AN UNEASY ARGUMENT AGAINST THE BULLFIGHTS BAN (AND OTHER CULTURAL EXPRESSIONS INVOLVING ANIMALS) IN COLOMBIA

Santiago García Jaramillo[†]

I. Introduction and Disclosure

On September 4, 2025, the Constitutional Court of Colombia, in ruling C-374 of 2025 (Ruling C-374), unanimously upheld Law 2385 of 2024, which instituted a national ban on bullfights and all activities related to that cultural tradition. In the same ruling, the Court extended the ban to other activities involving cockfights, *coleo,*[1] and *corralejas,*[2] despite the fact that petitioners did not include a claim of this sort in their lawsuit.[3] While this decision has been applauded by animal-rights defenders, I aim to demonstrate that the reasoning behind the ruling is not sound. In fact, it introduces internal tensions into the existing case law of constitutional law and is problematic in terms of moral and political philosophy.

Before getting into the argument, I must clarify two points. First, this paper does not aim to convince anyone of the aesthetic or cultural value of bullfighting. It is perfectly fitting to believe that bullfighting should be morally impermissible while raising criticisms of the move made by the Colombian Constitutional Court. Second, in the interest of full disclosure, I will warn my readers that I was born in Manizales, the only Colombian city where bullfighting is upheld by a great number of citizens. I myself was raised in a family that enjoys bullfighting, and I must say that it became part of my cultural identity. For these reasons, I also participated as counsel in some of this litigation. While my reflections will be grounded in constitutional theory, moral, and political philosophy, I accept the burdens of judgement when laying out

[†] Professor of Constitutional Law at Pontificia Universidad Javeriana (Bogotá-Colombia); LL.B Pontificia Universidad Javeriana (Bogotá); LL.M, Yale Law School; JSD Candidate, Cornell Law School. I want to thank Daniel Currea-Moncada, Miguel Jaramillo, Jaime Fernández, Felipe Negret Mosquera, and Shawn Thacker for their valuable discussions on the topic, as well as, comments on previous drafts. I am grateful to professors Vicente Benítez-Rojas and Sergio Severiche for their thoughtful comments on a previous draft, and their reasonable disagreements which improved this paper. Finally, I want to thank the editors at the CILJ for their valuable help and patience during this paper's publication process. Email: sg2268@cornell.edu | https://orcid.org/0000-0003-4969-7032

[1] *Coleo* is a traditional Venezuelan and Colombian sport, very similar to a rodeo, where a small group of llaneros (cowboys) on horseback pursue cattle at high speeds through a narrow pathway (called a *manga de coleo*) in order to drop or tumble them. Simon Romero, *Venezuela's Passion: Twisting the Tail of an Angry Beast*, THE NEW YORK TIMES, Sept. 10, 2006, https://www.nytimes.com/2006/09/10/world/americas/10coleo.html.

[2] A *corraleja* is a bullfighting festival in the Caribbean region of Colombia. In this type of event, the public is invited to engage the bulls in the ring. Compared a Spanish-style bullfight, the bulls are not killed after the fight, and the event is much less formal. Juan Forero, *Colombian Bullfights Thrive Despite Danger, Death*, NPR, Jan. 31, 2011, https://www.npr.org/2011/01/31/133371408/colombian-bullfights-thrive-despite-danger-death.

[3] Sherwin argues how this sort of interpretation to "save legislation" is more intrusive in the powers on the legislature than a simple declaration of unconstitutionality, and thus more undemocratic. Emily Sherwin, *Rules and Judicial Review*, 6 LEGAL THEORY 299 (2000).

the inconsistency generated by the court's decision, and accounting for both sides of the debate.

