Article

Journal of Environment & Development
2017, Vol. 26(3) 322–347
© The Author(s) 2017
Reprints and permissions:
sagepub.com/journalsPermissions.nav
DOI: 10.1177/1070496517701248
journals.sagepub.com/home/jed

Making Rights Come Alive: Environmental Rights and Modes of Participation in Argentina

Lucas G. Christel[1] and Ricardo A. Gutiérrez[2]

Abstract
New environmental rights were introduced in Argentina with the 1994 amendments to the 1853 national constitution. This constitutional recognition of environmental rights is a fundamental step in the advancement of environmental justice and citizenship, but it is not enough. When and how do environmental rights become effective? Under what circumstances are environmental rights effectively applied and enforced? We claim that participation is the key mechanism through which constitutionally enacted environmental rights become effective. More specifically, we argue that the embodiment of constitutional environmental rights in concrete policies and practices are propelled by the combination of contentious and institutionalized modes of participation. Based on evidence from two contrasting and salient cases—river sanitation in the Metropolitan Buenos Aires Region and open-pit mining in Andean Argentina—this article discusses how the combination of different modes of participation has been an effective channel for the enforcement and effectiveness of environmental rights.

Keywords
emergent environmental rights, environmental contention, constitutional rights, modes of participation, Argentina

[1]Universidad Nacional de San Martin, Buenos Aires, Argentina
[2]Universidad Nacional de San Martin and National Council for Scientific and Technological Research (CONICET), Buenos Aires, Argentina

Corresponding Author:
Lucas G. Christel, Universidad Nacional de San Martin, 25 de Mayo 1021, Buenos Aires 1650, Argentina.
Email: lucaschristel@hotmail.com

As in many other Latin American countries, in the mid-1990s Argentina underwent a constitutional reform process that brought forth, among other things, the constitutional right to a healthy environment and a number of connected procedural rights. Constitutional recognition of environmental rights is a fundamental step in the advancement of environmental justice and citizenship, but it is not enough (Jeffords & Minkler, 2016; May, 2013). Constitutional principles must be translated into enabling legislation; in turn, legislation must be effectively applied and enforced. As Epp (2008) puts it, 'rights are empty promises unless they are given administrative policies and practices' (p. 42).

But when and how do environmental rights become effective? Under what circumstances are environmental rights effectively applied and enforced? Based on evidence from the Argentine case, we claim that participation is the key mechanism through which constitutionally enacted environmental rights become effective, since the advance of environmental rights depends on how people interpret and utilize existing legal provisions to redress their grievances (Epp, 2008; Gellers, 2015). More specifically, we argue that the embodiment of constitutional environmental rights in concrete policies and practices is propelled by the combination of contentious and institutionalized modes of participation. Unlike other approaches, we do not see contentious and institutionalized participation as separate or antagonistic modes of action but rather as different tactics or tools that people use and combine to advance their grievances.

Our analysis proceeds in five stages. First, we describe the environmental rights introduced in the Argentine constitution through the 1994 reform and provide a brief account of their origins. Second, we propose an expansion of the emergent approach (Hannigan, 2006; Hiskes, 2009), which understands that both the meaning and enforcement of environmental rights are in a constant process of being (re)formulated. While some authors (e.g., Daly, 2012; Hajer, 2000; Hiskes, 2009; May, 2013; Roesler, 2012) focus on administrative procedures and institutionalized participation mechanisms (such as councils and committees), the expanded emergent approach we put forward looks more directly at the combination of contentious and institutionalized modes of participation as a channel for the enforcement and effectiveness of environmental rights. Third, we discuss and define the concepts of environmental contention and institutionalized participation. We distinguish three modes of environmental contention (social protest, judicial litigation, and expert controversy), define institutionalized participation, and assess the relationship between the former and the latter. Fourth, we examine how contentious and institutionalized modes of participation manifest themselves and combine in two contrasting Argentine settings: river sanitation in the Metropolitan Buenos Aires Region and open-pit mining in the Andean province of Mendoza. These are not the unique cases of environmental conflict in Argentina, but they stand out due to the achievement of important legislative and administrative

measures, allowing us to show how the combination of contention and institutionalized participation makes environmental rights come alive. By tracing back each case to its origins, we show how contention modes intertwine with institutionalized participation, and how participation (as broadly understood) has specific legislative and administrative effects. In the Matanza-Riachuelo case, an alliance of local and environmental organizations, scholarly groups, and executive control agencies resorted to judicial litigation and other modes of participation and, thanks to the key intervention of the federal justice, proved effective in bringing about the creation of a new river basin authority and the formulation of a river cleanup plan. In the province of Mendoza, a plurality of social and state actors managed, through a combination of different modes of participation, to get the approval of a provincial law that prevented the installation of open-pit mining in a province with great mining potential—a legislative decision that the same plurality of actors has been able to keep unchanged up to the present. Finally, we take stock of our findings from the case studies and discuss their theoretical implications.

The analysis of the two selected cases is based on process-tracing techniques, including the survey of official documents, local and national newspapers, and websites and other media sources; over 40 in-depth interviews with local, provincial, and national officials, grassroots and environmental organizations' members, business associations' representatives, and university researchers and experts; and observant participation. Through process tracing (Collier, 2011; Hall, 2003; McAdams, Tarrow, & Tilly, 2008), we have been able to grasp how an alliance of social and state actors—by using constitutionally enshrined environmental rights as legal and political tools in different participation modes—managed to bring about specific policy effects, thereby making those rights come alive.

Environmental Rights in Argentina

In Argentina, with the 1994 amendments, environmental rights were added to the unalienable rights and guarantees enumerated in the 1853 national constitution. The new Article 41 grants environmental rights as follows:

> All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. Environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions.

Article 41 is complemented with other constitutional articles and subsequent legislation. Article 43 frames environmental rights as collective rights and provides for the *acción de amparo* (an appeal for the protection of constitutional rights and guarantees) and the class action (lawsuits regarding collective rights that can be filed by those affected by environmental pollution or risks, by the National Ombudsman, and by civil associations representing diffuse interests). Article 75 states the need to promote human development and sets the hierarchical superiority of international treaties and agreements, including those related to environmental protection. Article 86 enacts the figure of the National Ombudsman as a warrant for the defense and protection of human and other rights guarded by the constitution. Article 124 recognizes the provincial dominion over natural resources and distributes legislative and executive competences between the national state and the provinces (the national state must set the minimum protection standards and the provinces must pass and execute the complementary legislation). Finally, the 2002 General Environmental Law sets the principles for environmental policies (including social participation in decision-making processes) and establishes the foundations for the definition of a minimum protection standard.

All together, these norms define the substantive right to a healthy environment for present and future generations (i.e., the right to clean air, water, and soil) as a collective right and supplement it with a number of important procedural rights and principles:

–Right to environmental information and education.
–Right to reparation according to settled legal procedures.
–Right to *acción de amparo*.
–Right to class action.
–Principle of citizen participation in policy making.

The reformed Argentine constitution frames environmental rights within a sustainable development approach (Sabsay, 2003), since it rules that a healthy environment must be suitable 'for human development in order that productive activities shall meet present needs without endangering those of future generations' (Article 41). As defined by the World Commission on Environment and Development, the notion of sustainable development seeks to reconcile economic growth and environmental protection (Hajer, 2000). That is why, after the 1992 Rio Conference, governments have increasingly adopted the notion of sustainable development (Clémençon, 2012; Hajer, 2000; Onestini, 2012).

