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Original Article

Economic nationalism and the public dominion of mineral resources in Ecuador, 1929–1941

Andrea Carrión [a,b,*]

[a] Department of Geography and Environmental Studies, Carleton University, Ottawa, Ontario, Canada
[b] National Strategic Centre for the Right to Territory (CENEDET), Instituto de Altos Estudios Nacionales (IAEN), Quito, Ecuador

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ABSTRACT

This article explores the origins and restructuring of legal frameworks aimed at facilitating the public dominion of mineral resources in Ecuador. The Constitution of 1929 declared mineral grounds to be an inalienable and imprescriptible dominion of the state. This gave rise to a concession regime, restricted foreign investment and re-established royalties and regular works as essential conditions to uphold mining claims. However, recurrent negotiations between the Government of Ecuador and the South American Development Company, an American-owned mining enterprise, limited further regulations. The application of a then progressive legal concept was mediated by the interaction with major corporate powers and hemispheric policies. The case brings into question the effective dominion of the state apparatus over natural resources by shedding light on the contested nature and multi-scalar arrangements of mining regulations. The historical analysis is relevant to understanding contemporary political concerns at a time when the Constitution of 2008 recognizes nature as a subject of rights and, simultaneously, when the extractive industries are expanding their reach within the country.

1. Introduction

The public dominion of mineral resources is a salient principle of most constitutions and mining legislation in Latin America (Chaparro, 2002). However, the entanglement between mineral resources and the state entails an intrinsic problematic. The identification, appropriation and management of ecological processes for the provisioning of capitalist societies relates to a particular cultural identity and the politics of value, through which nature is transformed into resources, commodities and conditions of production (Bakker and Bridge, 2006; Castree and Braun, 2001; Smith, 2008; Demeritt, 2002). The state, as a capitalist institution, assists the operation of the mining sector by defining and defending private property and concessions, subsidizing the costs of resource exploration, and deploying legal, political and military means to control access to natural resources (Robbins, 2008; Whitehead et al., 2007). Yet, there are few studies that investigate the politics that underscored the emergence of the aforementioned constitutional principle. This paper aims to address this gap from a historical perspective by analyzing the origins and restructuring of legal frameworks governing the extraction of mineral resources in Ecuador.

Vergara Blanco (1992, 2006) argue that state ownership over mineral resources has an intimate connection within Spanish colonialism and civil law heritage. The exploitation of mineral concessions was guaranteed by the political and administrative organization of the Spanish Crown. This produced a "patrimonial" link between sovereign and underground resources; the mines were an asset and a royalty of the political apparatus. Vergara Blanco insists that republican legal texts not only continued such tradition but also emphasized their language to reaffirm the ownership of the state over the mines. I argue that mining regulations of the late nineteenth century have been overlooked from this analysis. This case is relevant to understanding contemporary political concerns and conflict at a time when extractive industries are expanding their reach in Latin America. Moreover, in Ecuador there is an inherent contradiction between entitlements to nature as a subject of rights, granted by the Constitution of 2008, and the appropriation of nature for productive processes.

* Present address: José Gómez E13-22 & Humboldt, Edificio Urbana, Dpto 102, Quito C.P. 170516, Ecuador. Mobile: +593 98 768 4590.
E-mail addresses: acarrionh@gmail.com, AndreaCarrion@cmail.carleton.ca

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The Ecuadorian Mining Code of 1886, a replica of the Chilean Mining Code of 1874, facilitated the expansion of private ownership and extractive imperialism in the mining sector.[1] Ecuador developed a *res nullius* regime whereby mines became private property administratively granted to the first discoverer and applicant. The system considered legitimate property which incorporated the application of productive work; mine holdings were given to individual legal subjects in perpetuity insofar as owners could demonstrate the active development of mineral deposits. Only in the event of abandonment of mining works were holdings returned to the state. Moreover, the state subsumed other ecological processes and land uses to mine productivity.

In 1892, reforms to the Mining Code included in Article 1, "the state owns all mines (...) notwithstanding the dominion of corporations or individuals on the surface of the earth in whose entrails they are located." For progressive liberal regimes of the epoch, the recognition of such a principle represented a triumph over colonial regulations. The republican state was recognized as the legitimate owner of all mineral deposits, but could grant concessions through a royalty-based system. Harvey (2014, pp. 55) notes that private ownership, a requirement for the expansion of capitalism, depends on the existence of state authorities and legal systems encoding, defining and enforcing contractual obligations of individual legal subjects. The abovementioned provisions played an important role in opening up spaces for the operation of export-oriented industries and the dispossession of local communities in name of economic progress during the late nineteenth century (Chacón, 2001; Ramón and Torres, 2004).