II. The Complex Legal Status of Bullfighting

Bullfights have been part of Colombian history. They arrived with the Spanish colony, and they remained after independence. In cities like Bogotá, Medellín, and Cali, bullfights were well attended by citizens until the first decade of the twenty-first century.[4] In Manizales—a small city in the Andes, and in many small municipalities of Cundinamarca and Boyacá, they are the center of municipal festivities. Despite growing awareness of animal rights and animal protection, in these towns the bullrings never ceased to be full year by year, in contrast with Medellín, Cali, and Bogotá, where they systematically—and despite a long tradition—began to organically languish.[5]

Such was the importance of bullfighting to Colombian culture that Congress, in 2004, passed a *sui generis* statute that recognized bullfighting as an "artistic expression" and regulated each and every aspect of the "art of bullfighting." Such statute was challenged, but the Court declared it constitutional in Decision C-1192 of 2005, relying on an argument of pluralism and the right to cultural diversity. In 2010, the Court issued Decision C-666, a landmark in advancing the protection of the interests of animals. In this decision, the Court analyzed whether the exception—covering bullfighting, cockfights, *coleo*, and *corralejas*—to the infraction of animal mistreatment passed constitutional muster. The Court ruled that bullfights, cockfights, and corralejas could be held exclusively in the time and manner where they represented a long-held tradition.

In 2012, the Court, by Decision C-889 of 2012, ruled that mayors lacked the power to ban bullfights, since they were regulated by a national statute. This was the bedrock of the *tutela* decision that overturned the prohibition Bogotá's mayor—today President—Gustavo Petro implemented in 2012 in Bogotá. For the Court, an administrative authority, and even a popularly elected body at the municipal level, lacked the power to ban bullfighting. In 2017, the Court examined Law 1774 of 2016, which made severe and cruel animal mistreatment a felony; however, it excluded from the criminal characterization these cultural activities. In Decision C-041, the Constitutional Court considered that such exception was unconstitutional. The Court, in a 5–4 decision, banned these cultural expressions involving animals but deferred the ruling's effects for three years. The same Court, in a unanimous decision, nullified Ruling C-041, claiming that it departed from precedent without a strong argument. According to the Court, (i) the Colombian Constitution does not enumerate animal rights; and (ii) the general duty to protect the interests of animals is not absolute, and long-held cultural expressions represent a permissible exception to the concrete duty of animal well-being. The Court reiterated that Congress had the legal power to limit these expressions or to completely ban them.

---

[4] *See* Santiago García Jaramillo*, La Tauromaquia: Expresión Artística de los pueblos Iberoamericanos, análisis jurídico en el contexto colombiano,* 1 UNIVERSITAS ESTUDIANTES 122 *(2012);* Santiago García Jaramillo, *Colombia: La Judicialización de Los Ruedos*, 1 REVISTA DE ESTUDIOS TAURINOS 321 (2021).

[5] *Id.* In 2006, Law 1025 of 2006 was passed, recognizing Manizales heritage and identification with bullfighting. As a result, bullfighting was considered cultural patrimony.

It is unclear if the Court met its own standards to change these precedents. The duty of animal protection continues to be unenumerated,[6] and there is strong disagreement about its content. As a result, there is no new constitutional standard for judicial review. Second, Congress consistently excluded bullfighting and the other cultural expressions from criminal bans. In the case of Law 2385, Congress included bullfighting but excluded other expressions, so there is no democratic consensus.[7] And third, in 2017 the Court claimed that bullfighting was permissible because the duty of animal well-being was not an absolute duty. Therefore, even though the Court claimed that there was a change in society after precedential rulings, people in Manizales continue to attend the bullfighting festival each year, in large numbers.

III. The Core of the Ruling C-374/25

According to the Constitutional Court's press release, the Court reiterated its case law regarding the unenumerated duty of animal well-being, which the Court has derived from the "ecological content" of the Constitution. The Court has used this principle as the bedrock of decisions that recognized animals as sentient beings, and not as things. Expanding this Rule, the Court upheld banning the use of exotic animals in circuses due to the special protection of certain species of animals.[8] In 2019, the Court relied on this principle to ban sport hunting in Colombia.[9] It must be highlighted that this was not a controversial decision, as hunting is not a popular activity among Colombians. In 2022, the Court relied on the principle of animal protection to ban sport fishing. The *ratio decidendi* of such ruling, however, relies heavily on the precautionary principle, since it is possible that sport fishing causes severe damage to rivers and aquatic ecosystems; and second, the Court observed that there was no long-held tradition of sport fishing in Colombia. In conclusion, the Court's case law was clear that the animal-protection principle—from which it derives a duty of protection and well-being—is not absolute, and that long-held cultural expressions were a permissible exception to it.

