Portes, Rob Rosen, Gay Seidman, Steve Stern, and especially, to Cal Morrill. I also want to thank Gabi Rivero for her wonderful research assistance and the University of Miami School of Law for its support.

1. \*Pronounced <oo-wah>.

2. See, e.g., David Hill, *Will the U'was be Forced to Threaten to Commit Mass Suicide Again?*, GUARDIAN (June 17, 2014), <https://www.theguardian.com>

leader, Berito Kubarau'wa, said the threat was a response to the Colombian government's decision to grant a license to explore oil on U'wa land.<sup>3</sup> But, instead of self-immolation, the U'wa conducted a successful transnational campaign to prevent oil exploration on their land, employing different tactics and targeting state and non-state actors in Colombia and the United States.

Initially, the U'wa campaign filed lawsuits against the Colombian government domestically; but as the campaign expanded transnationally, it gradually changed tactics. The U'wa resorted to various international dispute resolution venues, making claims against the Colombian government before shifting targets and challenging the oil companies that had been granted the license. To challenge the companies, the U'wa purchased shares in one of them, Occidental Petroleum, which allowed them to promote shareholder resolutions and encourage other shareholders to divest. They also targeted the company's political supporters in the United States and changed the calculus of legal and reputational risks for key actors within the companies' organizational fields. Ultimately, the U'wa and their supporters prevented the two foreign companies, Shell and Occidental Petroleum, from oil prospecting on their land. However, while this Article is written, the U'wa are still litigating their case before the Inter-American Court of Human Rights to prevent the Colombian government from doing the same.

Why did the U'wa movement change its tactics throughout the campaign? This article analyzes the U'wa campaign (1995-2023) as a theory-generating case to explain why social movements change their use of law as a tactic when targeting state and non-state actors. In the process, it challenges the operationalization of key concepts in the literature of law and social movements.

A growing body of sociological and sociolegal literature focuses on why social movements resort to different tactics to achieve their goals, including their use of law. This literature emphasizes how factors related to various internal features of participating social movement organizations (SMOs), their networks, frames, and political and cultural environments, shape *when* they use different tactics including the law. However, with few but important

---

/environment/andes-to-the-amazon/2014/jun/17/will-uwas-forced-threaten-commit-mass-suicide-again [https://perma.cc/UGS9-3T2X].

3. *Id.*

exceptions,<sup>4</sup> the law and social movements literature has focused on a specific form of legal mobilization—litigation campaigns against the state—even though the general social movement literature increasingly focuses on how activists target non-state actors.<sup>5</sup>

The emphasis on the state follows an earlier trend in social movement research. Early proponents of the political process approach, like Charles Tilly, defined social movements as confrontations between political outsiders and the state;<sup>6</sup> but, since at least the 1990s, the United States general social movements literature widely accepts that social movements continuously target non-state actors like corporations, universities, and scientific institutions.<sup>7</sup> Moreover, the targeting of corporate actors predates the study of global or transnational social movements; historical research shows how the United States civil rights movement, for example, targeted corporate actors.<sup>8</sup> The law and social movements literature, however, has not reflected this change in perspective.

This Article contributes to the literature on law and social movements by analyzing legal mobilization against both state and non-state targets, which, following Armstrong and Bernstein,<sup>9</sup> I call ‘multi-institutional legal mobilization.’ This Article’s main contribution to this literature is helping explain why changes in campaign targets can promote variations in the *areas of law* mobilized by social movements, the arenas or *venues* they choose to

---

4. See MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994); JOHN G. DALE, FREE BURMA: TRANSNATIONAL LEGAL ACTION AND CORPORATE ACCOUNTABILITY (2011).

5. The New Social Movements literature in Europe focused on how social movements seek cultural and economic changes and target non-state actors. However, this body of literature has not received so much attention in the United States. See generally Jean L. Cohen, *Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements*, 52 SOC. RSCH. 663 (1985); NICK CROSSLEY, MAKING SENSE OF SOCIAL MOVEMENTS (2002); Alberto Melucci, *The Symbolic Challenge of Contemporary Movements*, 52 SOC. RSCH. 789 (1985).

6. See CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION 8–9 (1978).

7. See Elizabeth A. Armstrong & Mary Bernstein, *Culture, Power, and Institutions: A Multi-Institutional Politics Approach to Social Movements*, 26 SOCIO. THEORY 74, 78, 90 (2008); see also JEFF GOODWIN & JAMES M. JASPER, *Caught in a Winding, Snarling Vine: The Structural Bias of Political Process Theory*, 14 SOCIO. FORUM 27, 34–35 (1999); Edward T. Walker et al., *Confronting the State, the Corporation, and the Academy: The Influence of Institutional Targets on Social Movement Repertoires*, 114 AM. J. SOCIO., 35, 36, 38–39 (2008); Michael P. Young, *Confessional Protest: The Religious Birth of U.S. National Social Movements*, 67 AM. SOCIO. REV. 660, 662 (2002).

8. See also TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG CIVIL RIGHTS MOVEMENT 158 (2011).

9. Armstrong and Bernstein, *supra* note 8.

mobilize, and the *forms of legal mobilization* deployed. It shows that state and corporate targets provide different opportunities for legal mobilization because they operate within different fields of political, social, and economic life, each with their own set of norms and values, which I refer to as ‘field frames.’

Activists have different ways of resorting to field frames. Activists can target corporations within their own comfort zones, resorting to human rights or environmental frames to hold corporations accountable. This strategy may not always work since corporations are not necessarily vulnerable to attacks within human rights or environmental fields.<sup>10</sup> Alternatively, my research shows that activists can also target corporations by subverting corporate field frames, thereby using corporate norms, values, and institutions for their own purposes. Nevertheless, my research also shows that the counter-hegemonic use of field frames is a two-way street, as corporations also utilize activists’ fields to subvert human rights or environmentalist norms, blocking venues, and co-opting potential allies.

*Organizational Fields and Frames: Key Concepts for Understanding  
Multi-Institutional Legal Mobilization*

To explain tactical changes, this Article builds upon the multi-institutional approach to social movements of Armstrong and Bernstein,<sup>11</sup> along with Walker,<sup>12</sup> and the field theory of social movements and organizations.<sup>13</sup> Field theory conceptualizes social movement organizations and their targets as operating within different organizational fields, rather than within a monolithic environment providing a single opportunity structure. In their influential work, DiMaggio and Powell adapted the concept of organizational

---

10. See DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* (2005).

11. Armstrong & Bernstein, *supra* note 8.

12. See Walker et al., *supra* note 8.

13. See, e.g., Tim Barley & Curtis Child, *Movements, Markets and Fields: The Effects of Anti-Sweatshop Campaigns on U.S. Firms, 1993-2000*, 90 SOC. FORCES 425 (2011); Michael Lounsbury et al., *Social Movements, Field Frames and Industry Emergence: A Cultural-Political Perspective on US Recycling*, 1 SOCIO-ECON. REV. 71 (2003); Klaus Weber et al., *Forage for Thought: Mobilizing Codes in the Movement for Grass-Fed Meat and Dairy Products*, 53 ADMIN. SCI. Q. 529 (2008).

fields from Bourdieu,<sup>14</sup> which they define as groups of “organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products.”<sup>15</sup> The behavior of actors within a field is oriented by a *field frame*, which “define[s] the set of appropriate practices, norms, and beliefs that govern . . . behavior . . . within institutional fields.”<sup>16</sup>

Although imperfectly, organizational field frames tend to correspond with different areas of the law, like human rights, family law, or corporate law and securities regulations, which help to constitute a field, define its actors’ values, roles, and the expectations of participants. For example, a corporate field frame might have well-established rules regarding its executives’ obligations toward investors, lenders, political supporters, shareholders, suppliers, buyers, and industry regulators. At the same time, it might lack norms regulating corporate relations to other actors considered marginal or outsiders, like executives’ spouses, the neighbors of an organization’s facilities, or the indigenous communities living in the areas where they operate.

Actors operate within multiple, overlapping organizational fields in which they have varying levels of influence. Actors that are marginal within the corporate field but have some power in others, like the environmental or human rights fields, may resort to fields where they wield greater power to target their antagonists. For instance, they might seek to create norms to include new actors in the field, as with the increasing inclusion of corporations in the human rights field; or they might seek to assign new roles and expectations toward established actors, as with the emergence of new climate change obligations for traditional corporate actors in the environmental field.

Alternatively, as the U’wa case illustrates, movements can decide to subvert corporations’ field frames by deploying corporate and securities law for their own purposes. For example, activists can purchase company shares, shifting their identities to become insiders within corporate fields, which enables them to redefine their relationships with their corporate targets. This

---

14. PIERRE BOURDIEU, OUTLINE OF A THEORY OF PRACTICE 16 (1977).

15. Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIO. REV. 147, 148 (1983).

16. Erin M. Reid & Michael W. Toffel, *Responding to Public and Private Politics: Corporate Disclosure of Climate Change Strategies*, 30 STRATEGIC MGMT. J. 1157, 1159 (2009).

was the strategy used by the U'wa during the second stage of their campaign. Instead of resorting to human rights or environmental law, the movement used corporate law to affect a corporation's organizational field in two main ways: first, by purchasing shares they gained access to other shareholders and information, which helped them target key shareholders to promote shareholder resolutions and divestment campaigns. Secondly, the use of corporate and securities law also helped them to alter risk perceptions among key actors in the corporate field to exert pressure over the company's governance structures.<sup>17</sup>

Moreover, as previously mentioned, my findings illustrate that corporate actors also engage in strategies mirroring those of activists. Corporations can and do participate actively in social movement fields and strategically utilize key venues and actors in the field. Thus, it is not just activists but also corporations that seek to shape organizational field frames and strategically close certain venues within those fields.

Legal mobilization against corporate actors does not always entail litigation and may take various forms. For instance, government officials may be accustomed to lawsuits as part of their daily interactions with outsiders, but corporate executives tend to be more averse to lawsuits.<sup>18</sup> Thus, movements might resort to other forms of legal mobilization if they expect to negotiate with those corporate actors in the future. In those circumstances, activists may mobilize law as a bargaining chip to negotiate with corporations.

### *Structure of this Article*

This Article initially presents existing theories that can explain when, how, and why social movements resort to mobilizing law in their campaigns. The First Part of this Section focuses exclusively on the concepts and theories that explain legal mobilization, showing that they have overemphasized social movement litigation against the state, leaving out other types of targets and forms of legal mobilization. The Second Part illustrates how the multi-

---

17. Aaron A. Dhir, *Shareholder Engagement in the Embedded Business Corporation: Investment Activism, Human Rights, and TWAII Discourse*, 22 BUS. ETHICS Q. 99, 101 (2012).

18. See CALVIN MORRILL, *THE EXECUTIVE WAY: CONFLICT MANAGEMENT IN CORPORATIONS* 73-76 (1995).

institutional and field theory approaches to social movements and organizations help us understand why activists mobilize the law differently in challenging different types of targets. The Second Section of the Article presents my research findings and explains why movements change the areas of law, venues, and forms of legal mobilization used when challenging state and corporate actors. The Third Section describes the research methods and discusses the three stages of the U'wa campaign's trajectory. Finally, the Conclusion suggests areas for future research.

