The Extractive Industries and Society 2 (2015) 104–111

Contents lists available at ScienceDirect

The Extractive Industries and Society

journal homepage: www.elsevier.com/locate/exis

Original Article

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

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ARTICLE INFO

Article history:
Received 8 September 2014
Received in revised form 11 November 2014
Available online 6 December 2014

Keywords:
Economic nationalism
Public dominion
Mining regulations
Mining royalties
Ecuador

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.

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http://dx.doi.org/10.1016/j.exis.2014.11.004
2214-790X/

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.
>
> 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).

The legislature requested that all contracts granted under the previous Mining Laws be revised and openly questioned the operation of foreign companies as they "get privileges to circumvent Ecuadorian laws and fail to meet their commitments."[4] The constitutional law promoted the active role of the state in regulating the economy and requiring industry, trade and commerce to follow a new set of labour regulations. The Assembly appointed a special committee to provide legal advice, with specific reference to the South American Development Company and the Anglo-Ecuadorian Oilfields Limited. Both enterprises were the largest foreign investments in the mining sector in Ecuador during the first half of the twentieth century (Albornoz, 2001).

Thereafter, the laws governing mineral resources were tailored to the interaction between the national government and the major corporate actors. The General Attorney declared prior agreements null on the basis of inaccurate administrative procedures.[5] SADCO's General Manager, Andrew M. Tweedy, described the move as an "abstruse legal technicality" and called the National Assembly "entirely irresponsible, semi Bolshevik and decidedly anti-American." [6] The company manager undertook legal consultations with renowned lawyers who had strong influences on the legislative and judicial branches of government. The lawyers noted that the American-owned company had not received any special privileges in comparison to other mining companies. On the contrary, the lawyers argued that the company had exceeded the financial obligations included in the original agreements and that the contractual renegotiation asked for by the Assembly was not applicable (SADCO, 1929).

SADCO's representatives argued vigorously that their actions were not only legal but also beneficial for the whole country. The American businessmen disseminated and financed publications in mainstream newspapers. The Portovelo campground was discursively and actively presented as the engine for local and regional development and welfare. Mining was seen as a key player in fostering progress by reducing poverty, creating employment and expanding social policies, which in turn contributed to assuage local demands. The foreign enclave was portrayed as a dynamic and modern industrial site influencing the economy of the southern provinces of El Oro and Loja. Such strategy is common with the extractive industries, which enact discursive moments in order to counter the perception of being detrimental to social and environmental development (Bridge and McManus, 2000; Kirsch, 2010).

In addition, the company appealed to local identities to find support, to feed discrepancies among regional elites and to resist national control over the mining industry. The American businessmen argued they "had thought of doing good" by accepting suggestions made by "distinguished personalities" of Zaruma and Loja, and had "proposed to the Executive to swap their former commitment for the betterment of the region" (SADCO, 1929, pp. 9). Since the Liberal Revolution, the railway had been a symbol of progress, but also a matter of intense disputes between Loja, Cuenca and El Oro. Moreover, the commitment to build a train from Puerto Bolívar to Zaruma cancelled any option for a direct route from the lowlands to Cuenca.

Agustín Cueva, deputy for Loja and President of the Senate in 1929, referred to the case as a "problem of national civilization" that had transformed into a problem of "regionalist ignorance." The regionalism between Cuenca and Loja was exacerbated by rumours spreading form Cuenca stating that the Yankees' gold was a source of corruption. Cueva continued,

> Let us say frankly, in some spirits of the sister province there are muffled or unconscious feelings of hegemony of Azuay over Loja and El Oro. And therein lies the root of the disagreements, the muddy source that clouds the lens and harmonious development of the three provinces. All imperialisms–even the small ones- are the rotten sore of social solidarity.
>
> Agustín Cueva in Jaramillo Alvarado, 1955, pp. 423

Ecuador continued to be regional state without a bounded elite able to uphold national regulations and the state apparatus had scarce capacities to enforce administrative decisions. The central government was unable to bring together the regional interests. The "small imperialisms" coexisting within Ecuador gave way to successive political debates, legal consultations and technical inspections. In the meantime, the national liberal hegemony was dissolving as cacao exports declined, the balance of payments recorded deficit and the landed elite lost power. President Isidro Ayora was overthrown in 1931 and five different heads of state took office during 1932.[7] Ecuador plunged into a political and economic crisis, giving rise to new forms of political patronage and negotiation between the regional authorities and the central government.[8]