In Ruling C-374, the Court applied a proportionality test in which it confronted the protection of cultural diversity with the principle of animal protection. In setting the stage for such analysis, the Court changed its long-held case law regarding the

[6] *See* JEREMY WALDRON, LAW AND DISAGREEMENT (1999); ANDREI MARMOR, LAW IN THE AGE OF PLURALISM, 215–231 (2007). For the proposition that just because a right, or a constitutional duty, is unenumerated does not imply its nonexistence; its concrete content is, however, open to disagreement. The same difficulty applies to enumerated rights. As Waldron and Marmor explain, rights to be sources of disagreement rather than trump cards. *See generally,* JOSEPH RAZ, THE MORALITY OF FREEDOM (1990). Raz extends this insight by endorsing the interest-based theory of rights and an "evolutionary" conception of them. Because rights are grounded in interests, their contents—like those interests—evolve and change. This does not, however, erase the serious disagreements over the bearers of rights, the meaning and scope of the relevant interests, and the specific duties and obligations that rights entail.

[7] Of course, members of Congress can change their minds on what to exclude and include as a cultural expression. It is indeed part of their legal authority as members of a deliberative and representative body. What is problematic in this case is that the law mirrors a bill of attainder, as it targets specific regions that could not, through their representatives, form a majority in Congress. This exclusion seemed more of a strategic move to secure a majority, as if Congress had included the other cultural expressions, then it would have been possible for different regions to form a coalition to defeat the ban.

[8] Corte Constitucional de Colombia, *Sentencia C-283/14* (May 14, 2014) (Colom.).

[9] Corte Constitucional de Colombia, Sentencia C-045/19 (Feb. 6, 2019) (Colom.).

duty of animal protection. According to the Court, (i) the Legislature in recent years has passed more statutes that expand the scope of animal protection and raise the bar of animal well-being; (ii) there is an international trend toward recognizing animal rights and expanding the scope of animal protection; and (iii) recent case law has deepened the content of the duties of animal protection. The Court considers that such duties are grounded on "universal ethics which underlie our living constitution,"[10] which reflect a "non-controversial consensus on the duty to not cause harm to a sentient being for mere pleasure or fun, even in light of cultural and artistic expressions." [11] To conclude the setting of the stage, the Court claimed that constitutions must accommodate societal changes, which precisely "adopt new values and principles, that society develops over time, which exclude activities that today are intolerable, because they involve scenarios of violence, and arbitrary aggressions to other sentient beings."[12]

In a second move, the Court reconstructed the case law regarding bullfighting, in which there is a consensus that Congress has the legal authority to restrict or ban it. The argument was simple: first, because like in 2004 where Congress had the authority to recognize of bullfighting as an artistic activity, they could reverse the designation; second, because Congress is the pluralist, representative, and deliberative body of the different regions of Colombia; third, because of the uncontroversial premise that Congress has the authority to update the content of the rights to freedom of expression, free development of the being, and of cultural diversity[13].

The Court proceeded to undertake a proportionality test. It concluded that, once it was done, Law 2385 passed constitutional muster as

> [Law 2385] pursues a constitutionally important aim, grounded in the actual realization of the constitutional mandate to protect animal well-being. The means chosen are indeed apt to achieve that aim, since the prohibition adopted by the legislature seeks to bring an end to animal cruelty, and to the acts that inflict pain and suffering on the bull and on other animals during the spectacle. Alternative measures fail to satisfy the constitutional objective. Finally, the measure is not manifestly disproportionate, because it yields greater benefits within the framework of the Social State under the Rule of Law, which strives for a genuine, humanistic harmony with nature and, in particular, with animals. In effect, rather than framing the discussion around an autonomy that could be deemed absolute or an unbounded pluralism that would justify any and all forms of conduct, the prohibited activities do not occur in settings dependent solely on the will of the individual—where the unqualified exercise of an individual liberty would ostensibly be curtailed—but instead affect not only sentient beings with respect to whom a duty of protection is triggered, but also the rest of the community, which—as embraced by the legislature—seeks a transformation

[10] Corte Constitucional de Colombia, Sentencia C-374/25 (Sept. 4, 2025) (Colom.).
[11] *Id*.
[12] *Id*.
[13] *Id*.