LEGAL MOBILIZATION WITHIN CORPORATE CAMPAIGNS:  
THE LIMITATIONS OF THE LITERATURE ON LAW  
AND SOCIAL MOVEMENTS

Social movement scholars agree that roughly three orders of factors shape movement tactics: the large-scale political and cultural factors in the external environment in which movements operate; the community of movements within which they interact;<sup>19</sup> and the internal features of social movement organizations (SMOs), such as their resources, values, ideologies, structures, and trajectories. In evaluating tactical options, movements consider different audiences, including various authorities, their targets, actual and potential allies, and the media.<sup>20</sup> The law and social movements literature has investigated tactics by primarily focusing on environmental and organizational factors.<sup>21</sup> But it has also developed concepts to explain when movements resort to law.

---

19. These are diversely conceptualized as the movement's networks or organizational fields. However, networks and fields are not perfect synonyms. While the former implies some degree of direct social interaction between organizations, the latter does not. See Armstrong & Bernstein, *supra* note 8.

20. David S. Meyer & Suzanne Staggenborg, *Thinking about Strategy*, in STRATEGIES FOR SOC. CHANGE 3, 10 (2012).

21. See generally, Lisa Vanhala, *Is Legal Migration for the Birds? Legal Opportunity Structures and Environmental Nongovernment Organizations in the United Kingdom, France, Finland and Italy*, 51 COMPAR. POL. STUDS. 380 (2018).



*When do Social Movements Resort to Law? Limits and Possibilities of the Concepts of 'Legal Mobilization' and 'Legal Opportunity Structure'*

The literature on law and social movements has adopted the concepts of “legal mobilization” and “legal opportunity structure” to understand how social movements, other collective actors, and individuals use law as a tactic.<sup>22</sup> Early references to the term “legal mobilization” conceptualized and operationalized it broadly<sup>23</sup> as, “the process by which legal norms are invoked to regulate behavior,”<sup>24</sup> clarifying that “[it] is not dependent upon the use of particular formal structures,” nor does it “exclude individual action.”<sup>25</sup> Legal mobilization “implicitly recognizes the central role that mere knowledge and assertion of legal norms have in the distribution of public policy.”<sup>26</sup> Michael McCann, expanding on this literature, broadly defined and operationalized the legal mobilization of social movements as the use of symbolic discourses that help “transform or ‘reconstitute’ relationships among social groups,” often occurring outside of legal institutions.<sup>27</sup>

Although a significant part of the literature on law and social movements recognizes the conceptual breadth of legal mobilization, with notable exceptions<sup>28</sup> this literature mostly focuses on litigation and other institutionalized

---

22. For reviews of this literature, see Emilio Lehoucq & Whitney K. Taylor, *Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?*, 45 LAW & SOCIAL INQUIRY 166 (2020); see also Steven A. Boutcher & Lynette J. Chua, *Law, Social Movements, and Mobilization across Contexts Introduction*, 40 LAW & POL’Y 5 (2018).

23. Donald J. Black, *The Mobilization of Law*, 2 J. LEGAL STUDS., 125, 127 (1973); Richard O. Lempert, *Mobilizing Private Law: An Introductory Essay*, 11 L. & SOC’Y REV., 173, 176-78 (1976). Frances Kahn Zemans, *Legal Mobilization: The Neglected Role of the Law in the Political System*, 77 AM. POL. SCI. REV. 690 (1983).

24. Lempert, *supra* note 24, at 173.

25. Zemans, *supra* note 24, at 694.

26. Zemans, *supra* note 24, at 694.

27. See generally MCCANN, *supra* note 5.

28. Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 L. & SOC’Y REV. 11, 12 n.1 (2005); Shannon Gleeson, *From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers*, 43 L. & Soc’y Rev. 669, 673 n.3 (2009); SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS (1990); Di Wang & Sida Liu, *Performing Artivism: Feminists, Lawyers, and Online Legal Mobilization in China*, 45 L. & SOC. INQUIRY 687, 678-705 (2020).

forms of formal triadic dispute settlement.<sup>29</sup> As a result, although we know significantly more about when and why social movements litigate, we know significantly less about how or why activists use law in their campaigns outside of courts and other legal institutions.<sup>30</sup> Thus, scholars that focus on resource mobilization highlight how organizational resources or “support structures”—like lawyer participation;<sup>31</sup> prior experience and resources;<sup>32</sup> SMO networks;<sup>33</sup> the fields in which they interact;<sup>34</sup> their internal structure and opposition;<sup>35</sup> and sources of finance, expertise, legal knowledge<sup>36</sup>, networks, connections, and alliances<sup>37</sup>—shape when and why movements resort to litigation.<sup>38</sup> In turn, scholars who focus on environmental factors stress how legal, political, and cultural opportunities shape movement tactics, thereby illustrating the importance of the ways those opportunities frame future litigation.<sup>39</sup> Such scholars also pay special attention to the rules of

---

29. For a comprehensive review of this literature, see Emilio Lehoucq & Whitney K. Taylor, *Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?*, 45 L. & SOC. INQUIRY 166, 166-93 (2020).

30. Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. OF SOCIO. 1328, 1328-72 (2003); SALLY ENGLE MERRY, *supra* note 32.

31. Scott Barclay & Daniel Chomsky, *How Do Cause Lawyers Decide When and Where to Litigate on Behalf of Their Cause?*, 48 L. & SOC. REV. 595, 595-620 (2014).

32. CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* (1998).

33. Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1253 (2010); Dan J. Wang & Sarah A. Soule, *Social Movement Organizational Collaboration: Networks of Learning and the Diffusion of Protest Tactics, 1960–1995*, 117 AM. J. SOCIO. 1674, 1676 (2012).

34. Lauren B. Edelman et al., *On Law, Organizations, and Social Movements*, 6 ANN. REV. L. & SOC. SCI. 653, 655 (2010).

35. Noga Morag-Levine, *Partners No More: Relational Transformation and the Turn to Litigation in Two Conversationist Organizations*, 37 L. & SOC'Y REV. 457, 460 (2003).

36. ELLEN ANN ANDERSEN, *OUT OF THE CLOSETS & INTO THE COURTS* 29 (2006); Barclay & Chomsky, *supra* note 35, at 601-06.

37. Wang & Soule, *supra* note 37.

38. Epp, *supra* note 36, at 18.

39. See Lisa Vanhala, *supra* note 24.; Holly J. McCammon & Cathryn Beeson-Lynch, *Fighting Words: Pro-Choice Cause Lawyering, Legal-Framing Innovations, and Hostile Political-Legal Contexts*, 46 L. & SOC. INQUIRY 599 (2021).

procedure<sup>40</sup> and the ways in which adverse outcomes in litigation<sup>41</sup> help SMOs make injustices explicit<sup>42</sup> and gradually expand the rules of access to courts.<sup>43</sup>

*Legal opportunity structure* (LOS), therefore, is an adaptation of the concept of political opportunity structure (POS), which concerns available external environmental conditions used to advance certain social or policy changes through law.<sup>44</sup> Andersen<sup>45</sup> defined LOS as “the conditions under which interactions between or among legal actors and the various institutions in which they are embedded operate to facilitate or retard legal change.” Although this definition alludes to various institutions, in its operationalization it remains closely linked to formal legal institutions. Moreover, although other proponents of LOS have emphasized the importance of including different kinds of contextual elements, they have focused mostly on opportunities for litigation against the state. Scholars have thus emphasized the importance of contextual factors, like rules of procedure (especially standing and costs)<sup>46</sup> and the existence of sympathetic judges,<sup>47</sup> as elements of LOS.

40. See Bruce M. Wilson & Juan Carlos Rodríguez Cordero, *Legal Opportunity Structures and Social Movements: The Effects of Institutional Change on Costa Rican Politics*, 39 COMPAR. POL. STUD. 325, 343–48 (2006); Lisa Vanhala, *Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK*, 46 L. & SOC. REV. 523 (2012).

41. See HOLLY J. MCCAMMON, *THE U.S. WOMEN’S JURY MOVEMENTS AND STRATEGIC ADAPTATION: A MORE JUST VERDICT* 39–40 (2012) (highlighting how some legal experts would claim that the Strauder ruling was incompatible with women’s exclusion from juries).

42. *Id.* at 624–25 (explaining how pro-choice attorneys in *Gonzalez*, despite losing the case, succeeded in influencing future lower courts to engage in a fact-based inquiry as to undue burden in abortion cases).

43. See Vanhala *supra* note 41 at 557 (observing that, despite the many substantive early losses, the *Fleet Street Casuals* cases helped in liberalizing standing in the UK).

44. Chris Hilson, *New social movements: the role of legal opportunity*, 9 J. EUR. PUB. POL’Y 238, 238–39 (2002) (arguing that external factors that influence whether social movement actors will use political or legal opportunity).

45. ANDERSEN, *supra* note 40, at 8.

46. See Karen J. Alter & Jeannette Vargas, *Explaining Variation in the Use of European Litigation Strategies: European Community Law and British Gender Equality Policy*, 33 COMP. POL. STUD. 452, 462, 470, 475 (2000); ANDERSEN, *supra* note, 40, at 9–10 (discussing how standing shapes the options available to social movement activists); Rhonda Evans Case & Terri E. Givens, *Re-engineering Legal Opportunity Structures in the European Union? The Starting Line Group and the Politics of the Racial Equality Directive*, 48 J. COMMON MKT. STUD. 221, 224 (2010) (“[t]he nature of a legal opportunity structure depends upon the rules that govern access to the courts.”); Wilson & Cordero, *supra* note 44, at 327, 330 (discussing the impact of standing and costs on the success of social movement groups).

47. See ANDERSEN, *supra* note 40, at 10–11; Hilson, *supra* note 48, at 243.

Other scholars have started to question the notion of a monolithic, externally imposed, preexisting LOS. Instead, they have highlighted the role of activists' agency and framing in shaping legal opportunities<sup>48</sup> and the importance of interactions between SMOs and targets in tactical innovation.<sup>49</sup> Despite their findings, however, the law and social movement literature remains largely focused on litigation against the state. Additionally, the concept of legal opportunity structure, like POS, remains conceptually anchored on the assumption of a single, preexisting legal structure shaped by the state.

*Multi-Institutional Approaches to Social Movements:  
Organizations and Field Theory*

Various social movement scholars have sought to overcome the limitations of state-centered approaches.<sup>50</sup> Armstrong and Bernstein developed a multi-institutional approach to social movements that questions two important assumptions of state-centered, materialist approaches to social movements.<sup>51</sup> First, their approach recognizes that social movements also target non-state actors, like corporations, universities, and religious organizations. Second, it recognizes that activists seek changes in both material conditions and cultural meanings.

The fact that social movements pursue material and cultural changes targeting multiple, yet nested, institutions with “distinct logics suggests that the choice and effectiveness of strategies will also vary by target.”<sup>52</sup> Thus, movements are likely to vary their tactics depending on their targets, and the effectiveness of those tactics is a relational attribute whose usefulness depends on the target's organizational field rather than an inherent feature of a tactic. Sociologists, Walker et al.,<sup>53</sup> for example, found that institutional tactics—

---

48. See, e.g., Steven A. Boutcher & Holly J. McCammon, *Social Movements and Litigation*, in THE WILEY BLACKWELL COMPANION TO SOCIAL MOVEMENTS 306, 311-12 (David A. Snow et al. eds., 2019); McCammon & Beeson-Lynch, *supra* note 43, at 599-600; see generally Lisa Vanhala, *Legal Opportunity Structures*, 46 L. & SOC. REV. 523 (2012).