In 1932, Manuel Romero Sánchez, socialist deputy and native of Zaruma, launched a new campaign against SADCO framing it as a defense of national interests against extortion by international companies. The Congress requested another report and issued a decree "disapproving" the 1923 contract.[9] Again, the Congress noted that the contractual obligations had no correlation with the benefits granted to SADCO. The decree urged the Executive to pursue a new contract on the basis of the following criteria: public participation in mining profits, customs exemptions exclusive to mining supplies, and enforcement of labour regulations. Furthermore, in the event that the company decided to suspend works, the state could take over of the mines. The regional representative of the Socialist Party presented the case as confrontation between imperialist domination and national control of natural resources.

The threat of nationalizing the mines involved inputs at multiple scales, ranging from the local claims for greater revenues to hemispheric policies towards Latin American countries (Epps, 2009). The U.S. representatives recognized that direct participation in negotiations between private companies and the Government of Ecuadorian were resorted to extreme cases. In addition, the announcement of a Good Neighbour Policy, later adopted in 1933, preceded the commitment to non-intervention and non-interference from the United States in the domestic affairs. As a result, the U.S. diplomats in Ecuador had limited options to offer overt support to SADCO. Instead they suggested that the company seek political allies within the government. The contractual renegotiation continued as a *tour-de-force*.

The contract was a disputed legal concept: the Americans considered it as a binding obligation, while within the Ecuadorian state opinions collided. President Martínez Mera (1932–1933) highlighted that a contract implied the concurrence of two wills;

[4] Cámara de Diputados, Sesión extraordinaria, Acta N° 37, September 23rd, 1923, Archivo-Biblioteca de la Asamblea Nacional del Ecuador.

[5] In 1923 SADCO signed a contract that required the company to deliver materials to construct 130 km of railway connecting the seaport to the mining district. Administratively, such a contract should have been approved by the Legislature, not by the Executive, since any decision modifying tax collection or affecting public finances was the exclusive responsibility of the Congress. See: From M.C. de Vaca to Remigio Crespo Toral, Informe del Procurador General de la Nación, July 16th, 1929 in Utreras et al. (1933), pp. 58–59; Legislative Decree, June 26th, 1929 in Registro Oficial No. 77, July 17th, 1929.

[6] From A.M. Tweedy to Florence Tweedy, February 29th, 1929 and March 7th, 1929, Elizabeth Tweedy Sykes Archive.

[7] The Congress discredited the elected president of Ecuador, Mr. Bonifaz Neptalí, which gave way to a brief but violent protests, known as the "Guerra de los Cuatro Días" between August 28th and September 2nd, 1932.

[8] See: (Cueva, 1981; Quintero and Silva, 1991; Maiguashca, 1991).

[9] Resolución, November 12th, 1932; Decreto Legislativo December 1st, 1932 in Utreras et al. (1933), pp. 62–64.

the company could refuse renegotiating the contract in which case there would be a legal and physical inability to enter a new transaction. The Legislature, composed of socialists, conservatives and emergent populist leaders, required the revision of all previous agreements considered detrimental to national interests. In the midst of the cacao crisis and the monetary devaluation, the deputies lamented "nothing is more heartbreaking than retaining enormous wealth underground, and having to fill our budgets with forced loans from (private) banks" (Utreras et al., 1933, pp. 8). By the end of 1933, the Congress authorized a new contractual agreement. SADCO would have to pay 6% in mining royalties, sales taxes and income taxes, but retained duty free privileges as granted in previous contracts. Discursively, the public dominion over natural resources was linked to gold royalties but actual gold bullion never filled the national treasury.

The emergence of what could be deemed a progressive legal concept does not guarantee, in itself, the transformation of the political practice. The extent to which the public dominion of mineral resources, as established in the Constitution of 1929 could be applied was always partial, dependent on the contractual negotiations, the administrative interpretation and the politics underscoring resource accumulation. Moreover, throughout the 1930s the Ecuadorian state was riven by varying levels of dissension between presidents, congress, senate and military, and undermined by regional tensions. The specific institutional arrangements to enforce nationalist resource regulation at a national and local levels not yet been implemented.