> toward a culture of peace that excludes violence that undermines the integrity of non-human forms of life.[14]

The Court then introduced a categorical duty:

> [T]o exclude from [Colombian] society, any and all forms of deliberately inflicting pain, suffering, or death upon another sentient being under the pretext of pleasure or amusement, even when such expression may have historical grounding of an artistic, cultural, or sporting nature, and is representative of regions or of certain groups that practice it and recognize it as their own.[15]

This was the bedrock for extending the prohibition to cockfights, *coleo*, and *corralejas*, which the Legislature expressly excluded from the ban, although the decision was deferred for three years.

IV. A Murky Beginning

One of the most interesting features of Colombian judicial review is that it is triggered by an *actio popularis*, which is considered a participatory political right.[16] As could be expected, Law 2385 was subjected to many lawsuits from the parties involved in bullfighting. When deciding whether to undertake the examination of one of those lawsuits, Justice Natalia Ángel-Cabo claimed that bullfights were not a cultural and artistic expression because of their violent content. That is the rule reached in Decision C-374/25. But, the decision does not reflect the case law existing at the time of the docket's decision. Two citizens, as all citizens in Colombia have standing before the Court, asked Justice Ángel-Cabo to be recused, and she proceeded to recuse herself. However, the Court, *en banc,* rejected the recusal because she expressed her opinion in a "jurisdictional scenario." While the case law of the Constitutional Court has non-controversially claimed that justices cannot be recused for opinions expressed within rulings, dissents, or concurring opinions, it does not have a bright line rule in relation to docket decisions.

This scenario represents a gray area, where the analogy to dissents, opinions, and concurrences does not hold. Notice that when deciding to place a case on the docket in response to a citizen's *actio popularis*, the Court is limiting a political right, and for such reason it should be as deferential to the citizen as possible. Docket decisions trigger judicial review, or dialogue within the Court, and deference implies being heard, not granting the plaintiff the result they want.[17] Dissents, opinions, and concurrences are handed down after deliberation in collegiate bodies, whereas docket decisions are made by a single judge. If judges could alter case law when deciding

---

[14] Corte Constitucional de Colombia, Sentencia C-374/25 (Sept. 4, 2025) (Colom.).

[15] *Id*.

[16] *See* Constitución Política de Colombia art. 41. *See generally* Manuel José Cepeda-Espinosa, *Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court*, 3 WASH. U. GLOBAL STUD. L. REV. 539 (2004); ALEJANDRO LINARES CANTILLO ET AL., CONSTITUTIONALISM: OLD DILEMMAS, NEW INSIGHTS (1st ed. 2021).

[17] Corte Constitucional de Colombia, Sentencias of Nov. 25 & Dec. 18, 2024 (Justice Natalia Ángel-Cabo) (Colom.). Ironically, the language of "dialogue" is used by Justice Ángel-Cabo herself when deciding on the docket for one of the actions against Law 2385 of 2025.

the docket, they would not only limit a citizen's political rights, but they would also abuse the agenda-setting powers that constitutional courts enjoy.[18] Imagine, for example, a conservative judge who, through misquoted rulings, claims that life begins at conception to prevent the possibility of expanding abortion rights from entering the public agenda of the Court. That is a dangerous power, and especially disappointing from an academic who has a long-held view of the democratic character of Colombian judicial review due to the *actio popularis*.

V. A Petition of Principle

Although the Court states that it adheres to a proportionality test, the Court essentially declared the law constitutional before even applying the test.[19] If the premises of the test are the existence of a "universal ethics which underlie our living constitution," which reflect a "non-controversial consensus on the duty to not cause harm to a sentient being for mere pleasure or fun, even in light of cultural and artistic expressions," then there was no chance the law could be defeated in a proportionality test.[20] One of the most complicated features of moral reasons is the Court's claim to defeat any opposing reason.[21] When the Court claims the existence of a "universal ethics," it is accepting the metaethical, debatable premise of moral realism (morality is objective), and its universal binding force.[22] Such absolutism is precisely what led Bernard Williams to compare our morality system to slavery, by naming it the "peculiar institution" —an analogy to the (in)famous euphemism used by the US southern states to refer to slavery.[23]

The Court also has a conceptual problem when it comes to its metaethics—which ethical theory grounds its argument against bullfighting. The Court departs from moral realism, but then uses such a sloppy construction of reasoning that it can be

---

[18] *See* Andrei Marmor, *Randomized Judicial Review*, 15 USC LAW LEGAL STUDIES PAPER (2015); ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH (1986).