49. McCammon, *supra* note 42, at 223.

50. See generally Nella Van Dyke et al., *The Targets of Social Movements: Beyond a Focus on the State*, 25 RSCH. SOC. MOVEMENTS, CONFLICTS & CHANGE 27 (2005).

51. Armstrong & Bernstein, *supra* note 8, at 82. Elizabeth Armstrong and Mary Bernstein, *Culture, Power, and Institutions*, 26 SOCIO. THEORY 74, 82 (2008).

52. *Id.* at 86.

53. Walker et al., *supra* note 8, at 68.

including litigation—would be more frequently used against the state than against corporations. Conversely, they found that movements use more disruptive tactics against corporations and universities, which they claim is a result of state actors' greater capacities (repression, facilitation, routinization), greater strengths (openness to influence and challenger incorporation), and reduced vulnerabilities (need for legitimacy and need of challenger participation), to face challengers than corporations and universities.

The multi-institutional approach to social movements has developed in part due to the cross-fertilization between the study of social movements and the sociology of organizations, especially the study of corporations. One consequence of this cross-fertilization was to call into question the idea that movements and targets occupy a single, monolithic environment, thus challenging the assumption of a single opportunity structure. Instead, organizational theory proposes that social movements interact with, and challenge organizations and other targets in multiple, segmented environments.<sup>54</sup> Thus, challenges in different segments can produce diverse outcomes. Nonetheless, although movements and corporations interact with multiple environments, each with its own dynamic, their environments are interconnected. Thus, the environments of these organizations are better understood as separate-yet-interacting organizational fields.

The concept of organizational fields is used within the social movements literature to describe how social movement organizations are connected through overlapping members and leaders, resulting in shared cultures, organizational structures, and tactical repertoires.<sup>55</sup> Each field has what de Hond and Bakker call a "field frame" composed of the "technical, legal, or market standards that define normal modes of operation within that specific field."<sup>56</sup> Social change within a field is produced when movements or other actors disrupt an organizational field frame, altering the behavior of powerful

---

54. Marc Schneiber and Sarah Soule, *Institutionalization as a Contested, Multi-Level Process: Politics, Social Movements and Rate Regulation in American Fire Insurance*, in *SOCIAL MOVEMENTS AND ORGANIZATION THEORY* (Gerald F. Davis et al. ed., 2012).

55. Fabio Rojas and Brayden G. King, *How Social Movements Interact with Organizations and Fields: Protest, Institutions, and Beyond*, in *THE WILEY BLACKWELL COMPANION TO SOCIAL MOVEMENTS* (David A. Snow et al. ed., 2018).

56. Frank Den Hond and Frank De Bakker, *Ideologically Motivated Activism: How Activist Groups Influence Corporate Social Change Activities*, 32 *ACAD. MGMT. REV.* 901, 905-924 (2007); see also Reid and Toffel, *supra* note 17.

actors seeking to maintain their reputations within that field.<sup>57</sup> In this way, an organizational strength—like having a good reputation within a field—can become a vulnerability whenever that reputation is targeted by activists.<sup>58</sup> After periods of disruption and change, field frames resettle, as new norms emerge and establish themselves within the field. Thus, organizational fields go through periodic processes of frame disruption and resettlement.<sup>59</sup>

### LEGAL MOBILIZATION IN A MULTI-INSTITUTIONAL CONTEXT

My findings show that state and corporate targets provide different opportunities for legal mobilization. As the types of targets change, so too do the areas of law that are likely to be mobilized, the forums or venues, and the form or type of legal mobilization used. In this Section, I will explain why changes in the U'wa targets led to changes in the areas of law, the venues that the campaign mobilized, and the forms of legal mobilization the campaign utilized.

#### *Legal Mobilization as a Means of Disrupting Human Rights and Environmental Organizational Field Frames*

Under certain circumstances, SMOs challenge different targets to obtain the social and policy changes that they seek. Different targets interact within different organizational fields. Thus, each target presents different opportunities for deploying specific tactics. In this way, tactical changes and

---

57. Tim Bartley and Curtis Child, *Shaming the Corporation: The Social Production of Targets and the Anti-Sweatshop Movement*, 79 AM. SOCIO. REV. 653-79 (2012): 653-679; Brayden G. King, *A political mediation model of corporate response to social movement activism*, 53 Admin. Sci. Q. 395-421 (2008); Mary-Hunter McDonnell & Brayden King, *Keeping up Appearances: Reputational Threat and Impression Management after Social Movement Boycotts*, 58 ADMIN. SCI. Q. 387, 387-419 (2013).

58. Jung et al. *Issue Bricolage: Explaining the Configuration of the Social Movement Sector, 1960–1995*, 1201 AM. J. SOCIO. 187, 187-225 (2014); Dan J. Wang & Sarah Soule, *Tactical Innovation in Social Movements: The Effects of Peripheral and Multi-Issue Protest*, 81 AM. SOCIO. REV. 517, 517-548 (2016).

59. FABIO ROJAS & BRAYDEN G. KING, HOW SOCIAL MOVEMENTS INTERACT WITH ORGANIZATIONS AND FIELDS (2018).

innovation are common in multi-institutional settings in which activists challenge different kinds of targets.<sup>60</sup>

A field's frame constitutes the identities, regulates the roles, and reflects the relative status of actors within the field. The field's boundaries, values, the relationships among its actors, and their expectations are also largely constituted by its frame. Finally, frames define who the field's insiders and outsiders are, as well as its conditions for entry. Different areas of law tend to overlap with different organizational field frames even as organizations endogenize law, adapting it to their own structures, culture, and objectives.<sup>61</sup> Different areas of law also define the rules of interaction within broader or narrower segments of social life, contributing to the field's identity: they help to determine who matters, how, and when.

This happens both with substantive and procedural legal rules. Human rights law, for example, determines what segments of the population need protection, who protects them, and what aspects of social or individual life are valuable and deserving of protection.<sup>62</sup> In this way, human rights law, as well as corporate or family law, help define different fields of social life; establish the fields' values and actors' roles within them; and constitute the actors' respective statuses and the fields' hierarchies. Rules of standing in legal procedure, for example, help delineate a field's boundaries, shape the sphere of influence of different actors, and ascribe roles by excluding or including certain actors. Perhaps more importantly, by limiting the participation of certain actors in the legal process, rules of standing also limit their tools to interact with other actors in the field.

Sometimes, activists seek to alter the role of corporate actors within human rights or environmental fields by changing or creating norms to shape their behavior. They do so, among others, by altering substantive or procedural legal rules. The strategic, gradual expansion of rules of standing by environmental lawyers identified by Vanhala, for instance, provides a good

---

60. Armstrong & Bernstein, *supra* note 10; see Brayden G. King & Mary-Hunter McDonnell, *Good Firms, Good Targets: The Relationship Among Corporate Social Responsibility, Reputation, and Activist Targeting*, in *CORP. SOC. RESP. IN A GLOBALIZING WORLD* 430 (K. Tsutsui & A. Lim eds., 2015).

61. See Lauren B. Edelman et al., *The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth*, 105 *AM. J. SOCIO.* 406 (1999).

62. See CLIFFORD BOB, *THE GLOBAL RIGHT WING AND THE CLASH OF WORLD POLITICS* (2012).

example of this behavior.<sup>63</sup> A field's frame can also be disrupted by creating new rules that expand human rights legal accountability to new actors, such as corporations, or by regulating their behavior, as with the proposed creation of the international crime of ecocide, or the adoption of a treaty that makes corporations and corporate executives responsible for human rights violations.<sup>64</sup>

*Legal Mobilization as a Means to Subvert a Corporation's  
Organizational Field Frames*

However, as the U'wa campaign shows, activists outside a corporate field can resort to a somewhat different strategy. Instead of changing field frames from the inside, activists can seek to use the existing rules and values of corporate fields for their own purposes. By becoming shareholders, for example, otherwise powerless actors can purchase company shares, thus redefining their own identities to enter a corporate target's field. In doing to these actors transform their status from outsiders to insiders and reconstitute their relationships within the corporate field. This tactic grants formerly marginal actors a kind of 'corporate citizenship' or 'field standing,' transforming them from corporate outsiders into insiders, allowing them to change corporate behavior.

Analogous forms of subversion of dominant frames have been used in other contexts. Activists under authoritarian rule, for instance, show their support and mobilize the hegemonic norms of their targets' organizational field frames for their own counter-hegemonic purposes. These types of challenges, from within a target's field frame, correspond to what O'Brien and Li called 'rightful resistance,'<sup>65</sup> Scott named "critiques within the hegemony,"<sup>66</sup> and Field termed "rebels in the name of the tsar."<sup>67</sup> These tactics are

---

63. Vanhala, *supra* note 41.

64. See, e.g., G.A. Res. 26/9, at 2 (Jun. 26, 2014); see also, Int'l L. Comm'n, Rep on the Work of its Forty-Third Session at 96-97, U.N. Doc. A/CN.4/SER.A/1991/Add.1 (Part 2) (1991).

65. KEVIN J. O'BRIEN & LIANJIANG LI, RIGHTFUL RESISTANCE IN RURAL CHINA 2 (2006).

66. JAMES C. SCOTT, DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS 105-06 (1990).

67. DANIEL FIELD, REBELS IN THE NAME OF THE TSAR 8-9 (1976).



simultaneously both strongly institutional and subversive.<sup>68</sup> In every instance, marginalized or subaltern groups realign their identities with powerful actors to challenge other powerful actors, using hegemonic frames to exploit elite schisms, voice grievances, and advance their claims. Thus, actions like gaining shareholder access through purchasing shares or enhancing actors' risk perceptions within their targets' organizational field requires mobilizing the frames of the corporation, like those embodied in corporate and securities laws.

### *Changing Targets and Venues*

Changing targets also entails resorting to different arenas for legal mobilization. Conflict resolution arenas—including courts and other formal third-party dispute settlement mechanisms, as well as informal within-field arenas that actors use to resolve conflict through direct negotiation—play an important role in shaping normative changes within field frames.<sup>69</sup> Whether conflicts are resolved directly or by a third party, and whether resolved formally or informally, new arrangements can set normative precedents within the field, possibly altering the field's frame.

Importantly, the choice of arena is not neutral for a field's actors. Different actors are more or less vulnerable depending on the arena in which they are challenged. State officials might be less affected by lawsuits than corporate executives, in part because challenging the state is commonplace whereas a lawsuit might affect corporate value,<sup>70</sup> or because executives' rewards and status can become 'tainted' when they are involved in lawsuits.<sup>71</sup> For example, oil executives were less likely to negotiate with activists when there was impending litigation, as McAteer and Pulver<sup>72</sup> noted in their study of conflicts between oil companies and indigenous peoples in Ecuador. The

---

68. Lynette J. Chua, *Legal Mobilization and Authoritarianism*, ANN. REV. L. & SOC. SCI. 355, 367 (2019).

69. ALEC STONE-SWEET, GOVERNING WITH JUDGES: CONSTITUTIONAL POLITICS IN EUROPE 12-13, 18 (2000).

70. Walker et al., *supra* note 8.

71. See Morrill *supra* note 19, at 73-76.

72. Emily McAteer & Simone Pulver, *The Corporate Boomerang: Shareholder Transnational Advocacy Networks Targeting Oil Companies in the Ecuadorian Amazon*, 9 GLOB. ENV'T POL. 1, 23 (2009).

aversion of corporate executives to litigation is important, among others, because corporate campaigns commonly follow a tactical sequence in which activists initially display their ability to affect corporate reputations to gain leverage in later negotiations with their corporate targets. Once a lawsuit is filed, corporate decisionmakers commonly defer to their attorneys and abstain from contacting their counterparts outside of the legal process, which makes negotiations more difficult for activists. Thus, activists in corporate campaigns tend to mobilize the law in non-courtroom arenas, avoiding forums that might undermine their ability to negotiate with their targets.