3. The centralizing features of the Mining Law of 1937

President Federico Páez (1935–1937) was pro-foreign investment, a racist colonialist and an important ally for the American mining enterprise. He expressed that Ecuador needed the "immigration of foreign capital and white men" and added that, "looking to improve the lot of the Ecuadorian worker, I protected everything in my reach for the sake of what were called the 'Large Foreign Companies'."[10] The Páez administration helped suppress mine-workers protests, allocated mineral concessions and provided legal guarantees for the exploitation of natural resources. The Mining Law of 1937 restricted the constitutional concept of the inalienable and imprescriptible dominion of the state over mineral resources by linking such a notion to a concession regime. The national government could then grant mineral grounds for a 30 year period upon payment of an annual royalty. The politics of value reasserted the role of underground resources as a source of income for the national budget. The law favoured institutionalization, centralization and the modernization of decision-making procedures in the mining sector.

At the institutional level, this was done through the *Dirección General de Minería y Petróleos*. The office, created in 1933 and situated within the Ministry of Public Works, became the only authority upon which individuals or societies could apply for mining and oil claims. This institution managed all of the technical, administrative and financial aspects of the sector. The decision to grant mining concessions became exclusive to the central government, a change from, the past, when the provincial mine-judges were able to oversee the sector and collect mining patents. Local consultations pertaining to mining grants were minimal. The law required that the applicants and the national mining authority announced the discovery through the official newspapers, allowing thirty days for allegations and thereafter registered the new concession. Eventually, political lieutenants based in mining regions had to post public notices in the nearby towns. No traces of the implementation of these legal requirements have been found within the archives. Effective public consultations with local communities were not a common practice.

Cartography was a key element of modernized mine-claiming procedures that helped make legible the interests of the state. Under the new law, the prospective mine entrepreneur was required to submit a technical report prior to exploration, concession and exploitation of mineral grounds. The procedure involved preparing topographical maps with a clear delimitation of the concession area, based on the cartography produced by the Geographic Military Service or the Map of Ecuador sketched by Theodor Wolf in 1892. The geological surveys and topographical maps had to be signed by mining engineers. These requirements limited the application processes to foreigners with technical expertise and capital, considering that Ecuador had few geologists or civil engineers capable of undertaking expensive explorations.

The 1937 Mining Law structured a concession system based on mining royalties applicable to all mine-holders irrespective of nationality. The base royalty was 6% of the gross value of the mine product. Royalties could increase by mutual agreement between the parties or decrease due to a just allegation by the concessionaire, upon acceptance of the Executive power.[11] A concession could only be granted upon proof of payment of all guarantees, patents and royalties to the National Treasury in Quito. Such change implied a centralization of tax collection towards the national capital. Together, all of these new measures weakened the ability of municipal and provincial authorities to oversee the mining industry.

Mining enterprises could still allocate tax-deductible funds towards the construction of regional infrastructure. The roads and railroads were functional to the mining industry but also helped mitigate local demands. However, the concessionaire had to issue a mortgage towards the national government as a guarantee for all these obligations.[12] The mortgage had to include all property, machinery and equipment within the mining campground and would become effective in case of expiration or abandonment of mining works. This particular topic would prove to be crucial at the end of SADCO's activities in Ecuador in the late 1940s.

The mandatory annual technical reports and financial statements which provided the details of mining operations, costs and profits was a major move towards centralizing administrative procedures. To appease national interests, the mining authority had to supervise the efficiency of mineral exploitation and bookkeeping. The rules required that the information be submitted in Spanish; previously foreign companies had all of their surveys and accounting done in English. The state was entitled to any domestic or international legal means for the supervision and verification of data, a procedure that was included despite constitutional restrictions to sue in foreign jurisdictions.

The new mining law reinforced the national institutional apparatus but that process created new networks of power stretching from the capital to the mining district. The linkages required to undertake mining were no longer restricted to the upper classes. The law created networks and mediators willing to support the mining industry: a set of bureaucrats able to produce and approve maps, reports and accounts. In practice, corruption and clienteles mediated the application of the norm, not only in the mining sector but also throughout the institutional apparatus. By 1937, the government of Federico Páez was repudiated due to extravagant expenditures, bureaucratic patronage and pursuit of leftist groups. In addition, the awareness of structural inequalities perpetuating dependency began to gain momentum throughout Latin America. In different ways, information speaking about the bonanza of Zaruma and Portovelo spread around Ecuador-despite

[10] Páez, Federico, "Explico", Editorial El Comercio, Quito, 1939, pp. 31.

[11] Mining Law of 1937, article 61.