The framing of environmental rights within a sustainable development approach is akin to the origins of their constitutional enactment. Even though the focus of our analysis is the use (and not the origins) of constitutional environmental rights, a brief account of these rights' origins is worthy. Unlike other cases in which social mobilization is a driving force of the constitutional

enshrinement of environmental rights (Gellers, 2015), no major evidence of social mobilization' influence is found in the Argentine process. The addition of environmental rights to the Argentine constitution was to a large extent a party-driven process that took place after the 1983 return to democracy. The first democratic president (Raul Alfonsín) convened a Consolidation Democracy Council invested with the task to propose a reform to the 1853 national constitution. Made up of politicians and intellectuals from different parties, in 1986, the Consolidation Democracy Council proposed the incorporation of new 'social rights' into deconstitution, including the 'protection of quality life and the environment for all inhabitants.' The stated rationale of this proposal clearly reflects the international debate over environmental protection and development that was taking place at the moment.

By 1987, President Alfonsín was politically weakened and had to abandon his reformist project. In 1993, his opponent and successor, President Carlos Menem, sought to reform the constitution so that he could be reelected. To do so, Menem made a constitutional pact with Alfonsín, now the opposition's leader. Alfonsín seized the opportunity to introduce in the Constitution the social rights elaborated by the Consolidation Democracy Council during the 1980s. That was how the right to a healthy environment found its way from the 1980s failed reformist attempt through the 1994 reform thanks to Menem's reelection ambition.

Interestingly, the new right to a healthy environment (informed by the notion of sustainable development) was instrumental to Menem's attempt to cope with post-Rio 1992 international stimulus for the creation of new environmental institutions and, more important, to get access to international funding for environment-related projects. In fact, in 1991, Menem had upgraded and reinforced the national environmental secretariat to get ready for the 1992 Rio Conference and be capable of applying for international funding. Yet, in spite of all these innovations, environmental rights remained dormant for over a decade until the first enabling laws (including the General Environmental Law) were passed and an increasing number of environmental issues (as the ones examined in this article) came to the surface through different modes of participation.

The Emergent Nature of Environmental Rights

Our analysis is grounded on an emergent approach (cf. Hannigan, 2006; Hiskes, 2009), according to which, paraphrasing Hannigan, environmental rights are in a constant process of being formulated, even after they are constitutionally enshrined. In our view, the emergent nature of environmental rights is two-sided—it refers not only to environmental rights' origins but also to their enforcement. While in this article we focus on the enforcement (rather than the origins) of environmental rights, we seek to put forward an expanded version

of the emergent approach that posits participation as the key mechanism through which environmental rights come alive and sees it from a broad view, combining contentious and institutionalized modes of action used by people to express their grievances.

Even though we focus on the enforcement of constitutional rights, it is worth asking where environmental rights come from. We contend that the emergence of environmental rights involves a process of 'juridification' (Magnussen & Banasiak, 2013) that usually (but not always) ends up in the constitutional enshrinement of those rights. The process of juridification points to both Hannigan's (2006) and Hiskes's (2009) emergent approach to environmental rights and problems. The concept of emergence 'denotes process, flow, adaptation, and learning' (Hannigan, 2006, p. 138) and 'refers to the fact that these ideas, beliefs and norms are in the process of being formulated' (p. 144).

Juridification is defined by the Mexican legal sociologist Antonio Azuela (2006) as the 'process through which the expectations formed in the 'environmental field' (i.e., the expectations about what to do with the environment) are transformed into 'legal statements' to be incorporated to the cultural horizon of those actors participating in that field' (pp. 13–14). Thus, environmental rights (as expressed in the state legal system) come from the juridification of the environmental problematique at the juncture of two fields: the environmental and the legal. At that juncture, society's normative expectations about the environment are transformed into legal statements that return to the environmental field in the form of human rights.

The process of juridification may involve domestic and international factors. Hiskes (2009) argues that the origins of environmental rights are domestic rather than international. He makes the case for environmental rights as rights that emerge within a given (national) community and contends that the best way to arrive at the real protection of environmental rights is to rely on the political will already present within individual political communities and as it manifests itself in the national constitution (rather than relying on international agreements or regimes). Constitutions are of great importance to Hiskes, because they not only enshrine the significance a society attaches to environmental protection and enumerate human rights as unalienable rights but also convey the sense of connection of citizens across generations so inherent to environmental rights.

Similarly, Gellers (2012) determines that the trend toward the constitutionalization of environmental rights may not be explained by regional isomorphism, but without denying the importance of international factors. In line with Gellers's (2015) analysis, we see the constitutional enshrinement of environmental rights as a primarily domestic process in which international influences are mediated by the views, interests, and goals of the promoting actors involved. If international influences are rather constant, domestic promoting actors may vary across countries. While in some countries the process is propelled by the mobilization and participation of social actors, in others (as we saw is the case of

Argentina in the previous section), the constitutional enshrinement of environmental rights may be the result of interparty or elite negotiations.

As said, from an emergent approach, environmental 'rights' are seen as human rights, and 'the change from 'natural' to 'human' rights indicates that our view of rights is open to development and growth' (Hiskes 2009, p. 26). Conceiving of environmental rights as part of human rights implies considering environmental protection as essential for the enjoyment of basic human rights such as life and health and rejecting the possibility that those rights can be enjoyed in a degraded environment (Shelton, 2013).

Generally speaking, environmental rights can be simply defined as the human right to clean air, water, and soil, not only for living citizens but also for future citizens (Hiskes 2009). Thus defined, environmental rights have three important characteristics.

First, environmental rights are a group or collective rights. The fundamental 'right to life' presupposes more basic rights to clean air, water, and soil, and these environmental goods are ineluctably collective goods which respect neither space nor time constraints. This characteristic of environmental rights has two fundamental implications: (a) Present generations are responsible for future generations' environmental goods, and (b) legal actions can be pursued not only by those directly affected by environmental pollution or risk but also by organizations somehow representing citizens' diffuse interests.

Second, environmental rights are a matter of justice. Why? Because both pollution and environmental policies have distributional effects. Several authors (e.g., Carruthers, 2008; Harvey, 1996) have pointed out that not all social groups are equally exposed to pollution and environmental risks. But environmental rights also entail distributional effects with regard to environmental policies because 'the cost will fall more heavily on some people than on others, and the environmental good will benefit some more than others' (Hiskes 2009, p. 20).

Third, environmental rights are concomitant with a number of procedural rights through which citizens and social organizations can secure or claim the protection of the right to clean water, air, and soil (Daly, 2012; Gellers, 2012; Hajer, 2000; Hiskes, 2009; May, 2013; Shelton, 1991; Roesler, 2012). That is why it is more appropriate to talk about environmental rights, in plural, and not just about the 'substantive' right to clean water, air, and soil. To some (e.g., Daly, 2012; Hiskes 2009; May 2013), these procedural rights have been most comprehensibly defined by the 1994 Ksentini Report, later on incorporated into the 1998 Aarhus Convention. Those rights can be summarized as the general 'right to know, participate, and claim'.

However, constitutional enumeration is not enough for either enjoying or understanding environmental rights (Jeffords & Minkler 2016; May, 2013). Upon their constitutional recognition, environmental rights need to be applied and enforced. First of all, environmental rights (general as they are) must be translated into more detailed enabling legislation. And after the legislative

process has come to an (temporary) end, it is time for the enforcement of the environmental legislation (hopefully) grounded on the constitutional rights.