[19] *See* Robert Alexy, *Constitutional Rights and Proportionality*, REVUS - JOURNAL FOR CONSTITUTIONAL THEORY AND PHILOSOPHY OF LAW 5165 (2014) A proportionality test is form of constitutional interpretation. Courts analyze if a law is necessary to achieve a constitutional goal, and whether the measure introduced by the law disproportionately affects other constitutional rights.

[20] Corte Constitucional de Colombia, Sentencia C-374/25 (Sept. 4, 2025) (Colom.). That "Universal Consensus" is also far from true. Scholars, like Christine Korsgaard, have argued for the existence of animal rights, which derive from an Aristotelian conception of ethics, noting that animals – like humans – are beings with ends unto themselves.; ALLEN W. WOOD, KANT'S ETHICAL THOUGHT (Transferred to digital print ed. 2006)(In contrast, Allen W. Wood explains how for Kant "rational beings alone are to be regarded as ends in themselves.").; On the other hand, Stephen Darwall has claimed that duties toward animals could be recognized as a duty to the moral community, that is from humans to humans, not to animals in themselves. Stephen Darwall, Professor of Philosophy, Yale Univ., in-person conversation (Feb. 3, 2023).; BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY 175–196 (1985) (Perhaps all what the Court could have argued, had they been intellectually honest, is that there was a "political agreement" between the Court's constituency – nine judges and a handful of clerks-on extending the protection of animals, but the ambition of imposing their politics as a "universal ethical consensus" is certainly a "peculiar institution," in the way Williams intended such (in)famous expression: a sort of modern imposed slavery to some moralism.").

[21] *See* Williams, *supra* note 20; JOSEPH RAZ, PRACTICAL REASON AND NORMS (2002); ANDREI MARMOR ET AL., ENGAGING RAZ: THEMES IN NORMATIVE PHILOSOPHY (2025).

[22] *See* Richard Boyd, *How to Be a Moral Realist*, in *Essays on Moral Realism* 181 (Geoffrey Sayre-McCord ed., Cornell Univ. Press 1988); STEPHEN L. DARWALL, PHILOSOPHICAL ETHICS (1998).

[23] *See* Williams, *supra* note 20, at 175–197.

classified as virtue ethics,[24] or even existentialism.[25] The Court claims that societal changes can "adopt new values and principles, that society develops over time, which exclude activities that today are intolerable, because they involve scenarios of violence, and arbitrary aggressions to other sentient beings."[26] If someone believes in universal ethics, there are no "new values and principles developed over time,"[27] as this would amount to us being the authors of the universal values, not the product of an objective morality that we discover through reason. A moral realist should rely on epistemic problems. For example, a realist must claim that slavery was always morally wrong, and we just failed to grasp it; not that society came to create a new value against slavery. Metaethics is a complicated domain, and a judicial ruling is not the place to solve over 2,000 years of disagreements. Although, the philosopher-kings who drafted and approved this ruling believe they did so, despite its lack of philosophical rigor and logical flaws.[28]

Leaving metaethics aside, the problem is clearer. The Court adopted a conclusion which is the result of a logical fallacy. The Court departs from the "fact" that bullfighting—and later other cultural expressions—are necessarily cruel and violent, to conclude that they are cruel and violent, and thus constitutionally prohibited. Fallacies can be written in fancy language, as the Court tried, but they are bad arguments in classrooms and even worse when they claim final authority over citizens who disagree on the scope and content of the values and rights embedded in the Constitution. Finally, if the Court creates a "categorical imperative,"[29] which means that the Court raises to the level of Kantian human dignity the ban of "all forms of deliberately inflicting pain, suffering, or death upon another sentient being under the pretext of pleasure or amusement, even when such expression may have historical grounding of an artistic, cultural, or sporting nature, and is representative of regions or of certain groups that practice it and recognize it as their own."[30] Kantian human dignity—as problematic as it is—is an undefeatable principle.[31] This categorical imperative is conceptually over-inclusive, and it is applied by the Court under-inclusively. If the Court were to be consistent, it should have proceeded to ban the eating of Guinea pigs (a cultural tradition in Pasto, the south of Columbia);[32] horse races; and *friche* (a tradition by indigenous communities of La Guajira, the north of Colombia, where a goat is cooked in its own blood).[33]

---

[24] *See* ALASDAIR C. MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (3d ed. 2007).