[12] Mining Law of 1937, articles 63 and 66.

the economic crisis in the rest of the country. In December of that year, the military officials removed President Páez and placed General Alberto Enríquez as head of state. Thereafter, the new administration initiated a lingering confrontation with the South American Development Company and other foreign-owned companies under the motto national sovereignty.

4. Economic nationalism and the collection of mining royalties

> Ecuadorians who aspire for our country to become a free nation, master of its own economy, need to envision each of the subtle or rude ways in which imperialism is gradually subjugating us. The most visible form of imperial domination is embodied in the exploitation of our subsoil by powerful foreign companies. Paredes, 1970, pp. 8

In 1938, the General Secretary of the Communist Party, a medical doctor who had lived in the Portovelo mining campground, Ricardo Paredes, published a book entitled *Imperialism in Ecuador. Gold and Blood in Portovelo*. Paredes was part of a generation of Marxist intellectuals, anarchists, utopian socialists and critics of liberalism in Ecuador.[13] The emergent movement advocated a critical reflection on the social problems of the country, condemned foreign exploitation of natural resources and the looting of national wealth. He called for the nationalization of the means of production and the enforcement of labour laws. The Socialist Party, the Communist Party and Vanguardia Revolucionaria invited popular forces to join the government against imperial enterprises operating in the mining sector, oil sector and banana plantations. The foreign companies exploiting natural resources embodied imperial domination. The regulations targeting the American-owned foreign companies went beyond "rentist" attempts to benefit from the reduction of risk and the structural vulnerability of mineral investments, as described by Moran (1992) and Otto and Cordes (2002). The ideological debates permeated the administrative bureaucracy as to transform the regime of accumulation by modifying the modes of regulation. Temporarily, the military regimes and the socialists aligned towards strengthening state institutions and addressing the "social question" on an anti-corporate and anti-imperialist view (North, 2006; Paredes, 1970).

In December 1937, General Enríquez launched a campaign to limit the excessive profits of the American-owned mining company and regulate industrial relations. The President sought means whereby "the mineral wealth of the Ecuadorian people worthily benefits the Ecuadorian state, contributing to the readjustment of its own economy".[14] The Enríquez administration considered that existing royalties were insignificant and proposed a 100% increase in mining royalties. Mining companies had been granted fiscal and municipal tax exemptions upon payment of only 6% royalties. Thereafter, SADCO would have to pay 12% royalties, income tax, sales tax, import duties and a fine for the violation of monetary laws. The government requested advance payment of 2% royalties for the next 15 years. Such provision amounted for 800,000 USD, a figure based on mineral production levels of 1937. Additionally, the company would have to pay 50 sucres per kilogram (equivalent to 4.3 USD per kilogram) for the exportation of gold-bearing ores and custom duties for the importation of equipment, machinery or tools. The government framed the language as a matter of equity and justice and provided five days for SADCO to answer their memorandum and reach a settlement.

Russell P. Luke, SADCO's Resident Manager, highlighted, "the popular fantasy believes that (the company) does nothing other than taking gold out of the country".[15] Luke noted that the gross value of the mine product reached a total of 2 million USD for 1937, of which mining royalties represented almost 120,000 USD. The manager added that operating expenses, taxes and equipment purchases reached almost 75% of the gross product, leaving the company with minimal profits. Subsequently, Andrew Mellick Tweedy, SADCOs General Manager, requested assistance from the Department of State in Washington and the U.S. diplomatic representatives to Ecuador. Up until that date, U.S. diplomatic officials had not been directly involved in private negotiations. The constitutional provisions and the hemispheric policies banned diplomatic interference in domestic affairs. Epps (2009) argues that disregard for the contractual agreements and the anti-imperialist discourses provided reasons for disquiet within the U.S. Division of the American Republics at a time when both Bolivia and Mexico had nationalized the oil industry.

The polite language of official communications underscored tensions regarding a divergent understanding of legal concepts and political processes. Tweedy reflected on the seriousness of previous agreements, explaining that "it would be difficult to find a contract with the concurrence of a greater number of senior authorities and public officials, who knew the contract in all its details, and who should be considered (acted with) patriotism, ability and honesty necessary for the defense of national interests".[16] The perceptions of the legal obligations and the ability to renegotiate contracts entailed two substantially different and incompatible approaches.