Environmental legislation is usually the first step in the enforcement of constitutional environmental rights. During the legislative process, legal statements are more exposed to the changing influences of the political system. Because of that, and given the greater reversibility of laws in general, environmental laws are inherently subject to an 'emergent nature' or 'ontological vulnerability' (Philippopoulos-Mihalopoulos, 2013). In this regard, we do not see a qualitative difference between constitutional rights and environmental laws but rather a difference of degrees. Nevertheless, given their higher rank, constitutional rights are more difficult to change and work as more useful tools for the expression of environmental demands.

It is from the legislative process onward that the procedural rights mentioned earlier and the modes of institutionalized participation associated to them are deemed most crucial (cf. Daly, 2012; Hajer, 2000; Hiskes, 2009; May, 2013; Roesler, 2012). The enforcement and enjoyment of constitutional rights and their enabling legislation are contingent on administrative and judicial procedures, the implementation of which is closely tied to participation, that is, the 'right to know, participate, and claim'. And it is at this point that the social—and not merely legal—meanings of environmental rights begin to be found.

Therefore, as seen before, the emergent nature of environmental rights refers not only to their constitutional origins but also to the fact that they are, paraphrasing Hannigan, in a constant process of being (re)formulated through participation. Yet, we contend that procedural rights and institutionalized participation modes are also not enough for the enforcement of environmental rights. Even if procedural rights come to the fore at this point, social demands and actions regarding the environmental crisis cannot be fully comprehended within the terms of participatory policy-making mechanisms. As we will see in the Argentine case, the mobilization of those who form the environmental field goes beyond administrative procedures and institutionalized modes of participation. An expanded emergent approach allows us to pay particular attention to different ways in which both contention and institutional modes of participation are key to the enforcement of environmental rights.

Combining Contentious and Institutionalized Modes of Participation

We start by defining environmental participation in broad terms. Based on Pasquino's (2009) general definition of participation, we understand participation as a set of actions and behaviors aimed to influence (in a more or less direct way and a more or less legal way) state decisions regarding the environment and the regulation of interactions between humans and their environment.

Unlike other approaches discussed along this article, we do not see contentious and institutionalized participation as separate or antagonistic modes of environmental action but rather as different tactics or tools that people use and combine to advance their grievances. In that way, we claim that the enforcement and effectiveness of constitutionally enacted environmental rights are propelled by the combination of contentious and institutionalized modes of participation.

Whereas the notion of institutionalized participation refers to the institutional or administrative channels through which lay citizens and social actors participate in policy making, our understanding of contention starts with a basic definition of it as the 'common action that bears directly on the interests of some other acting group' (Tilly, 1986, pp. 381–382). Two elements are central to the notion of contention: the expression of grievances and claims and the confrontation of groups with opposing interests (McAdams, Tarrow, & Tilly, 2001; Tarrow, 2011).

As the discussion over institutionalized participation was already introduced in the previous section, we start here with the definition of three modes of contention that are relevant to environmental issues: social protest, judicial litigation, and expert controversy. Afterward, we resume and further define the notion of institutionalized participation and discuss its intertwining with contentious modes of participation in the enforcement and effectiveness of environmental rights.

Protest and litigation are considered as modes of contention because both of them include the basic idea of confrontation of interests. We add expert controversy as a mode of environmental contention in like manner. Expert knowledge is especially relevant in the setting and discussion of environmental issues. As far as environmental issues are highly controversial, it is expected that scientists take position and confront, through their ideas, evidences, and demonstrations, on different issues.

Social Protest

Protest is perhaps the most obvious mode of contention, since the large literature on social movements has focused on it as a challenging, disruptive, transgressive, or contentious form of collective action (e.g., Dalton, Recchia, & Rohrschneider, 2003; Della Porta & Diani, 2006; Offe, 1985). To analyze the role of social protest in the enforcement, actualization, and reformulation of environmental rights, we must address the broader issue of protest's effects. We do not intend to review here the vast literature that examines this issue (for an overview, cf. Goodwin & Jasper, 2003; Keck & Sikkink, 1998; McAdams et al., 2001). We briefly address the question of political influence. Assuming that all contenders want to affect policy and that they often lack the resources and clout of, for instance, well-established interest groups, what are the factors that translate their claims and actions into political influence? Broadly speaking, there are two ways of answering

this question: (a) by focusing on the contenders' resources, strategies, and tactics and (b) by focusing on coalition building and the making of pragmatic alliances between protesters and state actors.

From the first approach, available resources and mobilization strategies and tactics are crucial in explaining the possibility of political organization and sustained action as well as the likelihood of bringing public attention to protesters' concerns (Black, 1973; Kessler, 1990; McAdam, McCarthy, & Zald, 1996; Yates, 2015). State and society are seen as separate spheres, and protesters are conceived of as adversaries to state actors. This adversarial view is consistent with an emphasis on both the radical tactics protesters follow (such as barricades and road blockades) in their opposition to the state and the business sector and the consensual and horizontal nature of the relationships among protesters.

The second approach goes a step further and pays more attention to the multiple ways in which protesters interact with state actors of different sorts in order to gain political influence and see their claims transformed into state decisions (Hochstetler & Keck, 2007; Keck & Sikkink, 1998). From this view, protesters and state actors are not necessarily seen in adversarial terms. Judges can endorse the protesters' claims, thus stressing the protesters' opposition to the national executive; protesters may build an alliance with municipal authorities in order to scale up and have the provincial legislature pass a new law; conversely, local protesters may resort to national authorities to change provincial or municipal decisions. These and other examples indicate that the relationship between protesters and the state can be more complex and less linear than the way the standard literature on social movements tends to portray it (Abers & von Bülow, 2011; Rossi & von Bülow, 2015). Accordingly, we take on a more open and contradictory view of the state according to which protesters (and social actors in general) can combine tactics typical of social movements with pragmatic or programmatic alliances with state actors that may involve noncontentious modes of participation.

Judicial Litigation

In spite of the strong identification between protest and social movements, the modes of contentious action are not reduced to protest. After endorsing the distinction between 'transgressive' and 'contained' contention (McAdams et al., 2001) in the 2011 edition of his *Power in Movement*, Tarrow (2011) claims that more attention should be paid to contained contention and the 'multiplicity of hybrid forms of interaction that bridge convention and contention across the boundaries of the polity' (p. 272). He especially stresses the growing relevance of judicial action and the resort to the courts in the defense of rights. Likewise, protest and litigation are considered as 'confrontational practices' and 'unconventional activities,' opposed to 'conventional politics', by Dalton et al. (2003, pp. 752–753). In line with all these authors, we see litigation as a mode of contention in which, instead of

expressing themselves through the disruptive methods of protest, confronting interests are disputed and settled through judicial procedures.

Judicial litigation is the mode of environmental contention that most directly addresses environmental rights, as environmental litigation inherently refers to the protection of the constitutional right to a healthy environment. Under certain circumstances, judges and lawyers may become important actors in the enforcement and interpretation of environmental rights in Argentina. In the proceedings of a 2003 symposium on environmental law in Latin America, a United Nations official highlighted that in the region,

> "Latin American judges were capable of finding some novel solutions within the discretion possibilities allowed by current legislation. In no few occasions these solutions ended up being incorporated into legislation. Jurisprudential environmental law has thus become an important source of positive environmental law". (Di Paola, 2003, p. 16)

Litigation is the only mode of contention included in the procedural right to know, participate, and claim. Yet, authors like Hiskes (2009) and Hajer (2000) doubt the effectiveness of litigation in solving environmental problems. Nevertheless, judges and lawyers may play, along with other actors involved in a lawsuit, a unique role in the advancement of environmental rights through the determination of risks and responsibilities. In the context of a trial, the judge is the last resort in the determination of liabilities and risks at stake in any controversy (Azuela, 2006). Her sentences will be typically grounded on expert reports (environmental lawyers included) and scientific data. Yet, the validity of the facts proved through judicial procedures does not stem from the scientific evidence but from the formal authority invested in the judge that forces the parts to take her sentences as the established truth—a classical instance of John Austin's (1962) performatives.