[25] *See Existentialism Is a Humanism, Jean-Paul Sartre 1946*, https://www.marxists.org/reference/archive/sartre/works/exist/sartre.htm [https://perma.cc/Q233-UHYN] (last visited Sept. 23, 2025).

[26] Corte Constitucional de Colombia, Sentencia C-374/25 (Sept. 4, 2025) (Colom.).

[27] *Id.*

[28] *See* Marmor, *supra* note 18 (exploring the label Philosopher-King as applied to judges, and extended argument on the shortcomings of judges as moral experts).

[29] *See* ALLEN W. WOOD, KANT'S ETHICAL THOUGHT (Transferred to digital print ed. 2006) ; Darwall, *supra* note 22, at 139–176.

[30] Corte Constitucional de Colombia, Sentencia C-374/25 (Sept. 4, 2025) (Colom.).

[31] Wood *supra* 20; Darwall, *supra* 22, at 139–176.

[32] *The Guinea Pig,* COLOMBIA TRAVEL (Last accessed Oct. 20, 2025), https://colombia.travel/en/pasto/guinea-pig [https://perma.cc/229A-JXYE].

[33] Luis Freyle, *Friche: Un Plato de Tradicion Wayuu en La Guajira,* RADIO NACIONAL DE COLOMBIA (last accessed Oct. 20, 2025), https://www.radionacional.co/cultura/friche-un-plato-de-tradicion-wayuu-en-la-guajira [https://perma.cc/66CE-66A2](If the Court's intention was to articulate a categorical imperative

VI. A Problematic Anti-Deliberative Turn

The Colombian Court is often praised for its pro-deliberative case law.[34] For many, the Court is an example of Ely's style of democracy-enhancing judicial review.[35] Unfortunately this case tips the balance in a different direction. The Court, by extending the ban to other cultural expressions that involve animal suffering, curtailed democratic deliberation at least in two ways: (i) it impedes true deliberation in Congress, and (ii) it favored the majoritarian view of big cities against the cultural traditions of small cities and rural areas. In short, it did not give proper weight to the interests of those most affected by its ban.[36]

The Court curtailed deliberation by extending the ban to cultural expressions that Congress initially excluded. Bullfights are not popular in cities like Bogotá, Medellín, and Cali. For this reason, it did not pose a high cost for members of Congress to uphold the ban. However, cockfights, *corralejas*, and *coleo* are very popular in different regions. Had the bill proposing the ban included all these expressions, it would not have been approved. The Court then anticipates a possible democratic overturn by rendering a final judicial decision. This law also disproportionately affects certain social groups and cities which are not represented as a majority voting bloc in Congress. In Manizales, for example, the law mutilates part of its cultural identity, its economic income, and the civic ethos that made it the only bullring in Colombia that filled to capacity—almost half with young people and with members of all social strata. That senators from Bogotá, where bullfighting faces greater rejection, or from Pasto, Chocó, Valle, or the Llanos, where there is no such rootedness or tradition, should be the ones deciding makes one doubt the truly democratic character of the decision. On the other hand, in Manizales, councilor Hemayr Yepes, who made banning bullfighting his flagship issue, was soundly defeated in the last elections. For the majority of people in Manizales, either they liked bullfighting or they were simply indifferent, which shows that banning it was not a democratic priority for its citizens.[37]

---

prohibiting animal suffering and to promoting animal interests to the fullest extent possible, then it might have been compelled to consider more stringent implications of that principle. For instance, one could plausibly argue that, under such reasoning, even the keeping of pets in confined urban apartments would warrant scrutiny, given the uncertain compatibility of such conditions with the animals' welfare and freedom of movement.)

[34] Constitutionalism, *supra* note 16; JORGE ERNESTO ROA ROA, CONTROL DE CONSTITUCIONALIDAD DELIBERATIVO" EL CIUDADANO ANTE LA JUSTICIA CONSTITUCIONAL, LA ACCIÓN PÚBLICA DE INCONSTITUCIONALIDAD Y LA LEGITIMIDAD DEMOCRÁTICA DEL CONTROL JUDICIAL AL LEGISLADOR (1 ed. 2020).