The company substantiated the response appealing to the world order imposed by Western democracies and capitalism. For the American entrepreneurs, a contract was considered a fundamental legal act that facilitates the development of industrial works, investments and commercial transactions. The contracts were deemed biding law for the signing parties that cannot be dismissed unilaterally. Without this legal relationship, "business would come to a halt, trade and credit would decline greatly and cooperative effort, which is the foundation of any society, would suffer great impairment".[17] Mining was considered a risky business requiring minimal guarantees for investment, which included the stability and protection provided by concession contracts. On the contrary, SADCO's general manager thought, "attacking foreign companies is always popular with the *pueblo* and it looks as if his campaign is largely motivated by a desire to gain political support".[18]

The appeal to economic nationalism allowed for the targeting of the concession contract insofar as the state was seen as a legitimate actor capable of protecting public over private interests. Ecuador was facing internal problems related to trade deficit, indebtedness and skirmishes on the southern frontier with Peru. The military viewed gold exports as a "weapon against national economy." The gold-bearing grounds were exhausted, providing few economic benefits. As General Enríquez explained, "[the] export of precious metals, specially gold, cannot be free since gratuity could impair the country, disturbing its trade balance".[19]

[13] Ricardo Paredes organized the Socialist Party of Ecuador, founded in 1926, and the Communist Party of Ecuador, founded in 1931. (See: Guerra and Rodas, 2011; Ycaza, 2007; Becker, 2008).

[14] From Gral. A. Enríquez, Supreme Chief of Ecuador, to SADCO January 5th, 1938 in: Ministerio de Gobierno 1938, pp. 5.

[15] From R.P. Luke to Gral. Enríquez, December 16th, 1937 in: SADCO, 1938, pp.13.

[16] From A.M. Tweedy to Gral. Enríquez, January 21st, 1938 in: SADCO, 1938, pp. 12.

[17] Ibid.

[18] From A.M.Tweedy to Florence Tweedy, January 20th, 1938, Elizabeth Tweedy Sykes Archive.

[19] From G.A. Enríquez, Contestación del Gobierno del Ecuador a las alegaciones presentadas por la South American Development Company, January 28th, 1938 in: Ministerio de Gobierno, 1938, pp. 26.

In such a context, the invariability of the contractual agreement was considered to be an unacceptable and crumbly compromise at a time of socio-political transformation. For the Enríquez administration, "the history of all contracts denote the Company's intention to outwit its commitments and, alongside, the rights of the state".[20] In his reply, General Enríquez emphasized the "futility of pretexts", the "artificial stipulations" used to the extend deadlines and the "surreptitious efforts" developed by the Company in favour of its own interests. SADCO had abandoned its long-term commitments but remained in possession of mining claims. The Executive reasserted that the invested monies could never be regarded as a fair compensation to the country in exchange for the concessions. In parallel, the government sent two army battalions to Portovelo; the state would immediately proceed to nationalize all properties in the event that the company decided to suspend industrial activities.

Representatives from Washington D.C. were still reluctant to intervene but SADCO was one of the largest American investments at a time of expansion of the All American Cables, the United Fruit Company and the Anglo Ecuadorian Oilfields Limited in the country. American diplomats considered the whole process to be a discursive tactic used by the Government of Ecuador to deviate attention away from the internal weakness and finance military purchases. With utmost caution, Sumner Welles, U.S. Undersecretary of State, drafted a letter to the Embassy of Ecuador in Washington D.C. and expressed his desires for the parties to reconsider the contract in a friendly manner (Epps, 2009, pp. 54). All procedures were framed as an attempt to prevent harmful situations and build hemispheric solidarity within the framework of Roosevelt's Good Neighbour Policy.

The company worked to extenuate all political and diplomatic resources prior to responding. A.M. Tweedy cabled a message expressing "the serious desire to contribute to the economic life of Ecuador as much as possible and cooperate to achieve an equitable arrangement".[21] The proposal was to increase mining royalties by 3%; allow customs exemptions for 20 basic mining supplies; permit income and sales taxes to be paid according to the same terms as previous years; and guarantee 10 years of operation without contractual revision. General Enríquez rejected the proposal emphatically, stating "I do not wish the South American Development Co. contributing as a favour with economic aid to Ecuador; the Government duly requires what belongs to its legitimate rights, without having ever asked anyone a favour to arrange its economic situation".[22]

The American mining company demanded that an arbitration tribunal or the Supreme Court review the matter.[23] There were legal gaps restricting contractual renegotiations. Immediately, the Government of Ecuador issued a concessions law.[24] The new bill stated that contracts awarded to national or foreign companies to exploit underground resources were given as concessions, to be guided by the principles of public law – specifically the 1887 Mining Law and subsequent reforms. These legal frameworks recognized the state as the owner of the mines, although the wording was slightly different in the 1929 Constitution and the 1937 Mining Law. The bill required the state to enforce concessions under the principles of equity and common interest.