Therefore, litigation may play a central role in the regulation of the social definition of environmental problems and rights. The parties in the controversy present before the judge their claims, arguments, and backing evidence, and it is the judge who, on the basis of available legislation, establishes which claims and evidences are valid and which are not. In so doing, the judge brings a temporary end to two different indeterminacies affecting environmental issues: (a) the indeterminacy of general legislation, in the sense that it is not possible from the legislation (constitution included) to predict beforehand what the best legal answer for a particular case is (Azuela, 2006), and (b) the indeterminacy of scientific evidence, in the sense that all parties in the controversy present scientific data and expert reports which together produce a nonconsistent rendering of the problem at hand. This is not to say that judges always rule in favor of environmental protection or that law is an efficient cause of environmental

decision making. Judges and lawyers are important parts in many controversies, but they are not the only actors involved.

Expert Controversy

Of all three, this is undoubtedly the least graspable of the modes of environmental contention and also the most ubiquitous. Two aspects must be distinguished: the debate among experts and the use of scientific discourse in social and judicial controversies.

The first aspect of technical controversies is more silent, less noticeable, and thus much understudied in Argentina and elsewhere: The debates among experts as to what constitutes (an acceptable level of) pollution and environmental degradation (or what environmental risks are worth taking into account) and what their causes and the best solutions are. This is not to say that scientific research and expert debates are inexistent. What is at stake here is the poor dissemination of expert debates and the scarce transfer of scientific insights.

Nevertheless, abundant environmental legislation has been enacted in Argentina over the last decade, and we must presume (and know) that expert opinions and debates have somehow shaped legislative and executive decisions regarding environmental issues. But given that those debates, if existent, hardly reach public status, it is hard to assess its productivity in building environmental rights, thus its social impact is still mediated by how judicial actors and social protesters (and their opponents) use expert information. Beyond that, the social use and impact of scientific knowledge tend to remain in Argentina within the realm of 'invisible power', paraphrasing Bobbio (1987).

Thus, in relation to the second aspect, scientific discourse is present in both social demands and judicial statements. Social protesters tend to oppose projects and to object the "partiality" of the technical data and studies presented by firms and public officials on the base of "alternative" expert knowledge (mixed with other considerations such as human rights, regional development, or local identities). The public discussion of issues related to nature is carried out within scientific discourses which help legitimize environmental claims as nonbiased, general concerns. In spite of social scientists' claims, both experts and militants who resort to scientific statements reject the idea that nature is some socially built entity. As Beck (1995) points out, those who protest become immediately involved in a network of scientific requirements of which it is very difficult to get rid. In exchange, experts have lost their status as independent, objective providers of knowledge and need to conquer their role and legitimacy in a situation where different actors (social contenders, nongovernmental organizations [NGOs], and other experts) claim knowledge on their own (Hajer & Versteeg, 2005). In both ways, protest and science are inseparable components of the environmental field. And the same can be said about environmental litigation and science.

Institutionalized Participation and Beyond

Institutionalized participation can be defined as the modes of participation that come from the transformation of voluntary characteristics of civil society into forms of permanent political organization based on the interaction between social and state actors and the effectiveness of the institutions created for the operation of participation (Avritzer, 2009). In turn, these institutions are created with the specific goal of fostering 'the participation of social actors in deliberation and decision-making' (Avritzer, 2002, p. 136).

Like other authors, Hiskes (2009) stresses the importance of institutionalized participation in environmental decision making, arguing that the establishment of environmental justice depends on both constitutionalism and participatory democracy. The effective access to information and the opportunity to participate in decision-making processes through administrative procedures are crucial to the consolidation of environmental citizenship.

Yet, we notice that institutionalized participation in Argentine environmental policy making has been rather inchoate, while the involvement of citizens and organizations in social protests and judicial litigations has been so far more effective. We do not argue that institutionalized participation is not important in enforcing environmental rights but rather that contentious participation is equally productive in putting environmental issues on the public agenda, in conveying the social reinterpretation of environmental rights, and—sometimes—in changing or steering the course of decision making. That is why we pay special attention to the connection between contentious and institutionalized modes of participation. For instance, social protest can be effective in establishing linkages between public officials and social contenders, and the latter can take advantage of the newly opened participation channels, thereby favoring the connection between social actors and engaged individuals within the state (Keck & Sikkink, 1998; Tarrow, 2011). The resources derived from these types of linkages and connections can be mobilized either to block policies that are considered detrimental by social contenders and state actors—like open-pit mining—or to advance any particular policy they advocate for—like river cleanup in metropolitan areas (Hochstetler & Keck, 2007).

To sum up, the broad notion of participation we advance in this work entails a plurality of social and state actors that (either individually or in blocks) usually resort to and combine different participation modes (either contentious or institutionalized). Over the last years, institutionalized participation in environmental policy making has begun to develop in Argentina without implying the weakening of environmental contention. Moreover, in a challenging context in which the constant emergence of environmental rights is highly disputed both modes of participation have been necessary to embody constitutional rights in concrete policies and practices. In the following sections, we examine two cases in which different modes of contention combine with other forms of

participation. We will see that while the state embraces different actors with opposing interests and goals, social action does not circumscribe to protest (as a standard social movement theory would expect), and social contenders resort to the aggregation of contentious and institutionalized modes of action. We will also see that, while the process is usually started by contentious actions (either litigation or social protest), the advancing of environmental rights also depends on the opening and use of mechanisms of institutionalized participation.

River Cleanup in Metropolitan Buenos Aires: The Matanza-Riachuelo Case

Environmental litigation has proliferated all over the country over the past decade. But no other case has gained as much salience as the so-called Matanza-Riachuelo case. Initiated with a lawsuit filed by citizens allegedly affected by the pollution of the Matanza-Riachuelo River in metropolitan Buenos Aires, this paradigmatic case has brought to the fore the role of the National Supreme Court of Justice (CSJN, as per its Spanish acronym) and the federal courts in advancing environmental rights by compelling the state (at all levels) to carry on administrative measures in order to secure the right to a healthy environment. As part of those measures, a new institutionalized participation channel was created, which was used by social organizations committed to the cleanup of Matanza-Riachuelo to monitor the accomplishment of the judicial orders.

Matanza-Riachuelo is the most polluted river in Argentina and one of the three major tributaries of Río de la Plata that run through the territory of Buenos Aires Metropolitan Region. The river's source is in the province of Buenos Aires, and its lower section defines the southern boundary of the city of Buenos Aires, separating it from the province of Buenos Aires, which constitute two separate jurisdictions. The Matanza-Riachuelo river basin embraces 2,240 km^2 and is home to about four million people. Industrial waste and untreated sewage are the main sources of water pollution. Pollution affects more severely the lower section of the river, entailing health risks and urban blight for the adjoining neighborhoods.

Matanza-Riachuelo has been a subject of public concern for decades and even centuries. But all attempts of cleanup had failed until very recently. In 2004, a group of affected neighbors from Avellaneda (a provincial department located in the lower section) filed before the CSJN a lawsuit against the National Government, the province of Buenos Aires, the city of Buenos Aires, and 44 firms for injuries caused by the river pollution. The claimants resorted to the constitutional right to class action, and grounded their demand on the constitutional right to a healthy environment and the right to reparation in case of environmental damage. The so-called Beatriz Mendoza lawsuit soon became the major case of environmental litigation nationwide.