[35] Roa Roa, *supra* note 34.

[36] Gabriele Badano & Alasia Nuti, *Politicizing Political Liberalism: On the Containment of Illiberal and Antidemocratic Views* 180 (2024); Jacob T. Levy, *Federalism, Liberalism, and the Separation of Loyalties*, 101 AM. POL. SCI. REV. 459 (2007). Recently, Badano and Nuti, in the literature of political liberalism, have claimed, with Levy, that "decisions taken locally, rather than centrally, are more likely to represent the will of the people."

[37] In 2006, Congress passed Law 1025 of 2006, declaring the Manizales Festivals and the Manizales Bullfighting Festival part of the Nation's cultural heritage. The fact that such law was passed, to recognize and protect Manizales' culture, demonstrates the importance of bullfighting to the city.

Faced with these democratic weaknesses, the Court could have solved this problem by following the French court's decision, which prohibited bullfighting as a general rule, with the exception of a handful of towns where it is a long-held tradition.[38] Deference to municipalities would have been more democratic, as if a majority in the town rejects bullfighting they can elect authorities who propose the ban, but considering the local interests and effects.[39]

VII. Political Moralism and Political Realism

The fact that the decision to prohibit bullfighting is affirmed by the Constitutional Court, and framed in a duty of animal protection, makes the law passed by Congress even more anti-democratic. Constitutional decisions cannot be changed by ordinary legislation. Such decisions petrify outcomes, turning into moral victories what are simply political victories and defeats. Bernard Williams famously called this "political moralism," as courts present political victories as moral deliberations.[40] In this case, the Court presents its ruling as a categorical imperative –a practical reason that does not accept a defeating reason-- when it is a simple political construction. In this case, the Constitutional Court brands as immoral or indecent those who enjoy bullfighting. Following Williams, if morality claims to defeat any other sorts of reasons, then those who enjoy bullfighting simply cannot try to "win" in the democratic game ever again[41].

To be clear, Congress had the legal power to ban bullfighting, it was clear in case law, and it is within the powers of Congress to determine what counts as a cultural expression.[42] However, it is problematic that the Court does not defer to Congress. Instead, the Court makes flimsy metaethical arguments and uses a biased proportionality test to claim that prohibition was necessary and not simply permissible. Perhaps the Constitutional Court wants to build a society of "moral saints."[43] That sounds plausible but is scary. With such moralism, and with such a weak theory for changing precedent, the Court potentially opens the door for an eventual conservative majority to overturn other morally controversial decisions, such as abortion, LGBTQ+ rights, or indigenous rights that involve animal and

---

[38] Conseil Constitutionnel Français, Decision no. 2012-271 QPC (Sept. 21, 2012), Association Comité radicalement anti-corrida Europe. [The association Committee Radically Against Bullfighting Europe] and another [Criminal immunity in relation to bullfighting] allowed bullfighting only in regions where it is a tradition, while upholding a general prohibition for the rest of the Country.

[39] Another problematic effect on deliberation comes from the fact that the ban will turn these practices into felonies. This was never discussed by Congress, nor considered by the Court. The practical effect of Law 2385 is to eliminate the exception to the crime of animal abuse for these cultural practices. It is a rather uncontroversial principle of liberal criminal law that there should not be a crime without a prior approval of a law duly discussed by the legislature.

[40] *See* BERNARD WILLIAMS, IN THE BEGINNING WAS THE DEED: REALISM AND MORALISM IN POLITICAL ARGUMENT 1–3 (Geoffrey Hawthorn ed., 3. Auflage ed. 2008).

[41] *Id.* at 13(Williams introduces this argument while discussing a difference between being defeated in politics, and being morally wrong.).

[42] Corte Constitucional de Colombia, Sentencia C-666/10 (Aug. 30, 2010) (Colom.); Corte Constitucional de Colombia, Sentencia C-889/12 (Oct. 30, 2012) (Colom.); Corte Constitucional de Colombia, Sentencia C-041/17 (Feb. 1, 2017) (Colom.).