Thereafter, the military issued a dictatorial decree doubling annual royalties up to 12%, to be effectively paid every trimester beginning April 1st, 1938.[25] The army backed the nationalist approach to resource governance. The battalions were stationed in Portovelo, ready to pressure mining entrepreneurs if necessary, to fulfil these requirements. SADCO officials expressed concern over the forceful, peremptory and unilateral violation of the contract, but agreed to continue mining in Ecuador under the new regulations.[26]

The military government was able to reassert and enforce national sovereignty. The patrimonial link over natural resources was apparently achieved, despite private and foreign interests over mineral grounds. Romulo Betancourt, leftist leader and future president of Venezuela, highlighted the "stubborn determination of the (Enríquez) Government to demonstrate the companies' shareholders... that Ecuador is an autonomous, sovereign nation, in possession of its own destiny".[27] At the time, the left turn within Latin American countries such as Mexico, Bolivia and Ecuador had proved successful in nationalizing or regulating the extractive sector.

However, a few weeks later General Enríquez issued new norms with a more conciliatory language favourable to foreign investment. The President noted that the spirit of the Concessions Law was "defining reciprocal obligations, guaranteeing public trust and providing all types of guarantees to investors interested in business with the Government of Ecuador, harmonizing the permanent interests of the state with those of the private in a more equitable way".[28] Thereafter, the state continued regulating other extractive industries but without the hardship applied to SADCO.[29] Royalties had to ensure a fair return proportional to earnings, up to 12% of the gross product in relation to net profits. Moreover, other properties under control of junior companies subsidiaries to SADCO, such as the Cotopaxi Exploration Company and the Calera Exploration Company, continued paying just a 6% royalty.

The corporate mining business used media pressure, administrative strategies and political pressures to extend negotiations and profit from ongoing operations. SADCO distributed printed materials arguing the negative implications of the dictatorial decree and tax payments were made with complaints. On July 4th of that year, six aircrafts landed at the Portovelo airstrip to celebrate the independence of the United States in the American campground (Murillo, 2000). The move was embraced by the workforce but viewed apprehensively by the government, as it occurred amid border disputes between Ecuador and Peru. One month later, on August 5th, General Enríquez indicated that prior measures had no intention "to extort or trample" SADCO's rights and endorsed his verbal offer to reduce annual royalties to a cap of 40% of profits.[30] That same day, the government granted a 211 mine-holdings concession contract in an area called *Minas Nuevas*. The Minas Nuevas contract committed the government to "keeping the concessionaire in a tranquil and peaceful possession of national lands and mineral deposits comprised within the concession, and defending the awardee against any third party

[20] Ibid.
[21] From A.M. Tweedy, Cablegrama de New York al Señor Jefe Supremo de la República February 5th, 1938, in: SADCO, 1938, pp. 35.
[22] From General Enríquez, Contestación del Jefe Supremo del Ecuador al Cablegrama dirigido por A.M. Tweedy, February 5th, 1938 in: SADCO, 1938, pp. 35.
[23] From O.P. Ebeling, to Jefe Supremo República del Ecuador, February 14th, 1938 in: SADCO, 1938, pp. 36–37.
[24] Decreto Supremo No. 45, February 16th, 1938 in: SADCO, 1938, pp. 37–38.
[25] Decreto Supremo No.14, March 11th, 1938 in: Registro Oficial No. 118–119, March 18th–19th, 1938, pp. 2941–2942.
[26] SADCO, 1938, pp. xx.
[27] Betancourt, Rómulo, El Gobierno del Ecuador y el capital extranjero, *Diario Ahora*, May 2nd, 1938-05-02, in: http://sabre.ucab.edu.ve/handle/123456789/45084.
[28] Decreto Supremo No. 9, March 2nd, 1938 in: SADCO, 1938, pp. 40.
[29] For example, the Anglo Ecuadorian Oilfields Limited, operating the Santa Elena Peninsula, had to increase royalties from 6 to 10% on the production of crude oil, 8% on gasoline and twice the surface rights of 1937. Decreto Supremo No. 10, March 9th, 1938 in: Registro Oficial No. 118–119, March 18th–19th, 1938, pp. 2940–2941.
[30] From Gral. Enríquez to R.P. Luke, August 5th, 1938 in: SADCO, 1938, pp. 42–43. Gral Enríquez issued a new decree ratifying this agreement on August 9th, but the decree was never officially published and did not become an effective norm (SADCO, 1948, pp. 6–7). Enríquez trespassed powers to a new administration on August 10th, 1938.

reclamation intending surface rights on the same lands".[31] Seemingly, the rapid changes of mind by General Enríquez relate to the advancement of Peruvian troops on the southern border, which required alliance with American diplomacy and investors to address a potential attack.