The CSJN issued a first ruling in 2006. First of all, the CSJN established its primary competence on the case at issue on the basis of two important considerations: (a) that the demand referred to basic constitutional rights (right to a healthy environment and right to reparation) to be guarded by the CSJN and (b) that the interprovincial nature of the Matanza-Riachuelo River involved a federal conflict that required, or justified, the CSJN's intervention. This unprecedented rule soon became a major reference for other litigation attempts and also for other nonjudicial demands.

The 2006 CSJN ruling focused on environmental reparation and preservation and commanded the national government, the provincial government, the city government, and the Federal Environmental Council to conjointly present an integrated cleanup plan for the Matanza-Riachuelo River within 30 days. Upon the CSJN ruling, the National Ombudsman and a number of NGOs requested to intervene in the Beatriz Mendoza lawsuit as amicus curiae. This request, grounded on the procedural rights (class action) introduced by the 1994 constitutional amendments, was accepted by the CSJN, thereby making the National Ombudsman and environmental NGOs prominent actors in the litigation process.

The participation of the National Ombudsman and some NGOs in the Beatriz Mendoza lawsuit was actually part of a social mobilization process started around 2002. From then on, NGOs and scholarly groups, convened by the National Ombudsman, began to interact to put together and disseminate reports condemning the critical environmental situation of Matanza-Riachuelo, especially in its lower section. They also began to follow-up public policy measures and claimed the reactivation of the preexistent Matanza-Riachuelo Committee. In the process, NGOs and scholarly groups built with the National Ombudsman a solid alliance that helped unify particular demands and that would play an important role on the way to the legal process and in monitoring the cleanup plan requested by the CSJN.

Yet, the action of the environmental and local organizations that had participated in the mobilization process that ended up in the Beatriz Mendoza lawsuit remained largely unnoticed to the nationwide public attention and to state agencies until the intervention of the CSJN. The CSJN's decision to accept those organizations as amicus curiae (and later on to invest them with social accountability authority) had the double effect of legitimizing their preexistent role as social contenders and amplifying their demands.

The immediate state response to the CSJN ruling was the creation of a new river basin agency by initiative of the national government. The Matanza-Riachuelo River Basin Authority (ACUMAR, as per its Spanish acronym) was created by national Law 26168/06 in November 2006, and later ratified by the province and the city of Buenos Aires. As defined by Law 26168/06, ACUMAR is run by a board made up of four representatives from the national government, two from the province of Buenos Aires and two from the city of

Buenos Aires. ACUMAR is headed by the national secretary (current minister) for the environment.

Two public hearings were held in 2006 and 2007. At the hearings, the public authorities presented the first versions of an integrated cleanup plan that were contested by the CSJN, the National Ombudsman, and the NGOs, whereas the defendant firms tried to show that they were not responsible for the pollution of the river. In 2008, the CSJN issued a final ruling, making the three government levels responsible for the remediation and future prevention of environmental damages in the river basin. Once again, the CSJN commanded the national, the provincial, and the city governments to put together and carry on an integrated cleanup plan through the newly created ACUMAR. It also committed the Federal Court of Quilmes (a provincial department located in the lower section of the river basin) to monitor the compliance of its sentences, which later on was replaced by two other federal courts.

According to the 2008 CSJN ruling, three major goals had to be pursued by the future cleanup plan: (a) life quality amelioration in the river basin, (b) remediation of all environmental elements (water, air, and soil), and (c) prevention of damages with a sufficient and sensible degree of prediction. The ruling also established the basis for implementation by stipulating (a) administrative measures oriented toward the achievement of results and (b) monitoring instruments consisting of a 'mixed system' (Merlinsky, 2013). As to the latter, a novel monitoring mechanism for public policies was established. Monitoring responsibility was granted to three actors located in different arenas: the Nation's General Auditor (executive power), the federal courts (judicial power), and ACUMAR's *Cuerpo Colegiado* (an instance of social accountability through institutionalized participation). The CSJN commanded that the same actors that were accepted as amicus curiae in the litigation (local and environmental NGOs and the National Ombudsman) formed a *Cuerpo Colegiado* (Collegiate Body) invested with the power to monitor the fulfillment of ACUMAR cleanup plan's goals and terms.

The Beatriz Mendoza lawsuit brought about a profuse production and circulation of studies, information, and documents of all sorts that were used by all the parties in the dispute (firms, government agencies, judicial actors, social organizations) to prove their point. This profusion of documents, especially vivid at public hearings, helped build a corpus of knowledge about the river basin available—for the first time ever—as an object of public deliberation. Thus, the drafting of the integrated cleanup plan became both an object of expert controversy and a platform for the building of common knowledge on the affected territory as well as on river basin management. Furthermore, the controversy around Matanza-Riachuelo gave visibility to the metropolitan nature of urban environmental problems and policies, issues highly neglected until then by public authorities at all levels.

There is no doubt that the legal, social, and expert controversy over the cleanup of the Matanza-Riachuelo River has given rise to an important

change in the way environmental problems are processed in terms of fundamental rights in Metropolitan Buenos Aires. Nevertheless, many implementation problems are still in place. Although some measures have been taken, the execution of the proposed integrated cleanup plan is far from been completed (*La Nación,* 2016).

The institutional and political difficulties that ACUMAR and the integrated cleanup plan have so far faced seem to confirm the idea that the intervention of the judicial power can be more successful in setting the agenda and amplifying social demands than in embedding court rulings into bureaucratic and political practices at the three government levels. In spite of that, the Matanza-Riachuelo case shows how litigation combines with, and amplifies, a previous social mobilization process, and promotes expert controversy. At the same time that it brings forth a new institutionalized participation mechanism (*Cuerpo Colegiado*), the combination of all those participation modes furthers the formation of a state–society alliance among local and environmental organizations, scholarly groups, executive control agencies (the National Ombudsman and the Nation's General Audit), and the federal courts themselves; such combination demands the effective enforcement of constitutional environmental rights. Even if the river cleanup plan is far from completion, that alliance has been effective in inducing the creation of ACUMAR, in monitoring its activities through a newly created institutionalized participation mechanism, and in forcing national, provincial, and municipal executive authorities to put together the cleanup plan. The Matanza-Riachuelo case also shows how the same social organizations can combine mobilization strategies (in this case, under less disruptive tactics than those favored by the social movements literature), litigation tactics (as amicus curiae), and institutionalized participation (as members of the monitoring *Cuerpo Colegiado*).

Open-Pit Mining on the Argentine Andes: The Case of Mendoza

In the Andean province of Mendoza, the alliance of social, economic, and political actors was successful in restricting the installation of open-pit mining, thereby showing the productivity of environmental contention and it is intertwining with other forms of participation in advancing environmental rights. Along the process, important environmental protection norms and the incorporation of social organizations into institutionalized participation practices were achieved due to the combination of social protest, litigation, and expert controversy, on a par with the building of society–state alliances at both the municipal and the provincial level.

Mendoza protests against open-pit mining have focused on three different sites: the department of San Carlos and other departments of the Uco Valley, the department of San Rafael, and the department of General Alvear. The first events took place in San Carlos in 2003 when the presence of mining firms was first noticed. By the end of 2005, the conflict over the activity escalated when the

intentions of a mining company to extract gold and cooper near Laguna del Diamante water reservoir became public.