### *The Two-Way Street Between Corporations and Activists' Fields*

My findings also show that corporations utilize the areas of law, dispute-resolution venues, and forms of legal mobilization commonly used by activists to undermine their tactics. For example, they may seek to alter human rights field frames and seek support from, or close access to, the international organizations, and even the non-governmental organizations (NGOs), commonly used by activists to alter actors' framings of the conflict. In the U'wa case, the oil companies sought to block activists' access to certain conflict resolution venues, particularly international courts. In this way, they attempted to reframe the nature of their conflict with the U'wa in order to neutralize potentially stigmatizing frames that could negatively affect their reputation. This type of countermobilization allows corporate actors to control the arenas and the framing of their conflicts.

## METHODS

To understand the decision-making processes in the U'wa campaign, I conducted archival and field research in Colombia and the United States, navigating through organizational repositories at the local, national, and international levels. Archival research helped to construct a chronology of events and identify the actors and institutions involved, the actions they performed, and the variation in the roles that they played throughout the campaign. Having identified these actors and events, I constructed a list of interviewees and ultimately conducted fifty-seven in-depth interviews.

The fifty-seven semi-structured interviews were conducted in person, both in Spanish and English, and lasted between one and four hours. They were digitally recorded, transcribed, and—when in Spanish—translated into English. To select interviewees, I listed institutions, organizations, and individuals that my archival research suggested directly or indirectly affected the movement's tactics. Through documentary evidence and some initial interviews, I was able to identify the individuals within the institutions and organizations who were directly involved in the campaign's decision-making processes. I identified a total of seventy-nine people, fifty-seven of whom agreed to be interviewed. These interviewees represent most of the institutions and organizations that directly intervened or were indirectly related to the campaign. The interviewees include activists, Colombian high court judges, oil company executives in both countries, Colombian government officials, Colombian national indigenous leaders, U'wa leaders, United States and Colombian environmentalists, officials from international organizations, investment bankers in the United States, and a Washington D.C. lobbyist for the oil companies. Interviews focused on organizational characteristics and interviewee perspectives on the history of the campaign's tactics.

Besides interviewing, I conducted on-site observation of the local movement over a two-year period in three main settings: the U'wa reservation, the nearby town of Cubará where the U'wa organization (Asou'wa) has its offices, and the area of La China near the border of the U'wa reservation. I conducted observations in Bogotá, where the offices of National Indigenous Organization of Colombia (ONIC), the national government, and domestic NGOs are located. I worked with ONIC in their international litigation projects, which enabled me to observe their interactions with the U'wa leaders and environmentalists and to assess the role of each in domestic and transnational mobilization and tactical change. Moreover, it allowed me to observe their interactions with local indigenous leaders, government officials, and representatives of intergovernmental organizations like the United Nations, the International Labor Organization (ILO), and the Organization of American States (OAS). Finally, I conducted on-site observations of the international links in Bogotá and five cities in the United States: San Francisco, Santa Cruz, Washington, D.C., Los Angeles, and New York. In all these United States sites, I conducted interviews with oil executives, oil lobbyists,

activists, international organizations officials, and lawyers for these indigenous groups. I also participated as a guest in various fundraising and organizational events.

### THE TRAJECTORY OF THE U'WA CAMPAIGN

As mentioned above, the campaign's trajectory can be divided into three partially overlapping, partially discontinuous, stages. In the first stage, the campaign went from relying heavily on domestic litigation to resorting to different international dispute resolution venues. In the second stage, as the campaign shifted targets, it also shifted tactics. It moved from using human rights frames and institutions to purchasing company shares to gain access to shareholders and information, enabling the U'wa to promote shareholder resolutions, a divestment campaign, and to alter the way actors within the company's corporate field perceived the legal and reputational risks entailed by the U'wa conflict. In the third stage, the campaign shifted targets and tactics once more, turning its international human rights litigation campaign against the Colombian government. A summary of the main actions carried out in these three stages is provided in Table 1 below:

| TABLE 1<br>U'WA CAMPAIGN TRAJECTORY   |   |   |
|---|---|---|
| First Stage<br>March, 1993 – November,<br>2001  | Second Stage<br>May, 1997 – May, 2001   | Third Stage<br>May, 2001 – currently  |
| <ul style="list-style-type: none"> <li>● Threat to commit collective suicide announced.</li> <li>● File a first <i>tutela</i> writ for lack of consultation.</li> <li>● File lawsuit upon the Council of State.</li> <li>● File a second <i>tutela</i> writ.</li> <li>● U'wa and supporters file a claim in the Inter-American Commission of Human Rights.</li> </ul> | <ul style="list-style-type: none"> <li>● Attend Occidental shareholders' meetings (1997, 1998, 1999).</li> <li>● Meeting with Occidental management (1997).</li> <li>● Protests in Fidelity offices.</li> <li>● Fidelity Investments sells 60% of its shares in Occidental (\$400 million).</li> <li>● Interactions with Sanford Bernstein, largest individual</li> </ul> | <ul style="list-style-type: none"> <li>● Litigation in the Inter-American Court of Human Rights.</li> </ul> |

|  |  |  |
|--|--|--|
| <ul style="list-style-type: none"> <li>● Occidental and the Colombian government request the OAS Secretary General create the OAS-Harvard Commission.</li> </ul> | shareholder (\$1.19 billion). <ul style="list-style-type: none"> <li>● Support from Sinsinawa Dominican Sisters.</li> <li>● Nationwide campaign against Al Gore.</li> <li>● Interactions with JP Morgan: allegations of unduly representing risks to investors in SEC report.</li> </ul> |  |
|--|--|--|

*The First Stage: From Domestic Litigation to the Mobilization of International Dispute Resolution*

Initially, the U'wa campaign relied on the perceived legal opportunity offered by a newly created, rights-friendly Constitutional Court to prevent oil exploration on their lands. Indigenous people had actively participated in the constituent assembly seven years before, expressly incorporating the right to self-determination and the inalienable right to indigenous lands into the text of the Constitution.<sup>73</sup> The court had incorporated various human rights contained in international treaties into the constitution by way of interpretation. Thus, the U'wa supporters requested that the court incorporate the right of indigenous peoples to be consulted prior to any exploration and extraction of natural resources on their lands, which is included in the ILO 169 Indigenous and Tribal Peoples' Convention, thus preventing Occidental Petroleum and its partners from exploring oil in their territory.

The invocation of a human rights convention was a way of using the state's enforcement powers to rescind the environmental license it had granted. As with other international treaties, ILO conventions have no centralized-enforcement mechanism. Thus, while incorporating the convention into the Colombian constitution via domestic litigation appeared the U'wa's best possible tactic for avoiding oil exploration in their land, a positive ruling in their favor would only guarantee their right to prior consultation, not a power to veto oil exploration. So, their expectations of constitutional

---

73. See CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.], julio 4, 1994, art. 1, 7, 10, 63, 68 (Colom.).

litigation were limited. An indigenous lawyer from a national indigenous organization involved in the U'wa campaign referred to the expectation that indigenous people had in the new constitution in the following way:

Recently I listened to the elder Lorenzo Muelas say that we thought the constitution had solved all our problems as indigenous peoples, and that is just not true because even though the constitution helped significantly, because it regarded us as bearers of constitutional rights, it has also meant indigenous mobilization was weakened.<sup>74</sup>

Beyond domestic legal opportunities, the U'wa had significant organizational resources enabling them to litigate to the highest echelons of the Colombian judiciary.<sup>75</sup> When the news that the U'wa were about to commit collective suicide spread, many Colombian organizations and public officials offered support. One of these public officials was the country's *Defensor del Pueblo* (human rights ombudsperson), who filed a *tutela*, a legal claim requesting the courts to order that the Ministry of the Environment (MA)<sup>76</sup> revoke the environmental license granted to the oil companies. The claim stipulated that the companies had not carried out prior consultations with the U'wa; therefore, from its initial stages, the U'wa campaign had a support structure and important organizational resources that facilitated litigation against the MA.

Complex jurisdictional rules only allowed the Constitutional Court to suspend oil exploration temporarily, thus only granting the U'wa a partial legal victory. The Constitutional Court ruled that the right of indigenous peoples to prior consultations was a fundamental constitutional right of the Colombian Constitution of 1991 and granted protection to the U'wa. The Court ordered the MA to begin consultations between Occidental and the U'wa within the next thirty days. Notably, the court also ruled that, under ILO Convention 169, indigenous peoples did not have a right to prevent oil exploration in their land, though they did have to be consulted before

---

74. Interview in Bogotá, Colom. (Feb. 6, 2010).

75. Interview with national indigenous leader in Bogotá, Colom. (Apr. 6, 2010); interview with U'wa Indigenous leader in Cubará, Colom. (Nov. 2, 2009).

76. The acronym used here stands for its name in Spanish, *Ministerio de Ambiente*. Interview with environmental activist in Bogotá, Colom. (Mar. 16, 2010).

exploration took place.<sup>77</sup> As my U'wa interviewees admitted, this meant engaging in consultations with Occidental knowing in advance that the company would not abandon the exploration project; thus, once consultations ended without an agreement, the companies would resume oil exploration.<sup>78</sup>

The campaign then experienced the closing of opportunities for domestic litigation. Since the decision of the constitutional court only provided a temporary suspension of the license, the campaign filed a second lawsuit against the environmental license before the *Consejo de Estado*, or Council of State, the highest administrative court in the country. Two months later, this court decided to uphold the license issued by the MA.<sup>79</sup> Thus, Occidental and its partners could resume exploration without fear of more domestic legal challenges against its environmental license.

Despite having two definitive legal decisions, the contradictions between the courts demonstrated the inability of domestic legal institutions to resolve the conflict. Litigation in domestic courts failed to prevent oil prospecting in U'wa land. By the time the courts issued their rulings in 1997, news about the U'wa had been extensively covered abroad, and various media outlets continued providing information about them, even sending reporters to their reservation. The media and different social movement organizations abroad became interested in the narrative of their conflict, the tenacity of their opposition to oil extraction, and the charisma of their leader, Berito Kubarau'wa.<sup>80</sup> These factors helped them consolidate a large and diverse coalition of supporters domestically and abroad. The U'wa then resorted to various international organizations as a way of overcoming domestic litigation's limitations.

---

77. CORTE CONSTITUCIONAL [C.C.] [Constitutional Court], Feb. 21, 1997, Sentencia SU-039/97, (Colom.).

78. Interview with U'wa Indigenous leader in Cubará, Colom. (July 4, 2010); interview with U'wa Indigenous leader in Cubará, Colom. (Nov. 9, 2010).