The anti-capitalist discourses shifted with the rise of fascism and the imminence of a war. In the last pages of his book, Paredes (1970, pp. 211) states:

> . . . our tactics against imperialism needs to change. Our struggle should be directed towards requiring the great imperialistic countries which maintain democratic forms, to intervene with their fellow capitalists operating in our republics, to cease their abuse and extortion, and not intend interfering in our internal politics. . .. We must demonstrate in a practical way that we are not opposed to foreign investment, but not under conditions of slavery. We need the capital and the advanced techniques of the major industrial countries to develop our own economy.

Ecuador was at a crossroads: unable to solve domestic inequalities, in the midst of an international war and without clear perspectives for economic recovery. In July 1941, the armed incursion of Peruvian forces into the Ecuadorian territory deviated attention towards national sovereignty. Ecuador was unprepared to meet the Peruvian forces and the troops attacked the southern provinces. The company found means to benefit from the conflict. SADCO provided shelter and health services to displaced people and the Ecuadorian troops coming from the lowlands. Shortly after the ceasefire, President Arroyo del Río, a former lawyer of SADCO, repealed the dictatorial decree of 1938 and reinstated the benefits established in the 1934 contract, mandating that SADCO continue paying a 12% royalty until a new transactional contract could be settled.[32] The national government sought international support to uphold its territorial sovereignty by providing economic preferences and securing the concessions of the American investors in Ecuador. Later, in 1942, the president yielded the military bases to the United States in the peninsula of Santa Elena and the Galapagos Islands, as a defense strategy during World War II. In such context, the public dominion over natural resources comes into question, as contingent to capitalist interests and hemispheric domination.

5. Conclusion

The public dominion of mineral resources emerged as a radical legal concept to reclaim state capacities at a time of expansion of extractive imperialism. However, the nationalist regulations within the mining sector in Ecuador were place-specific, constructed *vis-à-vis* the interaction between the state, the foreign investors and concrete socio-spatial struggles. At the same time, the institutional system, the administrative practices and the historical junctures restricted the application of progressive principles while enabling the continuity of contracts.

The emergence and selective application of legal concepts represents a particular mode of regulation. Both the state and the corporations used the norms for their own purposes, their views shaped by their ideological backgrounds. The foreign investors reasserted property rights and the contract as a key to sustaining progress and development. On the other hand, the nationalist governments embraced the constitutional notion of the public dominion of natural resources to uphold governance and national finances in the name of the common good. This approach challenges "weak governance" as an internal quality of extractive industries, and explores such dynamic process whereby regulations are transformed to accommodate particular social and economic powers.

The regulatory process has affected projects up to the present day, as the country adopts progressive legal concepts, driven by leftist governments, but is confronted with the logic of capitalist expansion. Ecuador was the first country to embrace the "rights of nature" within the Constitution of 2008 (Tanasescu, 2013; Walsh, 2009; Becker, 2011; Acosta and Martínez, 2009). This concept builds upon post-developmental discourses grounded in social movements and indigenous values, beliefs and knowledge. However, the very same Constitution includes a provision in Article 1, stating: "Non-renewable natural resources of the state's territory belong to its inalienable and absolute assets, which are not subject to a statute of limitations." The public dominion of natural resources implies domination and management of biophysical process in the name of an administrative common good, still shaped by the needs and discourses of a developmental paradigm and extractive capitalism.

Acknowledgments

This article is part of my doctoral research, funded by the *Secretaría Nacional de Educación Superior, Ciencia, Tecnología e Innovación* (SENESCYT). An earlier version was prepared for presentation at the 2014 LASA Congress and supported by the Carleton University Graduate Student Travel and Research Bursary. Many thanks for the comments made by the conference participants, the anonymous referees and the supportive editorship of Gavin Hilson, all of which has improved the manuscript significantly.

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