As social concerns were growing, the Diamante Front was formed out of a diverse group of neighborhood unions, rural associations, local council members, religious organizations, tourism businessmen, independent professionals, and school teachers under the leadership of San Carlos Rural Society's president. Simultaneously, a typically grassroots organization (San Carlos Self-convened Neighbors) also formed in San Carlos, which adopted an assembly structure and were more prone to engage in direct actions than the Diamante Front. Despite their differences in organization and strategies, both groups managed to work together along the process.

In San Rafael, the conflict over mining started in 2004 when the National Atomic Energy Commission made public its intention to resume the exploitation of uranium in Sierra Pintada without having remediated the environmental passive of previous operations. To channel local opposition to the reopening of Sierra Pintada, the Southern Multisectoral for a Sustainable Development network was formed with the participation of rural producers and nongovernmental organizations and under the coordination of the San Rafael Commercial, Industrial, and Rural Chamber.

In March 2005, the Southern Multisectoral hired specialized lawyers and filed an *acción de amparo* to demand that Sierra Pintada would not be reopened. Opposition to uranium mining and the legal basis of this *acción de amparo* were mainly built upon Article 41 and the General Environmental Law (Multisectorial del Sur, n.d.). The San Rafael Federal Court ruled a precautionary measure forbidding the National Atomic Energy Commission to take any further action. After a long litigation process, in 2009, Mendoza's Federal Appeal Court confirmed the precautionary measure and ordered the National Atomic Energy Commission to restrain from starting a new exploitation in Sierra Pintada insofar as all environmental passives generated in previous phases were not remediated. This decision was ratified by the CSJN in 2010.

In General Alvear, the mobilization against open-pit mining started in 2006 when the granting of new mining permits in San Rafael became public. As General Alvear is located downstream San Rafael, General Alvear neighbors and organizations started to worry about the impact of mining on the quality of the scarce water resources that were essential for the development of the department's traditional rural and touristic activities.

Initially, a grassroots organization (Punta del Agua Self-convened Neighbors assembly) was formed to undertake a communication campaign against open-pit mining. Later on, assembly members joined General Alvear Commercial, Industrial, and Rural Chamber to form the General Alvear Multisectoral, which comprised around 40 nongovernmental, business, labor, political, and educational organizations. With the activities of San Rafael and General

Alvear Multisectorals, by 2006, Southern Mendoza became the major bastion of resistance against open-pit mining in the province.

Along with the growing opposition in these three places, resistance networks developed across Mendoza. By the end of 2006, self-convened assemblies and more institutionalized groups formed Mendoza Assemblies for Pure Water (AMPAP, by its Spanish acronym) with the main goal of working toward the approval of a provincial law to forbid metal and uranium mining. Prior provincial legislation paved the way for a law restricting metal mining. In 2005, law 7422/05 enlarged Laguna del Diamante environmental reserve and prompted the suspension of mining exploration in the Uco Valley. In 2006, law 7627/06 precautionarily suspended metal mining permits, explorations, and exploitations. Yet, law 7627/06 was vetoed by governor Julio Cobos.

The veto of law 7627/06 had the unexpected effect of multiplying antimining resistance in several cities and departments. Municipal Acts rejecting open-pit mining combined with strong mobilizations demanding the restitution of law 7627/06. Given this growing state–society resistance, a new bill was presented in the provincial legislature, this time to forbid metal mining. After an open debate process with the participation of grassroots organizations, antimining networks, and other social organizations, together with a sustained social mobilization, particularly in General Alvear and San Carlos, law 7722/07 was passed in June 2007 and later on promulgated by Governor Julio Cobos. The plurality of actors who were drivers of the law found in Article 41 and in the General Environmental Law, the legal basis on which to underpin a precautionary strategy to guarantee a healthy environment, at the provincial level, on the face of environmental damage caused by potential mining exploitation.

Even though it was not the first provincial law forbidding open-pit mining, law 7722/07 soon became emblematic because of Mendoza's great mining potential, showing that antimining legislation was not restricted to provinces "without potential" and encouraging the passing of similar laws in other provinces such as Tucumán, La Rioja, and La Pampa.

After the passing of law 7722/07, contenders' actions gradually became more institutionalized. On one hand, environmental litigation gained more protagonism and, on the other, grassroots and local organizations forged stronger links with state institutions, especially by participating in the Provincial Environmental Council. Nevertheless, protest tactics were never abandoned by those organizations.

In the months following the legislative sanction, different business chambers and actors linked to mining interests demanded in the provincial justice that law 7722/07 be declared unconstitutional, arguing that it violated the national Mining Code and the constitutional right to work. In this new phase of the process, litigation combined with social protest and expert controversy. In response to the unconstitutionality appeals, grassroots organizations resorted again to mobilization and protest tactics during all the years that it took the Superior Tribunal of Justice of Mendoza Province to rule on the issue.

In this judicial controversy, the disputing parties alleged the adequacy of Law 7722/07 to the principles of environmental policy while stressing that repealing the law goes against the right to a healthy environment, enshrined in Article 41 (AMPAR, 2014). Finally, in December 2015, the provincial Superior Tribunal of Justice denied the unconstitutionality requests and ratified the validity of law 7722/07.

Antimining organizations' participation in the Provincial Environmental Council was the highest point of institutionalized participation. While the participation in the Council was debated among the different organizations, Greater Mendoza Popular Assembly for Water, General Alvear Multisectoral, and other groups decided to join the Council under the expectation of getting information on the implementation and monitoring of environmental policies and becoming active parts in environmental impact assessments (EIA).

Social organizations' representatives were highly active in two assessment procedures of great importance: Rio Colorado Potassium Project's Environmental Impact Declaration and San Jorge Cooper Project's EIA. A member from Greater Mendoza Popular Assembly for Water was appointed to represent the Provincial Environmental Council before the interdisciplinary commission invested with the responsibility of assessing the Rio Colorado Project. In September 2009, the provincial government approved the project's environmental impact declaration in spite of the over 100 observations made by the interdisciplinary commission, and the Provincial Environmental Council's refusal to accept the environmental impact declaration.

The role and impact of social organizations was more determinant in the case of the San Jorge EIA. One hundred eighty-five people enrolled to speak in the public hearing scheduled for October 26, 2010; 143 of them expressed their opposition to the project. Social rejection to the project was carried out with a high level of technical and environmental knowledge (Segura, 2010). The public hearing, as is common in the public discussion of environmental issues, became a remarkable arena of expert controversy. Along with the constitutionality and applicability of law 7722/07, two major issues were at stake: the quality of the water course to be intervened by the project (Tigre brook) and the toxicity of xanthate. While a geologist hired by the mining company reported that the Tigre brook's water was not drinkable, environmentalists rejected such diagnosis on the basis of reports showing that the water was apt for human and animal consumption. Likewise, while the mining company's representatives argued that xanthate, the substance proposed to lixiviate the mineral, was not toxic and therefore its use did not imply a violation of law 7722/07, assembly actors resorted to different classifications in which xanthate was listed as a toxic substance.

The San Jorge public hearing was not binding. The final decision was to be made by the provincial legislature in a context of electoral campaign. Social resistance to the project increased after the public hearing and reached the legislature. The main opposition candidate for governor (Peronist Francisco

Pérez), who would later become the new governor, requested his party's legislators to vote against the project. The San Jorge Project's EIA was rejected by the provincial legislature in August 2010.