79. CONSEJO DE ESTADO [C.E.], julio 4, 1997, Sentencia S-673/97 (Colom.).

80. Interview with environmental activist in S.F., Cal., U.S. (Feb. 5, 2010).

Claims-Making in the Organization of American States: The Inter-American Commission of Human Rights and the OAS-Harvard Project

The failure of domestic human rights litigation and the consolidation of a transnational support structure helped the campaign innovate tactically.<sup>81</sup> Specifically, it fostered the internationalization of the campaign around a coalition of loosely connected SMOs—mostly based in Colombia and California but focused on different issues and tactics—called the U’wa Defense Working Group. These SMOs included religious, indigenous, human rights, and environmental organizations. Participating organizations had different goals and divided their roles according to their areas of expertise. United States-based organizations with transnational reach, like Earthjustice, Earth-Rights International, and the Center for Justice and International Law (CEJIL), oversaw the legal aspects of the campaign. Simultaneously, other organizations focused on corporate campaigns—like Amazon Watch, Rain-forest Action Network (RAN), and the Accountability Counsel—which connected Colombian and United States-based campaign participants, developed the corporate strategy and managed interaction with corporate actors. Still others, like Project Underground, focused on grassroots mobilization in the United States. In Colombia, indigenous organizations such as the ONIC and the U’wa Association (Asou’wa); environmental organizations, including the Hemera Foundation and CENSAT-Aguaviva; human rights litigation-focused organizations, such as the Jose Alvear Restrepo Lawyers’ Guild (CAJAR); and labor unions, including the United Workers’ Central (CUT, Ecopetrol’s labor union); focused on grassroots mobilization and certain aspects of legal strategy.

---

81. Vanhala, *supra* note 41, at 546.; *see generally* McCammon and Beeson-Lynch, *supra* note 40.



TABLE 2 PARTICIPATING SOCIAL MOVEMENT ORGANIZATIONS

|                      | Legal               |   | Multi-Tactics         |                   | Corporate                                     |
|----------------------|---------------------|---|-----------------------|-------------------|---|
|                      | <i>Human Rights</i> | <i>Environmental</i>                      | <i>Indigenous</i>     | <i>Labor</i>      | <i>Environmental /Indigenous</i>              |
| <b>Transnational</b> | CEJIL               | Earthjustice<br>Earthrights International |                       |                   | Accountability Council<br>Amazon Watch<br>RAN |
| <b>National</b>      | CAJAR<br>(Colombia) | CENSAT<br>Hemera<br>(Colombia)            | ONIC<br>(Colombia)    | CUT<br>(Colombia) | Project Underground<br>(U.S.)                 |
| <b>Local</b>         |                     |   | Aso'uwa<br>(Colombia) |                   |   |

In the campaign's first stage, transnational legal and national indigenous SMOs played an important role in designing and implementing the legal strategy with international organizations. During the second stage of the campaign, as the corporate campaign achieved some success, however, transnational corporate SMOs came to the forefront while transnational legal SMOs faded into the background.<sup>82</sup> In the third stage of the campaign, legal and indigenous SMOs again played a key role in directing litigation strategy, while the corporate campaign SMOs moved to the backstage.

International organizations, like the OAS, and even international courts, lack the coercive power of the state. Despite this limitation, the first stage of the campaign insisted on utilizing highly institutionalized, quasi-judicial, international mechanisms of third-party conflict resolution. Simultaneously, Occidental and the government responded to the campaign's expansion by internationalizing and reframing the conflict; which, as we will see, in contrast with the U'wa campaign, the corporate strategy was to resort to mediation, a less institutionalized, "softer" mechanism for international-dispute settlements.<sup>83</sup> The use of this informal mechanism helped Occidental and

82. Interview with environmental activist in Berkeley, Cal., U.S., (Feb. 2, 2010); reaffirmed in interview with environmental activist in S.F., Cal. U.S. (Feb. 4, 2010).

83. Laura Nader, *Civilization and Its Negotiations*, in UNDERSTANDING DISPUTES: THE POLITICS OF ARGUMENT 39, 46 (Pat Caplan ed., 1995); LAURA NADER, THE LIFE OF THE LAW: ANTHROPOLOGICAL PROJECTS 150 (2002).

the government shape the frame of the conflict and the venue where it was to be resolved.

To prevent Occidental from resuming its exploratory activities, on April 28, 1998, Asou'wa, ONIC, EarthRights International, and CAJAR filed a legal claim against Colombia before the Inter-American Human Rights Commission (CIDH)<sup>84</sup> in Washington, D.C. They requested, as provisional measures, the suspension of the exploration license granted to Occidental, protective measures for the U'wa, and a formal visit to U'wa territory.<sup>85</sup>

The CIDH is an autonomous fact-finding institution that is part of the Inter-American Human Rights System of the Organization of American States (OAS), with headquarters in Washington, D.C. This system has two main bodies: the CIDH and the Inter-American Court of Human Rights (IACHR). In the Inter-American system, member states, NGOs, and individuals have standing to claim human rights violations against member states. But they must first file complaints in the CIDH. After gathering enough evidence, the CIDH may decide to reject the claim, issue provisional measures, promote a settlement, and/or take the case to the IACHR.

Despite lacking legal enforcement powers, and although Occidental could not be sued or held accountable in the Inter-American Human Rights system, a statement by the CIDH acknowledging that Colombia had violated the U'wa's human rights would harm the company's reputation. This represents the first change in the way international law was mobilized, as the organizations participating in the campaign knew that, even if the CIDH granted provisional measures, they would only affect the Colombian government, which still could refuse to comply without suffering significant consequences.<sup>86</sup> Thus, the campaign no longer relied on a strong coercive dimension of law. Rather, human rights law helped shame the Colombian government and Occidental. It could only affect their reputations and identities, but no formal sanctions could be effectively imposed. Using McCann's

---

84. Acronym from its name in Spanish, *Comisión Interamericana de Derechos Humanos*. I do not use the standard English acronyms for the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), as they tend to be confusing, especially among audiences unfamiliar with the Inter-American System.

85. Initial Complaint Before Inter-Am. Comm'n H.R., Apr. 28, 1998, Organización Nacional Indígena de Colombia, U'wa Campaign Archive, Bogotá, Colom..

86. Interview with environmental activist in Berkeley, Cal., U.S. (Feb. 2, 2010); reaffirmed in interview with environmental activist in S.F., Cal., U.S. (Feb. 4, 2010).

terminology,<sup>87</sup> law operated as a “club” rather than as a set of “top-down controls.” As a corporate executive expressed, Occidental wants to be considered “the partner of choice,” and thus cared deeply about the image that other companies and governments held regarding its operation:

It was more of a reputational thing for us, but it was a real concern. I mean it was a very, very big concern, it absorbed a lot of my time and attention because as a company, when you invest in a country, your reputation and your integrity, the way you are perceived is absolutely critical because you want to be the partner of choice. There’s a lot of companies that Colombia can do business with, or Yemen, or Oman, and when they pick up paper and do research, we want them to see the kind of company that we really are.<sup>88</sup>

After filing the claim with the CIDH, the U’wa campaign’s targets reacted. As previously mentioned, Occidental and the Colombian government simultaneously scaled-up the conflict internationally, each on their own terms. They wanted to neutralize the CIDH by creating a parallel venue for resolving the conflict within the OAS, a similar tactic to when they successfully pursued parallel domestic court litigation in Colombia. At the suggestion of Occidental executives, on May 4<sup>th</sup>, 1997, the Colombian Minister of Foreign Relations requested that the Secretary General of the OAS create a team, including experts on negotiation and ethnic conflicts from Harvard University, funded by Occidental. This team was to investigate the U’wa situation and recommend the best options for a friendly resolution of the conflict.<sup>89</sup>

At the time, Cesar Gaviria, a former president of Colombia, was the Secretary General to the OAS. Gaviria contacted Harvard’s Weatherhead Center for International Affairs and formed a team with two Harvard-affiliated experts on indigenous issues and an OAS official. Ten days after the request, members of the Unit for the Promotion of Democracy were sent to

---

87. See generally MCCANN, *supra* note 5.

88. Interview in Wash. D.C., U.S. (July 2, 2010).

89. Interview with OAS official in Wash. D.C., U.S. (July 1, 2010).

Colombia as part of the “OAS/Harvard Project” to study the conflict, visit the area, and talk to the parties involved.

Although the Colombian government ultimately requested that the Secretary General of the OAS create the OAS/Harvard Project, the idea was originally conceived by Occidental. Moreover, Occidental covered the expenses of the Harvard team members.<sup>90</sup> This shows that, even though Occidental was not a party to the claim filed in the CIDH, the company was concerned about how an adverse decision could affect its reputation. A former Occidental executive narrated how the company convinced the government to present the request to the OAS in the following way:

When the campaign became transnational, we [at Occidental] started going in circles not knowing what to do, because the reputational problem was enormous for us. Then I conceived [of] the strategy. I invented it and presented it to other people in Occidental, and they approved it, and we sustained various meetings with people from the government talking about it. The idea was that this [campaign] had already been internationalized and we had to internationalize it too . . . [The government’s] calculation was the following: if Colombia’s answer [to the claim of human rights violation made in the CIDH] is proactive, interested, various things are going to happen. The CIDH is not going to get involved in something in which Colombia does not need it and has already asked the OAS to carry out an independent observation of the issue. That gave us a lot of control, on the one hand, and on the other, with the recommendations in hand we could start working around a common agenda.<sup>91</sup>

Besides trying to prevent the CIDH from admitting the case by requesting another OAS organ resolve it, this corporate tactic helped reframe the crux of the conflict. In creating this new venue, Occidental sought to change the frame from a human rights violation to one of “intercultural dialogue.” As the above interview excerpt shows, Occidental expected that by changing the frame and the venues, it could shape the type of organizations that

---

90. Interview with Occidental Petroleum executive in Bogotá, Colom. (Jan. 3, 2010) [translated from Spanish]; interview with OAS official in Wash., D.C., U.S. (July 1, 2010).

91. Interview in Bogotá, Colom. (Jan. 3, 2010) [translated from Spanish].

supported the U'wa, making the company's interaction with the U'wa more "manageable".<sup>92</sup>

Moreover, the company requested that José Miguel Vivanco, the long-time director of Human Rights Watch in the Americas, take the case of the U'wa, although he ultimately rejected the request. Occidental knew the environmental organizations that supported the U'wa and was familiar with their tactics; it had previously interacted with Amazon Watch and RAN in a campaign seeking reparations for environmental damages caused to various Peruvian indigenous groups. Similarly, Shell, one of Occidental's minority partners, had interacted with RAN, Amazon Watch, and Project Underground in a campaign against human rights violations and environmental damages caused to the Ogoni people in Nigeria. According to their accounts, Occidental executives said their strategy aimed at taking the U'wa cause away from what they considered to be off-mark, radical, San Francisco-based environmental groups. Company executives claimed these groups were more interested in exacerbating the conflict for their own fundraising purposes than in the well-being of the U'wa people. Further along, the executives asserted that there was no way for Occidental to come out ahead in this conflict in the venues provided by radical activists:

The official position of Occidental was that this was a way of protecting the company's reputation. Thus, we opened a forum for dialogue so that we could really resolve this conflict, which was not that of the women with the banners in Golden Gate Park. We were lost there [laughter]!<sup>93</sup>

The corporation's strategy did not change the organizations supporting the U'wa, but it did prevent the CIDH from analyzing the merits of the claim for more than two decades. As I will elaborate on below, it was only in 2020 that the CIDH decided to present the U'wa case to the IACHR. This temporarily closed the legal opportunity for the campaign to litigate its case

---

92. Interview in Bogotá, Colom. (Jan. 3, 2010) [translated from Spanish]; interview with Occidental Petroleum executive in Wash. D.C., U.S. (July 2, 2010).