In Latin America nationalist mining regulations emerged in the early twentieth century.[2] Moran (1992) claims that economic nationalism in developing countries and the demand for renegotiation of mining contracts results from the reduction of risk and uncertainty after projects requiring large sunk capital prove successful. Furthermore, Otto and Cordes (2002) argue that the bargaining powers in the mining sector relate to the structural vulnerability of mineral investments insofar as they are capital-intensive, cannot be relocated, use relatively stable production technologies and have limited competitors. I problematize this approach by highlighting that nationalist legal reform and mining policies had an ideological background to restrict long-term rights of foreign-controlled mining companies with few obligations, little accountability to the government, limited technology transfer and scarce redistribution of wealth at the national level, although they served quite diverse political purposes throughout different periods and geographical contexts.[3]

In seeking to understand the restructuring of mining codes, I turn to some key elements of the regulation theory. This approach postulates a tight relation between the regimes of capitalist accumulation and the social modes of economic regulation (Jessop, 1996; Aglietta, 1976). The accumulation regime encompasses mutational adjustments to the regulatory framework in order to sustain a specific mode of production. Insofar the regulatory process involves intentional social practices it is also dynamic and prone to internal contradictions. Therefore, the crises of the political and institutional system can sustain or alter the accumulation regime. In this view, the mining regulations hold a privileged status: they are the tools by which the organizational and technological aspects of extractive capitalism are fixed and imposed in concrete time-spaces to sustain accumulation. However, they are also a stage in the dispute for the transformation of the political and ideological paradigm.

Although Ecuador retrieved and reasserted the public dominion of mineral resources, specifically in the Constitution of 1929 and the Mining Code of 1937, I argue that such a process was effectively mediated by recurrent negotiations with the South American Development Company, SADCO. SADCO was an American-owned mining company, a subsidiary of the Vanderbilt Group, which operated the Portovelo gold mines between 1896 and 1950. To unravel the argument I organized the work as follows. First, I describe the politics of the Ecuadorian Constitution of 1929 in which the then progressive public dominion of natural resources was actually mediated by corporate-based negotiations. Second, I explain the centralizing features of the Mining Law of 1937 and how the institutional framework interceded the application of the law. Third, I explore how the upsurge of leftist social movements and authoritarian governments came together to force contractual renegotiations and protect public over private interests. The account aims to illustrate the background of regional tensions, ideological discussions and influences against which nationalist mining regulations came into existence in Ecuador. The case is supported with primary sources, including legislative materials, government records, corporate documents and private correspondence. Overall, the paper problematizes the dominion of the state apparatus over natural resources by shedding light on the contested nature and multi-scalar arrangements of mining regulations.

2. The *public dominion* over mineral resources

> The state has the dominion over all minerals or substances which -in veins, strata or ore- constitute deposits whose nature is different from the soil. In the case of the preceding clause, the state's dominion is inalienable and imprescriptible and the usufruct may only be granted to individuals and civil or commercial societies under the terms ascertained in the respective laws, provided that they establish regular works for the exploitation of these elements.
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> Constitution of Ecuador of 1929, Article 151: section 14

In 1929, the National Assembly of Ecuador declared mineral grounds to be inalienable and the imprescriptible dominion of the state. Under such provision, the state had the patrimonial, absolute and exclusive ownership of mineral wealth. The norm gave rise to a concession regime, restricted foreign investment and re-established royalties and continuous mining works as basic conditions to uphold mining claims. Technically, foreigners were no longer allowed to own or acquire mining concessions, lands or water resources within 50 km of international borders. In addition, all contracts held between foreigners and the Government of Ecuador had to renounce diplomatic claims and could not stipulate subjection to a foreign jurisdiction.

[1] The *res nullius* regime introduced an entitlement system linked to common law and British imperialism. For a detailed explanation of different doctrinal systems pertaining to property regimes applicable for mine holdings (see: Ossa Bulnes, 1999; Vergara Blanco, 1992; Campbell, 1956).

[2] Legal reforms aimed at sovereign control over mineral resources are usually associated with the expanding mining capacity in the aftermath of World War II and the nationalistic policies of the Cold War period, from the 1950s to 1970s (Williams, 2005). Otto and Cordes (2002) for a historic analysis relevant to Latin America on the connections between resource-based economies and nationalist policies (see: Furtado, 1976; Cardoso and Faletto, 2002; Thorp, 1998).

[3] In Mexico, the 1917 Constitution reasserted the national dominion over natural resources and regulated foreign investment in the oil sector, obliging mining companies to acquire inputs locally, collecting tax revenues and facilitating the expansion of the state apparatus (Brown, 1993). In Chile, the early development of state capacity and taxation of the mining industry allowed investments in infrastructure and public services useful for industrialization and improved working conditions (Paredes, 2010). In 1937, after the Chaco War, the Government of Bolivia expropriated the facilities owned by Standard Oil Company and allowed its purchase by the Argentine company YPF as a means to secure the international frontier (Philip, 1982).