The Mendoza case shows that the alliance of social, economic, and state actors was crucial for the advance of environmental rights. Such achievements as the expansion of the Laguna del Diamante reserve, the passing and ratification of law 7722/07, and the rejection of San Jorge Project's EIA were possible due to the effective combination of different modes of contentious and institutionalized participation, which in many occasions were undertaken by the same actors. The persistence of social protest along the process did not diminish the importance and effectiveness of litigation, expert controversy, and institutionalized participation at different stages.

Closing Remarks

In this work, we examined how the embodiment of constitutional environmental rights in concrete policies is propelled by the combination of different modes of participation. By analyzing two salient Argentine cases, we showed how environmental participation, broadly understood, works as a channel to legitimate and make real environmental rights that were introduced with the 1994 constitutional amendments but remained dormant until the beginning of the new century. We found that, in each case, an alliance of social and state actors, by resorting to constitutionally enshrined environmental rights, manages to achieve specific policy results that makes those rights come alive. Policy results include the creation of a water sanitation authority (ACUMAR), the launching of a river cleanup plan, and the opening of a new institutionalized participation mechanism (*Cuerpo Colegiado*) to monitor the cleanup plan's implementation in Matanza-Riachuelo, and the expansion of a natural reserve (Laguna del Diamante reserve), the passing and ratification of an antimining law (Law 7722/07), and the rejection of an important mining project (San Jorge Project) in Mendoza.

In both cases under scrutiny, three modes of contention (social protest, judicial litigation, and expert controversy)—with predominance of litigation in Matanza-Riachuelo and of social protest in Mendoza—combine with more institutionalized modes of participation. We found that a same actor may be involved in either contentious or institutionalized modes of participation. In other words, the same actors that undertake contentious or mobilization actions also engage in institutionalized actions; at the same time, contentious actions do not vanish once participation and conflict are institutionalized. The reverse side of this finding is the existence of protection alliances that cross the state–society divide. In Matanza-Riachuelo, this alliance gathers local and environmental organizations, scholarly groups, executive control agencies, and the federal courts. In Mendoza, the alliance embraces local economic associations, grassroots and environmental organizations, local and provincial legislators, scholarly groups, and the courts.

Nevertheless, we notice a one-direction relationship between contention and institutionalized participation. Both in Mendoza and Matanza-Riachuelo, the process is started by contentious actions (either litigation or social protest), and contention leads to the opening of mechanisms of institutionalized participation (such as the *Cuerpo Colegiado* in Matanza-Riachuelo or the Provincial Environmental Council in Mendoza). This finding implies that those actors that initially promoted contentious actions learned both to interact with more formal actors (especially in Mendoza) and to resort to institutionalized participation modes as part of their action repertoire.

Along with these common traits, we found important differences between the two cases. The first one refers to the type of goal pursued. In Matanza-Riachuelo, the contenders' goal is 'reparation' of a severe damage already inflicted, which requires the common and sustained action of executive agencies from three levels of government. Instead, in the case of open-pit mining in Mendoza, what is at stake is a 'precautionary' measure (to prevent projects that may cause a future environmental damage). This difference in goals may be related to the effectiveness of participation.

While in Matanza-Riachuelo, participation seems to be more expedient in setting the issue on the agenda and creating new institutional venues than in achieving its goal (damage reparation), in Mendoza, the passing of an antimining law indicates a greater effectiveness of environmental participation, since that is precisely what participating organizations and groups demand. In the light of these two cases, we could conclude that the enforcement and practical embodiment of environmental rights through participation are more likely (or more effective) when the damage has yet to be done, though further research is needed to prove this hypothesis.

The difference between both participation goals (reparation versus precaution) seems to be related to the mode of participation that prevails after the central decision (judicial or legislative) is made. While in Matanza-Riachuelo, social organizations' institutionalized participation in the *Cuerpo Colegiado* becomes relevant to monitor and demand that ACUMAR's actions comply with the court's sentence, in Mendoza, the persistence of social mobilization seems to be crucial to avoid that the legislative decision to forbid open-pit mining becomes overridden by pro-mining interests.

Both cases also show an important difference regarding expert controversy. Even though it is developed through the entire process, in both cases, there seems to be a privileged moment or arena for the expression of expert controversy: public hearings. Different expert positions are expressed and deliberated during public hearings. Yet, the extent and depth of the debate changes according to the requirements of the litigation process vis-à-vis the legislative process. In Matanza-Riachuelo, where the reparation of an environmental damage and the identification of those responsible for it are at stake, scientific knowledge becomes a central input in the building of evidence on the existing damage and

its causes. The judges "need" scientific knowledge to back up and legitimate their decisions, which, once taken, are mandatory for those in charge of reparation. By building evidence on the damage and its causes, expert controversy paves the way, through the judges' sentences, for the mounting of common knowledge previously inexistent or unavailable. Instead, in the case of a precautionary measure such as the antimining law in Mendoza, lawmakers just take sides with one of the parts involved without much consideration about expert evidence and arguments. Lawmakers seek to respond to, or mitigate, social pressure, and "losers" just wait for a more propitious political moment to show that reason is on their side; it is probably because of this that sustaining mobilization across time is necessary to prevent the law from being overridden.

Our approach to the role of participation in advancing environmental rights was developed from the comparison of two salient cases. Yet, we think that our conclusions can be tested and furthered by the research of other Argentine cases such as open-pit mining regulation in other provinces, fracking regulation at the local and provincial level, national glacier protection and forest protection policies, and river cleanup in the Sali-Dulce River Basin. By doing so, we could build a broader theory on how contentious and institutionalized modes of participation combine as means for securing environmental regulation and advancing environmental rights.

In particular, a broader comparison would allow us to identify regularities as regards the way in which different modes of institutionalized and contentious participation combine and the outcomes they bring forth. What is more, studying the combination of contentious and institutionalized modes of participation could also help understand the advancement of human rights in general, since, as we saw, environmental rights fall under their realm. To both ends, further research is needed. A first step would be identifying regularities across different cases in varied settings. To do so, comparative studies (either of subnational units, such as provinces or states, or of countries) can render an invaluable service. Comparative studies can help not only to identify regularities (commonalities and differences) across cases and settings but also to establish connections between those regularities and the political and economic contexts in which participation occurs. In so doing, we could further more generalizable conclusions about the modes and effectiveness of participation as well as their contextual determinants.

Acknowledgments

The authors thank Rebecca Abers, Patricio Besana, Jessica Buds, Catalina Smulovitz, Marisa von Bülow, and four anonymous reviewers for their valuable comments.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: The research this article is based upon was funded by the Argentine National Council for Scientific and Technological Research (CONICET) and the Argentine National Agency for Scientific and Technological Promotion (ANPCYT).

References

Abers, R. N., & von Bülow, M. (2011). Movimentos sociais na teoria e na prática: Como estudar o ativismo através da fronteira entre Estado e sociedade? [Social movements in theory and practice: How to study activism through state-society borders?] *Sociologias*, *13*(28), 52–84.

AMPAP. (2014). *Comunicado de prensa de las Asambleas Mendocinas por el Agua Pura. Ciudad de Mendoza* [Press release of Mendocine assemblies for pure water]. Retrieved from http://www.opsur.org.ar/blog/2014/06/13/mendoza-repudiamos-el-intento-de-modificacion-de-la-ley-7722/

Austin, J. (1962). *How to do things with words*. Oxford, England: Oxford University Press.

Avritzer, L. (2002). *Democracy and the public space*. Oxfordshire, England: Princeton University Press.

Avritzer, L. (2009). *Participatory institutions in democratic Brazil*. Washington, DC: Woodrow Wilson Center Press.

Azuela, A. (2006). *Visionarios y pragmáticos: Una aproximación sociológica al derecho ambiental* [Visionaries and pragmatics: A sociological approach to environmental law]. México: UNAM/Fontamara.