93. Interview in Bogotá, Colom. (Jan. 3, 2010) [translated from Spanish].

in the Inter-American system, though it did not preclude the campaign from resorting to other intergovernmental organizations.<sup>94</sup>

*The Second Stage: Shifting Targets, Changing Tactics*

Around the time the U'wa campaign claimed that the Colombian government had breached human rights treaties in the CIDH, the transnational environmental SMOs engaged directly with Occidental at its-then headquarters in Bakersfield, California. However, there were several obstacles to their direct engagement tactics. A common mechanism for targeting corporations consists in brand-tarnishing their products with consumers,<sup>95</sup> but this option was unavailable to the SMOs in the U'wa campaign. At the time, only 13% of Occidental's oil and gas exploration was conducted in South America.<sup>96</sup> Furthermore, Occidental had no targetable brands, nor did it sell retail products to individual consumers that could be boycotted.<sup>97</sup> As various interviewees accepted, this made it difficult for activists to adopt a consumer persuasion tactic.<sup>98</sup> In view of these constraints, the coalition carried out its campaign against Occidental by appealing to shareholders instead. In the following sub-section, this Article documents the changes in this tactic.

---

94. As a labor union, the CUT can claim a member state has violated an ILO convention. Thus, it presented a claim against Colombia on behalf of the U'wa for violating the right to prior consultation contained in the ILO 169 Convention. Although the ILO directorate agreed, this tactic failed to produce the results expected by the U'wa, as the remedy would be to conduct consultations and resume exploration.

95. Bartley & Child, *Shaming the Corporation: The social production of targets and the anti-sweatshop movement*, 79 AM. SOC. R. 653 (2014); Rachel Schurman & William Munro, *Targeting Capital: A Cultural Economy Approach to Understanding the Efficacy of Two Anti-Genetic Engineering Movements*, 115 AM. J. OF SOC. 155; Rachel Wright, *Why Cooperate?*, 14 STANFORD SOC. INNOVATION R. 66, 66-67 (2016).

96. Interview with Occidental Petroleum executive in Bogotá, Colom. (Jan. 3, 2010) [translated from Spanish]; interview in Wash. D.C., U.S., (July 2, 2010).

97. Interview with Occidental Petroleum executive in Wash. D.C., U.S. (July 2, 2010).

98. Interview with environmental activist in Bogotá, Colom. (Feb. 4, 2010) [translated from Spanish]; interview with environmental activist in S.F., Cal., U.S. (June 15, 2010); and interview with environmental activist in S.F., Cal., U.S. (July 20, 2010).

### Engaging Shareholders as a Corporate Insider

In May 1998, the U'wa traveled to the United States again to receive the Goldman Environmental prize for their struggle to prevent oil exploration. After receiving the award, they planned to stage protests in front of Occidental's headquarters during the company's shareholder meeting. Right before this happened, the coalition achieved two important successes: firstly, Occidental reduced the oil exploration area to one tenth of its original size (from 200,000ha to 20,000ha), exploring a few meters outside of the reservation. Secondly, Royal Dutch Shell, Occidental's partner,<sup>99</sup> decided to opt out of the exploration project entirely. Shell's management explicitly said that theirs was a business decision. Nonetheless, as previously mentioned, the company was simultaneously facing similar opposition to oil extraction in Nigeria by the Ogoni people<sup>100</sup> and in the UK because of its management of the Brent Spar platform in the North Atlantic.<sup>101</sup>

After being awarded the Goldman Environmental prize in San Francisco and the Bartolomé de las Casas prize in Spain, the U'wa received award funds, which they used to purchase shares of Occidental, a well-established tactic in corporate campaigns.<sup>102</sup> By purchasing shares, the U'wa people redefined their identity. They shifted from being outsiders whose voices could be easily ignored by the corporation to shareholders—that is, insiders, participants in the company's governance structure. As an activist in one of the United States-based environmental SMOs said:

But how can the leaders of these communities have direct communication with the CEO of a company? That's what we facilitate. That's one of our strategies. We bring the leaders to the shareholder meeting of the company: Oxy, ConocoPhillips, Chevron. I mean,

---

99. Occidental owned 37.5%, Shell 37.5% and Ecopetrol 25% of the business in the Gibraltar drilling site and Samoré block (Ecopetrol archive).

100. Michael J. Watts, *Righteous Oil? Human Rights, the Oil Complex, and Corporate Social Responsibility*, 30 ANN. REV. ENV'T & RES. 373 (2005).

101. *Brent Spar: Battle That Launched Modern Activism*, REUTERS EVENTS (May 5, 2010), <https://www.reutersevents.com/sustainability/business-strategy/brent-spar-battle-launched-modern-activism> [<https://perma.cc/FZ7V-9HSA>].

102. Stuart L. Gillan & Laura T. Starks, *The Evolution of Shareholder Activism in the United States*, 19 J. APPLIED CORP. FIN. 55 (2007).

these companies, Talisman, which is another oil company, and we get in. We get sympathetic shareholders. We give them their access. We go into the meeting and the indigenous leaders confront the CEO of the world's largest corporations and they [the indigenous leaders] say to them, "get out of our territory or don't come in the first place, because I'm cleaning up your mess." And it's basically the kind of case that we've been working on.<sup>103</sup>

A high-ranking Occidental executive referred to the way in which the U'wa's new tactic affected Occidental and its investors reputational risks, in contrast to litigation and the use of the OAS-Harvard Project:

They did all sorts of things which were effective at gaining them publicity, and they got some stars involved who would show up at the [shareholders'] meeting, . . . they were successful, enormously successful in creating substantial delay and creating a fuzz that was fully intended to shame the company into not moving forward. They weren't successful in a more formal legal process in inhibiting the operation. And I think they recognized that after they did initially enter into a good faith third-party mediated process [the Harvard-OAS Project] that seemed equitable. When it didn't come out the way they wanted it to, I think they thought they had exhausted the straightforward way and they needed another way, and that was to do enough damage to our reputation so that it would erode shareholder value. And so that was the tactic, to get shareholders to abandon the company because of the reputation risk involved in investing in Oxy.<sup>104</sup>

As insiders, the U'wa acquired the right to propose shareholder resolutions, a mechanism compelling corporate management to hold shareholder votes on issues directly relevant to the corporation. Activists mobilize shareholder resolutions when seeking to convince investors that their claims pose significant risks to the targeted company or to its shareholders.<sup>105</sup> These

---

103. Interview in S.F., Cal., U.S. (July 20, 2010).

104. Interview in Wash. D.C., U.S. (July 2, 2010).

105. McAteer & Pulver *supra* note 73.



resolutions directly challenge a corporation's organizational field frames by disputing the morality and financial sustainability of management decisions or corporate practices.<sup>106</sup>

Besides giving the U'wa a voice within the corporation, purchasing shares allowed the U'wa to gather information to target other key shareholders. U'wa campaign activists then faced two types of tactical dilemmas that have been recognized in the literature on corporate campaigns: the first was whether to focus on large institutional investors that may have sway with management, or on smaller individual investors that may be more conscientious actors and sympathetic to activists' claims.<sup>107</sup> The second dilemma was whether to approach shareholders and corporate management contentiously or cooperatively.<sup>108</sup> The alternatives in these two dilemmas have trade-offs, but the U'wa campaign approached them eclectically. They targeted both large institutional investors and smaller shareholders with reputational or political significance. But their approaches to these two groups differed: for the most part, the U'wa approached smaller shareholders cooperatively and large institutional investors in a two-stage process of contention and cooperation. This is a staple tactic of organizations with expertise in corporate campaigns, like the Rainforest Action Network.<sup>109</sup> The exception was Al Gore, who had investments in Occidental. Despite being an individual shareholder, he was targeted contentiously by the SMOs.

During this part of the campaign, the SMOs with greater experience in corporate campaigns—like RAN and the recently created Amazon Watch—identified and targeted key shareholders of Occidental, protesting in front of their offices, hanging banners from their buildings, and publishing newspaper ads, among other tactics. After targeting them contentiously and displaying the SMOs' capacity to obtain media attention and damage shareholders'

---

106. See W. Trexler Proffitt Jr. & Andrew Spicer, *Shaping the Shareholder Activism Agenda: Institutional Investors and Global Social Issues*, 4 *STRATEGIC ORG.* 165 (2006); Reid & Toffel, *supra* note 17, at 1159; Michael D. Slater, *Reinforcing Spirals: The Mutual Influence of Media Selectivity and Media Effects and Their Impact on Individual Behavior and Social Identity*, 17 *COMMUN THEORY* 281 (2007).

107. Richard Benton & Jihae You, *Governance monitors or market rebels? Heterogeneity in shareholder activism*, 17 *STRATEGIC ORG.*, 281, 287-88 (2019).

108. Mary-Hunter McDonnell et al., *Bad Company: Shifts in Social Activists' Tactics and Resources After Industry Crises*, 32 *ORG. SCI.* 033 (2021).

109. See RAINFOREST ACTION NETWORK, <https://www.ran.org/mission-and-values/> <https://perma.cc/9A3L-42XE>].

reputations, the SMOs negotiated specific commitments to try to gain leverage over Occidental's management. The campaign and committed shareholders would then pressure Occidental's management in different ways, whether by threatening with divestment from the company, supporting shareholder resolutions, or issuing public declarations against its management.

In 1999, the U'wa leaders and Amazon Watch supporters attended Occidental's shareholder meeting using the time allotted to them as shareholders to request suspending oil exploration on their land until an impartial third party established whether it was safe. A month before, three United States-based activists—including a Native American and a Pacific Islander—were kidnapped and murdered by the *Fuerzas Armadas Revolucionarias de Colombia* (FARC), a guerrilla group operating in the area.<sup>110</sup> At the same time, protests were carried out in Los Angeles and ten other cities in the United States, Canada, Peru, and Colombia.

One of the first shareholders that cooperated with the campaign was the Catholic Sisters of the Sinsinawa Dominican order,<sup>111</sup> a sympathetic shareholder which submitted a resolution proposing the suspension of any oil exploration on U'wa land until an independent committee established that oil exploration and extraction did not entail risks to the material and cultural survival of the U'wa people.<sup>112</sup>

The largest institutional shareholders targeted by the campaign were Fidelity Investments and Sanford Bernstein, a subsidiary of Alliance Capital Management. The campaign organized a simultaneous rally in front of Fidelity's offices in different cities in the United States and asked to speak with the company's management. Fidelity is a mutual fund that owned almost \$700 million in Occidental shares. According to two interviewees from different SMOs, through contacts with teacher associations that had their pension funds managed by Fidelity, they convinced Fidelity's management to divest more than \$400 million from Occidental; this amounted to about

---

110. See Danny Feingold, *The Portrait of the Activist as a Young Man*, L.A. WEEKLY (Apr. 28, 1999), <https://www.laweekly.com/portrait-of-the-activist-as-a-young-man/> [https://perma.cc/R6EC-5YJ7].

111. U'wa Def. Working Grp., *Colombia's U'wa Tribal Leaders to Address Oxy Executives at Company's Annual Meeting Tomorrow*, AMAZON WATCH (Apr. 29, 1999), <https://amazonwatch.org/news/1999/0429-colombias-uwa-tribal-leaders-to-address> [https://perma.cc/9F2U-MU8R].