[43] Susan Wolf, *Moral Saints*, 79 J. PHIL. 419 (1982). According to her definition, "[b]y moral saint I mean a person whose every action is as morally good as possible, a person, that is, who is as morally worthy as can be."

human suffering.[44] It is reasonable to conclude that was the reason for the unanimous decision. The academically weak moralism of the Court serves the political interests of progressives and conservatives alike.

More interestingly, the Court does not have an argument for where it is deriving its moral realism. Why should we embrace the comprehensive moral theory of a law clerk or a majority of the Court? Are we to assume that the objective moral standards of a society are those of a law clerk from Bogotá, from nine justices, to the point that they can exclude reasonable views of citizens in the regions of Colombia? Where do the dogma and beatitudes of the moral sanctity preached by the Court come from? A preferable society is one where ethics are constantly debated and questioned. The human prejudice, as our ethical identity as a species, is the only consensus in ethics,[45] but the details of how to expand it are open to our political and practical deliberations. As Susan Wolff, when attacking moralists, famously claimed, "I don't know whether there are any moral saints, but if there are, I am glad that neither I nor those about whom I care the most are among them."[46]

VIII. Conclusion

Defenders of animal rights won in Congress, and that deserves democratic deference. However, the Court, by framing its decision in moralistic arguments, "categorical imperatives," and an inexistent "universal consensus" curtails democratic deliberation, as it impedes defenders of bullfighting from reopening the debate in Congress, as well as impedes those who despise bullfighting from protesting, facing those who support bullfighting, and from trying to convince them to abandon this cultural tradition.[47] Moral philosophers discuss the importance of blaming in our interpersonal relationships.[48] 'Blaming' in the form of strongly protesting bullfighting was more salutary for a democratic society and a more stable—yet more difficult—way to achieve social change than a moralized and academically weak imposed decision by the Court.[49] Defenders of the decision may claim that this is an expression of transformative constitutionalism, but the truth is

---

[44] Contingent on Congressional statutory authorization - not an implausible scenario. It is important to highlight, that the precedent set in decision C-374, involving a less demanding theory for precedent change, and a flimsy moralistic reasoning, could be used to overturn these morally divisive decisions.

[45] *See* BERNARD WILLIAMS, PHILOSOPHY AS A HUMANISTIC DISCIPLINE 135 (2008).

[46] *See* Wolf, *supra* note 43, at 419.

[47] If the Court grounded its decision only on the legal competence that Congress had to ban a cultural expression it would have been less problematic. It would have equal to saying Congress has such legal power, and it was duly exercised and it led to a political victory. Those who enjoy bullfighting were losers this time, but just as Congress had the power to ban, it has the power to reinstate, and as such, those who favor bullfighting could play again in the political game. However, the message of this decision is moralistic: it is simply immoral under the constitution to defend bullfighting, and those who defend it are outcasted in a timeless fashion from the political debate.

[48] *See* Susan Wolf, *Blame, Italian Style*, REASONS AND RECOGNITION ESSAYS ON THE PHILOSOPHY OF T.M. SCANLON 332 (2011); DERK PEREBOOM, WRONGDOING & THE MORAL EMOTIONS (2021) (arguing a view against blaming in interpersonal relationships).

[49] MANUEL R. VARGAS, THE SOCIAL CONSTITUTION OF AGENCY AND RESPONSIBILITY (2018)(Vargas argues the importance of non-state actors shaping a good "moral ecology." He highlights how campaigns such as "Frown Power" to expressions of racism, to modern practices of "calling out" biased behavior, have re-shaped local practices, without the need of strong state interventions.).

that it does not transform anything. [50] Cockfights, *coleo*, and *corralejas* will continue to happen illegally in regions where the State does not have strong control. Animals will continue to suffer in mass farming and slaughterhouses. Like what Michael Dorf and Sherry Colb, both great legal theorists and vegan advocates, have claimed: in order to modify our ethical relationship with animals, we must change society, not only laws. [51]

[50] ARMIN VON BOGDANDY ET AL., *TRANSFORMATIVE CONSTITUTIONALISM IN LATIN AMERICA: THE EMERGENCE OF A NEW IUS COMMUNE* (Oxford University Press, 2017).

[51] *See* SHERRY F. COLB & MICHAEL C. DORF, *BEATING HEARTS: ABORTION AND ANIMAL RIGHTS* (2016).