Beck, U. (1995). *Ecological politics in an age of risk*. Cambridge, England: Polity Press.

Bobbio, N. (1987). *The future of democracy: A defense of the rules of the game*. Minneapolis: Minnesota University Press.

Carruthers, D. V. (ed.). (2008). *Environmental Justice in Latin America: Problems, promise, and practice*. Cambridge, England: The MIT Press.

Clémençon, R. (2012). From Rio 1992 to Rio 2012 and beyond: Revisiting the role of trade rules and financial transfers for sustainable development. *Journal of Environment & Development*, *21*(1), 5–14.

Collier, D. (2011). Understanding process tracing. *PS: Political Science & Politics*, *44*(4), 823–830.

Dalton, R. J., Recchia, S., & Rohrschneider, R. (2003). The environmental movement and modes of political action. *Comparative Political Studies*, *36*(7), 743–771.

Daly, E. (2012). Constitutional protection for environmental rights: The benefits of environmental process. *International Journal of Peace Studies*, *17*(2), 71–80.

Della Porta, D., & Diani, M. (2006). *Social movements: An introduction*. Oxford, England: Blackwell.

Di Paola, M. E. (2003). *Simposio de jueces y fiscales de América Latina: Aplicación y cumplimiento de la normativa ambiental* [Symposium of judges and attorneys from Latin America: Application and enforcement of environmental regulations]. Buenos Aires, Argentina: FARN.

Epp, C. (2008). Implementing the rights revolution: Repeat players and the interpretation of diffuse legal messages. *Law and Contemporary Problems*, *71*(4), 41–52.

Gellers, J. (2012). Greening constitutions with environmental rights: Testing the Isomorphism thesis. *Review of Policy Research*, *29*(4), 523–543.

Gellers, J. (2015). Environmental constitutionalism in South Asia: Analyzing the experiences of Nepal and Sri Lanka. *Transnational Environmental Law*, *4*(2), 395–423.

Goodwin, J., & Jasper, J. M. (2003). *The social movements reader: Cases and concepts*. Cornwall, England: Blackwell.

Hajer, M. A. (2000). *The politics of environmental discourse: Ecological Modernization and the policy process*. Oxford, England: Oxford University Press.

Hajer, M. A., & Versteeg, W. (2005). Performing governance through networks. *European Political Science*, *4*(3), 340–347.

Hall, P. (2003). Aligning ontology and methodology in comparative research. In J. Mahoney & D. Rueschemeyer (Eds.), *Comparative historical analysis in the social sciences*. New York, NY: Cambridge University Press.

Hannigan, J. (2006). *Environmental sociology*. New York, NY: Routledge.

Harvey, D. (1996). *Justice, nature and the geography of difference*. Oxford, England: Blackwell.

Hiskes, R. P. (2009). *The human right to a green future*. Cambridge: Cambridge University Press.

Hochstetler, K., & Keck, M. E. (2007). *Greening Brazil: Environmental activism in state and society*. Durham, NC: Duke University Press.

Jeffords, C., & Minkler, L. (2016). Do constitutions matter? The effects of constitutional environmental rights provisions on environmental outcomes. *KYKLOS*, *69*, 294–335.

Keck, M., & Sikkink, K. (1998). *Activists beyond borders: Advocacy networks in international politics*. Ithaca, NY: Cornell University Press.

Kessler, M. (1990). Legal mobilization for social reform: Power and the politics of agenda setting. *Law and Society Review*, *24*, 121–144.

La Nación. (2016, November 24). *Saneamiento en la cuenca Matanza-Riachuelo: Los números preocupantes de los últimos años* [Sanitation in the Matanza-Riachuelo basin: The worrying numbers of recent years]. Retrieved from http://www.lanacion.com.ar/1959118-acumar-2011-2015-informe-de-la-auditoria-general-de-la-nacion

Magnussen, A., & Banasiak, A. (2013). Juridification: Disrupting the relationship between law and politics? *European Law Journal*, *19*(3), 325–339.

May, J. (2013). Constitutional directions in procedural environmental rights. *Journal of Environmental Law & Litigation*, *28*, 27–51.

McAdam, D., McCarthy, J., & Zald, M. (Eds.). (1996). *Comparative perspectives on social movements opportunities, mobilizing structures, and framing*. Cambridge, England: Cambridge University Press.

McAdams, D., Tarrow, S., & Tilly, C. (2001). *Dynamics of contention*. Cambridge, England: Cambridge University Press.

McAdams, D., Tarrow, S., & Tilly, C. (2008). Methods for measuring mechanisms of contention. *Qualitative Sociology*, *31*, 307–331.

Merlinsky, G. (2013). *Política, derechos y justicia ambiental: El conflicto del Riachuelo*. Buenos Aires, Argentina: Fondo de Cultura Económica.

Multisectorial del Sur. (n.d.). *El ambiente adecuado para la vida ES un derecho de todos* [The right environment for life IS a right for all]. Retrieved from https://dl.dropboxusercontent.com/u/25333702/gacetilla%20Multisectorial.pdf

Offe, C. (1985). New social movements: Challenging the boundaries of institutional politics. *Social Research*, *52*(4), 817–868.

Onestini, M. (2012). Latin America and the Winding Road to Rio + 20: From sustainable development to green economy discourse. *Journal of Environment & Development*, *21*(1), 32–35.

Pasquino, G. (2009). *Nuovo Corso di Scienza Politica*. Bologna, Italy: Il Mulino.

Philippopoulos-Mihalopoulos, A. (2013). Actors or spectators? Vulnerability and critical environmental law. *Oñati Socio-Legal Series*, *3*(5), 854–876.

Roesler, S. (2012). The nature of the environmental right to know. *Ecology Law Quarterly*, *39*, 989–1047.

Rossi, F., & von Bülow, M. (2015). *Social movement dynamics: New perspectives on theory and research from Latin America*. Farnham, England: Ashgate.

Sabsay, D. (2003). Constitución y medio ambiente en el marco del desarrollo sustentable. In M. E. Di Paola (Ed.), *Simposio de jueces y fiscales de América Latina: Aplicación y cumplimiento de la normativa ambiental (pp. 33–44)* [Symposium of judges and attorneys from Latin America: Application and enforcement of environmental regulations]. Buenos Aires, Argentina: FARN.

Segura, E. (2010). *If you don't understand I explain it with a drawing*. Retrieved from http://www.mdzol.com/nota/252650

Shelton, D. (1991). Human rights, environmental rights, and the right to environment. *Stanford Journal of International Law*, *28*, 103–138.

Shelton, D. (2013). *Human Rights and the Environment. Substantive Rights* (Legal Studies Research Paper 2013–33). Washington, DC: The George Washington University Law School.

Tarrow, S. (2011). *Power in movement: Social Movements and contentious politics*. Cambridge, England: Cambridge University Press.

Tilly, C. (1986). *The contentious French*. Cambridge, England: The Belknap Press of Harvard University Press.

Yates, L. (2015). Rethinking prefiguration: Alternatives, Micropolitics and goals in social movements. *Social Movement Studies*, *14*(1), 1–21.

Author Biographies

Lucas G. Christel holds a PhD in political science from the National University of San Martín (Argentina). He is a postdoctoral fellow of the same university, where he also works as a political science instructor.

Ricardo A. Gutiérrez holds a PhD in political science from The Johns Hopkins University. He is a professor at the National University of San Martín's School of Politics and Government and a researcher from the National Council for Scientific and Technological Research (CONICET).