112. Interview with environmental activist in Bogotá, Colom. (Feb. 4, 2010).

60% of their shares. Though, Fidelity claimed its divestment was not related to U'wa pressure.<sup>113</sup>

The U'wa's strategy with Sanford Bernstein's company, Alliance Management, which controlled \$54 million in Occidental shares, was very similar: they protested in front of Bernstein's offices, resorted to banner-hanging, and requested a meeting.<sup>114</sup> Once the meeting was granted, campaign representatives asked Alliance Management to support the proposed shareholder resolution. Although Alliance management did not divest from Occidental, a representative did meet with the U'wa in their San Francisco offices.

As mentioned above, a third shareholder targeted by the coalition was former United States Vice President Al Gore during his 2000 presidential campaign.<sup>115</sup> Gore owned shares in Occidental, and his father had longstanding ties with the company and had directed one of its subsidiaries. Because Gore had run his campaign as an environmentalist concerned with climate change, the U'wa campaign expected that, with some pressure, he would support the shareholder resolution to suspend exploration in U'wa land. As the literature on corporate campaigns show, politicians can be receptive to protest and publicly sever their relation to corporations when issues draw media attention and are politically salient, or when corporations have a poor reputation.<sup>116</sup> The campaign organized rallies in front of Gore's presidential campaign offices in various states and in public spaces where he would make appearances,<sup>117</sup> and published paid ads in *The New York Times* appealing to his well-known environmentalist prestige. The campaign also attempted to meet Gore through Democratic representative Cynthia McKinney, though, ultimately this did not prove fruitful.

---

113. Interview with environmental activist in Bogotá, Colom. (Feb. 4, 2010); interview with environmental activist in S.F., Cal., U.S. (June 16, 2010); and see William Santiago, *Letter From a Surprise Visitor*, N.Y. TIMES (Dec. 17, 2000), <https://www.nytimes.com/2000/12/17/business/private-sector-letter-from-a-surprise-visitor.html> [<https://perma.cc/Q229-FZQG>].

114. Bill Weinberg, *U'wa Take Campaign to Corporate Offices*, XVIII NATIVE AMERICAS 1 (2001).

115. Interview with Occidental Petroleum executive in Wash., D.C., United States, 6/2/2010.

116. Mary-Hunter McDonnell & Timothy Werner, *Blacklisted Businesses: Social Activists' Challenges and the Disruption of Corporate Political Activity*, 61 ADMIN. SCI. Q. 584, 591-92 (2016); see Reid & Toffel, *supra* note 17.

117. Action Res. Ctr., *GORE EXPOSED! Flashers' Expose Al Gore's Ties to Big Oil and Its Threat to the U'wa People*, AMAZON WATCH (Oct. 6, 2000), <https://amazonwatch.org/news/2000/1006-gore-exposed> [<https://perma.cc/3HDE-KTU5>].

In the end, the proposed resolution made by the Sinsinawa sisters did not achieve the necessary support, and Occidental carried out its exploratory perforation on August 5, 2001. In its initial perforation of the Samoré block, Occidental found gas, but according to its statements, it did not find enough gas or oil to make the operation profitable. Thus, on May 7, 2002—eleven years after the joint venture to explore oil in the three blocks was signed with the Colombian government—Occidental decided to close the exploration site without exploring the rest of the block or the remaining two blocks: Catleya and Sirirí. Instead, Occidental gave its participation in the contract to its Colombian state-owned partner, Ecopetrol, which built a gas pipeline and started extracting gas from the perforation site less than a kilometer outside the reservation in Samoré in 2008.

#### The Global Search for Capital as an Opportunity to Disrupt the Organizational Field of a Corporation

In this stage of the campaign, after Occidental and Shell returned the exploration block to Colombian state-owned oil company Ecopetrol, the U'wa campaign lulled because United States-based activists lacked the influence and legitimacy to target it.<sup>118</sup> As one United States-based environmental activist saw it:

You know it's much more difficult when it's Ecopetrol and that's—that's also true for domestic institutions here in Colombia. For mobilizing solidarity within Colombia, it's fine to say "well that is a Gringo imperialistic company" that's coming in, and everyone is like "fuera Gringo," but with a state-owned Colombian company it's like "oh—you know, it's like kind of—it's us" on some level. You know, this made it more difficult.<sup>119</sup>

Thus, the state-owned nature and national reach of Ecopetrol protected it against challenges from United States-based organizations. In 2003,

---

118. Interviews with environmental activist in Bogotá, Colom. (Feb. 4, 2010) [translated from Spanish]; interview with environmental activist in S.F., Cal., U.S. (July 20, 2010).

119. Interview with environmental activist in S.F., Cal., U.S. (July 20, 2010); reiterated in interview with environmental activist in Bogotá, Colom. (Feb. 5, 2010).

however, the Colombian oil sector underwent a significant market-oriented transformation that paradoxically revitalized the transnational U'wa campaign. Until then, all oil exploration contracts established a mandatory joint venture with Ecopetrol, and the risks of the operation were assumed by its partners. Under the new regulations, however, Ecopetrol had to compete with foreign companies on equal standing,<sup>120</sup> and thus, it needed capital. To obtain it, in 2008 its board of directors decided to issue 20 million shares in the New York Stock Exchange (NYSE).<sup>121</sup>

SMOs in the United States sought to influence Ecopetrol's management by disrupting its issuance of shares.<sup>122</sup> Instead of targeting the company directly, however, they targeted J.P. Morgan, the bank underwriting the issuance of shares in the NYSE. In September 2008, the U'wa and their supporters met with J.P. Morgan's director of environmental affairs; they also sent her letters claiming that J.P. Morgan's filing before the Securities and Exchange Commission (SEC) misrepresented the legal and reputational risks that its conflict with the U'wa entailed to investors, providing maps that showed an overlap between the block and U'wa land.

United States-based SMOs used corporate and securities law both to enhance legal risks involved in oil exploration in U'wa lands and to affect perception of JP Morgan's integrity. In their communications with the bank, they not only referred to the legal consequences of misrepresenting risks to investors, but also appealed to the bank's identity and reputation, citing its public statements regarding the bank's preference for projects supported by indigenous communities through prior and informed consultations.<sup>123</sup> The SMOs and U'wa leaders also met in November of 2008 with various investment firms in New York, urging them not to invest in Ecopetrol and warning them that they could be held liable for expanding oil activities into U'wa lands.<sup>124</sup>

---

120. L. 1760/2003, Junio 26, 2003 (Colom.).

121. Interview with Ecopetrol executive in Bogotá, Colom. (Feb. 15, 2010) [translated from Spanish].

122. Interview with environmental activist in Bogotá, Colom. (Feb. 4, 2010) [translated from Spanish].

123. Letter from Amazon Watch to J.P. Morgan Chase (Sep. 17, 2008) (on file with Author).

124. PR Newswire, *Colombian U'wa Indigenous Leaders Visit US, Urging Investors and US Congress to Respect Human Rights*, BILATERALS (Nov. 20, 2008), <https://www.bilaterals.org/?colombian-u-wa-indigenous-leaders&lang=es> [<https://perma.cc/3DNB-3T73>].

J.P. Morgan analyzed the situation and asked Ecopetrol's management to provide more information regarding its conflict with the U'wa.<sup>125</sup> It ultimately concluded, however, that it had not misrepresented the risks, and the NYSE issued Ecopetrol's shares. Ecopetrol did not explore oil further inside U'wa lands until 2014, when it sought to drill three wells in the Magallanes block. The Magallanes project was suspended after long negotiations between the U'wa and the Colombian government.<sup>126</sup>

### From Corporate Activism Back to International Litigation

Once Shell and Occidental had abandoned the exploration project in Samoré, Ecopetrol preserved the right to the exploration and extraction of oil and gas not only in the Samoré block, but also in two other exploration blocks, including Magallanes. Ecopetrol's gas extraction and its maintenance of the exploration sites constituted a source of concern for U'wa leadership, even if the company had agreed to temporarily suspend exploration. The risk of future oil exploration justified maintaining the claim in the CIDH, even if it was dormant. Asou'wa and ONIC attempted to revive the case, but they feared an aggressive attempt on their part would have an adverse effect and the CIDH would reject their claim as inadmissible.<sup>127</sup> Thus, national and international organizations involved in the claim only made informal requests to the CIDH.

During Cesar Gaviria's term as Secretary General of the OAS, and even beyond his successor's term, the U'wa claim remained dormant in the CIDH. It was only in July 2015, seventeen years after filing the claim, that a completely different CIDH declared the admissibility of the case. The CIDH initially asked the parties to try and reach a direct agreement, but they were unable to do so. As a consequence, on October 21<sup>st</sup>, 2020, the CIDH

---

125. Interview in Bogotá, Colom. [translated from Spanish] (Feb. 05, 2010); interview in Bogotá, Colom. [translated from Spanish] (Mar. 03, 2010).

126. Peter Murphy, *UPDATE 1-Colombia to Repair Oil Pipeline after Deal with Indigenous Group*, REUTERS (May 2, 2014), <https://www.reuters.com/article/colombia-ecopetrol-pipeline-idUSL2N0NO02V20140502> [<https://perma.cc/HPZ2-UTB4>].

127. Interview with Indigenous lawyer of national SMO in Bogotá, Colom. (Feb. 6, 2010) [translated from Spanish].

issued its final report on the merits of the case.<sup>128</sup> It concluded that the Colombian government violated the U'wa's rights to the peaceful and exclusive enjoyment of their collective property, access to information, and their political and cultural rights as established in the American Convention on Human Rights.<sup>129</sup> Moreover, it also asserted that, given the dynamics of the armed conflict in Colombia and its relation to oil extraction in the region where the U'wa live, the U'wa were at risk of extinction. According to IACHR precedent, this risk of extinction constitutes one of the circumstances in which indigenous and tribal peoples must provide their explicit consent to any extractive projects in their territory.<sup>130</sup>

The CIDH requested that the IACHR rule that the Colombian government should formalize Uwa' control over U'wa land, purchasing any land rights that non-indigenous people may have and expanding the reservation. The CIDH further requested that the Court order Colombia to adopt all legislative and administrative measures possible to prevent such violations from reoccurring, including the statutory implementation of the right to prior consultations with free, prior, and informed consent.<sup>131</sup>

As the CIDH reopened the opportunity for international litigation, the Uwa campaign's targets and tactics changed once again. With these changes in targets and tactics, the salient SMOs also changed. International litigation is currently being led by two litigation-focused SMOs, but other SMOs remain relevant. At the national level, indigenous SMOs are also participating in the campaign. In the United States, Amazon Watch—a transnational environmental SMO focusing on corporate campaigns—is still part of the process, though it mostly coordinates international and national SMOs, and the U'wa campaign is not mentioned as an active campaign on its website. Moreover, Colombia is not mentioned among the countries where Amazon Watch has active campaigns.

---

128. See *Pueblo Indígena U'wa y sus Miembros v. Colombia* [U'wa Indigenous People and Its Members v. Colombia], Case 11.754, Inter-Am. Comm'n H.R., Report No. 146/19, OAE/Ser.L/V./II.173, doc. 161 (2019).

129. See *id.*; Organization of American States, American Convention on Human Rights, Nov. 22, 1969, 36 O.A.S.T.S., 1144 U.N.T.S. 123 [hereinafter "Pact of San Jose, Costa Rica"].

130. See CIDH *supra*, note 129; *Kichwa v. Ecuador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, 185 (June 27, 2012).

131. *U'wa Indigenous People and its Members v. Colombia*, Report on the Merits, Inter-Am. Ct. H.R., No. 146/19, Case 11.754.

*Discussion*

Tactical decisions normally result from combining prior plans with intense on-the-ground decision making during interactions between challengers and their targets. A legacy of these interactions is the mutual knowledge that SMOs and corporations acquire of each other and the way such knowledge affects their tactical decisions.<sup>132</sup> SMOs in the U'wa campaign acquired knowledge about targets through their interactions with them, while corporations also acquired knowledge about SMOs, their fields, frames, and tactics.<sup>133</sup> Moreover, as demonstrated by the first stage of the U'wa campaign, this mutual knowledge influenced SMOs, as well as state and corporate targets, to shift from domestic litigation to their use of international venues. As the U'wa campaign expanded transnationally, Occidental became more active, resorting to human rights NGOs, universities, and international organizations. In turn, as the opportunities for a successful mobilization of international legal institutions were closing, SMOs with expertise in corporate campaigns became more salient and the campaign shifted its attention to its main corporate targets.

One strength of the state is that it does not require activists' participation to operate, so activists must gain access to its decision-making processes by seeking some form of leverage. As Zemans<sup>134</sup> claimed, resorting to litigation or any formal dispute resolution mechanism domestically is a form of citizen participation or a way to exert pressure over the state by influencing "state insiders," like judges, through legal frames. These frames are used by activists in creative ways. Sometimes law is used as a top-down set of controls to transform behavior through coercion and economic sanctions,<sup>135</sup> while in other situations, activists mobilize law to transform procedural rules<sup>136</sup> or gradually alter substantive rules<sup>137</sup> throughout long-term processes of legal and social transformation. However, as McCann<sup>138</sup> has shown, at other times law can

---

132. See McCammon & Beeson-Lynch, *supra* note 40.

133. Interview with Occidental Petroleum executive in Wash. D.C., U.S. (July 1, 2010); reaffirmed in interview with lobbyist for oil companies in Wash. D.C., U.S. (July 2, 2010).

134. Zemans, *supra* note 24, at 692.

135. See generally MCCANN, *supra* note 5.

136. Vanhala, *supra* note 41.

137. See MCCAMMON, *supra* note 42.

138. See generally MCCANN, *supra* note 5.



also help redefine activists' identities, enabling them to gain access to their targets' organizational fields and to use field frames to change their relationship with their targets. In any case, to achieve these objectives law does not need to be mobilized in a courtroom.

The failure of domestic litigation in the U'wa campaign shows that this form of legal mobilization does not always produce the results that activists expect.<sup>139</sup> Perceived political opportunities do not always coincide with structural factors,<sup>140</sup> which can limit the deployment of tactics, like litigation. Moreover, different targets provide distinct opportunities to deploy a given set of tactics, which shows the extent to which opportunities tend to be target-specific.<sup>141</sup> Structural factors can close opportunities to utilize certain areas of the law through formal institutions, like courts, but this does not mean other forms of legal mobilization are also blocked. Nonetheless, this does not mean litigation is useless. Litigation can be useful for movements even if judicial outcomes are adverse, as it can help activists raise public awareness about an issue and grant legitimacy to their claims. Despite any contradictions or ambiguities, legal frames, like those in judicial opinions, provide movements with a language to achieve social change. This is what McCann has called "the transformative legacy of legal action."<sup>142</sup>

As the U'wa campaign shifted its focus from the state to corporate targets, it also changed its tactics. This occurred partly because, in contrast with the state, which does not require citizen participation to operate, corporate actors require the participation of employees, shareholders, consumers, suppliers of necessary goods and services, and regulators, among other insiders within their organizational field.<sup>143</sup> Therefore, activists targeting

---

139. O'BRIEN AND LI, *supra* note 66; see generally Zemans, *supra* note 24; César A. Rodríguez-Garavito & Luis Carlos Arenas, *Indigenous Rights, Transnational Activism, and Legal Mobilization: The Struggle of the U'wa People in Colombia*, in *LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* 241–266 (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

140. David S. Meyer & Debra C. Minkoff, *Conceptualizing Political Opportunity*, 82 *SOC. FORCES* 1457 (2004).

141. *See id.*; see also David S. Meyer, *Institutionalizing Dissent: The United States Structure of Political Opportunity and the End of the Nuclear Freeze Movement*, 8 *SOCIO. F.* 157 (1993); McCarthy et al., *Images of Protest: Selection Bias in Media Coverage of Washington, D.C. Demonstrations*, 61 *AM. SOCIO. REV.* 478 (1996).

142. *See generally* MCCANN, *supra* note 5.

143. *See generally* Walker et al., *supra* note 8.

corporations smartly access insiders within the organizational fields of their targets. One area of social interaction between corporate insiders that is relatively densely regulated in the United States is corporate governance.<sup>144</sup> The law establishes a series of protections to minority shareholders, and in doing so, creates a social boundary between insiders and outsiders. Among many other aspects, this boundary affects shareholders' access to information and voice, which are key to influencing organizational decision-making.

By redefining their identity as shareholders, the U'wa sought to influence other shareholders to support them in changing management's decision-making. However, instead of using law as a top-down mechanism of formal control, they used law to redefine their identity as insiders within a corporate field, and then used this field's frame to redefine their relation to shareholders and corporate management. Some shareholders might have been motivated in supporting the U'wa to preserve their own reputations or to maintain shareholder value against the consequences of reputational damage. As mentioned, there is some evidence that Fidelity divested due to pressures stemming from pension funds, which strengthens the thesis that activists' threats can enhance risk perceptions regarding investment in corporations.<sup>145</sup> Others, like the Sinsinawa sisters, may have been persuaded that supporting human rights was more aligned with their values and beliefs than corporate gain, strengthening the thesis that organizations interact with multiple organizational fields and connections between fields help produce social change.<sup>146</sup>

The tactic of targeting J.P. Morgan to exert an indirect influence over Ecopetrol, pressuring it to abandon its exploration rights over the three oil blocks on U'wa land, illustrates the interdependence between opportunities, targets, and tactics, as well as the centrality of organizational field frames. As a state-owned Colombian company, Ecopetrol was relatively immune to challenges from United States-based and Colombian activists, and the opportunities to affect corporate insiders were very limited, if not entirely closed. But, as it sought to become partially publicly owned by issuing shares

---

144. See Reid & Toffel, *supra* note, at 17.

145. Shareholder value had increased ninefold in Occidental in the previous decade, during the tenure of Ray Irani as CEO, so the investment was not threatened. However, Fidelity did divest briefly after they were targeted by the U'wa campaign. See Weinberg, *supra* note, at 115.

146. DiMaggio & Powell, *supra* note 16, at 154; Edelman et al., *supra* note 62, at 406.

in the NYSE, Ecopetrol created a vulnerability to activists' challenges. This vulnerability emerged at least in part because its organizational field frame also changed: trading its shares in the NYSE meant that it had to adhere to a new set of corporate and securities rules. This meant that it had to become more attentive to the perceptions of institutions like the SEC and to activists mobilizing risk perceptions for potential investors.

As for the tactics, even if corporate-focused environmental SMOs were leading this part of the U'wa campaign, making claims before J.P. Morgan was similar to litigating at least in one respect: they were asking a third party to evaluate the legal repercussions of a factual situation. However, importantly, J.P. Morgan was not exactly analyzing the merits of a claim of human rights violations, nor the legal and reputational risks involved in the corporation's operation. These concerns tend to become endogenous, and what the bank most likely evaluates is its own compliance with the SEC's requirements in underwriting the operation. Thus, instead of appealing to the bank's solidarity with the U'wa claims, the campaign framed its concern by aligning its interests with those of potentially deceived investors. To be sure, the U'wa's written communications did not convince the bank that the campaign was concerned about the adequate risk disclosure to potential investors, but they set a precedent that may lead to an SEC sanction or to future litigation from an unsatisfied investor. In that way, the tactics of resorting to corporate and securities law enhanced the risk for both J.P. Morgan and Ecopetrol. Even though this tactic may not have resulted in Ecopetrol abandoning its blocks in U'wa land, it illustrates the ways in which activists can mobilize corporate and securities law, and risk perceptions more generally, to influence corporate targets.

## CONCLUSIONS

The law and social movements literature focuses mostly on litigation against the state, and this constitutes an analytical limitation for theory-building, because movements target both state and non-state actors through different institutional tactics, such as legal mobilization. In contrast with traditional political process and resource mobilization approaches, this article

explores the dynamics of legal mobilization in a multi-institutional context. Instead of conceptualizing the state as the exclusive provider of opportunities for social change, this article shows how corporations and the state operate in different, yet partly overlapping and interconnected organizational fields, each providing different opportunities for legal mobilization. Activists can target corporations in their own activist fields, using human rights or environmental frames, or subverting corporate frames to target corporations in their own fields. By that same token, corporations can subvert activists' field frames to prevent them from resorting to certain venues.

Social movements may change the normative content of human rights or environmental field frames to include new actors or to assign them new roles. Thus, as scholars have noted, environmental movements can seek to alter procedural or substantive rules in environmental law to expand standing to certain organizations.<sup>147</sup> Moreover, human rights movements can seek to hold multinational corporations internationally responsible for human rights violations, or they can seek to attribute new rights or duties to established actors within the field,<sup>148</sup> such as granting indigenous communities collective rights or imposing a duty to criminally prosecute certain environmental crimes.

Alternatively, as my findings show, instead of promoting normative changes in the fields of human rights or the environment, movements can resort to corporate and securities law to subvert existing rules within a corporate field frame. Social movement organizations can deploy more than formal legal tactics like litigation against corporations. They can also redefine their identities and relationships with their corporate targets, shifting from corporate field outsiders to insiders. This enables them to mobilize law differently, utilizing tactics like promoting shareholder resolutions and divestment campaigns, or altering risk perceptions among key actors.<sup>149</sup> Additionally, since activists sometimes engage corporations through a sequence of

---

147. Vanhala, *supra* note 41, at 537-38.

148. Clifford Bob, "Dalit Rights Are Human Rights": *Untouchables, NGOs and the Indian State*, in *THE INTERNATIONAL STRUGGLE FOR NEW HUMAN RIGHTS* 30 (2009).

149. Dhir, *supra* note 18, at 102, 105.

contention and cooperation,<sup>150</sup> law provides bargaining chips to negotiate with corporations under the shadow of law.<sup>151</sup>

As others have noted,<sup>152</sup> the relationship between law, social movements, and organizations, remains basically unexplored. In this practically uncharted area, qualitative, theory-generating research that seeks to uncover the mechanisms and trace the longer historical processes that describe the different ways in which activists use law to target organizations is paramount. This kind of research can help to unpack the ways in which different types of SMOs mobilize the law against corporate organizations and various types of actors in their organizational fields. The ways in which activists engage the law to target shareholders is only one area of research; there are many others, including the ways in which activists engage both private and public financial institutions or the ways in which activists mobilize law against different links in global commodity chains. Moreover, the literature on multi-institutional legal mobilization should seek to articulate the literature on law and organizations to develop more comprehensive theories of the role that law plays in the interaction between social movements and organizations.

---

150. McDonnell et al., *supra* note 109, at 1035.

151. See Robert H. Mnookin and Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 950-97 (1979).

152. See Edelman et al., *supra* note 62, at 406.