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Journal of Law and Political Economy

Title
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Permalink
https://escholarship.org/uc/item/0wt340tg

Journal
Journal of Law and Political Economy, 6(2)

Author
Sierra-Camargo, Ximena

Publication Date
2026-10-30

DOI
10.5070/LP6.70020

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Ximena Sierra-Camargo, York University*

Challenging the Constitutional State in a Context of Transnational Mining Economies and of Global Coloniality

Abstract: Focusing on the case of the municipality of Marmato, Caldas, within the Colombian mining regime, this article argues that a global economy based on intensive resource-accumulation activities reshapes the state apparatus in normative and institutional terms. This article discusses how the Colombian mining regime has been articulated within a transnational lawmaking process and is legitimized by a classic development discourse that reproduces the continuity of particular (neo)colonial forms of exploitation. It shows how certain forms of capital accumulation and exploitation in (neo)colonial contexts, like those developed in large-scale gold-mining projects, persist under constitutional democracies due to the reprimarization of the economic processes. The extractive dynamics of the twenty-first century not only demonstrate that the constitutional state is permanently re-inscribed in a (neo)colonial rationality, but also show how the (post)colonial period is reconfigured through a sort of constitutionalization of the (post)colony.

Keywords: coloniality, extractivism, constitutional state, mining, transnational law

I. Introduction

In Colombia, as in other Latin American countries, a significant mining boom has occurred since the 1990s, expanding the so-called "extractive industries," including large-scale gold-mining activities. This boom triggered a legal and institutional reform process promoted within the Colombian Constitution's framework, based on the guidelines and prescriptions of transnational actors whose aim was to standardize the mining legislation throughout the Latin American continent (Sierra-Camargo 2024). The constitutional shift had a strong relationship with the configuration of a (neo)extractivist regime, which created favorable conditions for foreign investors in the mining sector by reviving legal tools often used in colonial and (post)colonial scenarios, such as the concession contract. This regime has fostered forms of "accumulation by dispossession" (Harvey 2004; 2003) that generate new forms of exclusion in a (post)colonial context.

By focusing on the case of the municipality of Marmato in Colombia, this article explains how a (neo)extractivist mining regime in Colombia was enacted at the local level but simultaneously with reference to a global governance system. By doing so, the article will explain how the ongoing "global

* Ximena Sierra-Camargo is a Sessional Lecturer in Mining Law at Osgoode Hall Law School, York University, Canada. Please direct correspondence to jimenasierra@gmail.com.

coloniality" (Grosfoguel 2008) of the gold-mining regime operates nowadays. This concept of "global coloniality" makes it possible to understand how the colonial rationality installed on the American continent at the end of the fifteenth century, with the establishment of colonial administrations, is closely linked with the emergence and development of European industrial capitalism. Moreover, this concept suggests that colonial logic persists today and is expressed in material and cultural terms.

The concept of "global coloniality" helps explain how some colonial hierarchies were maintained by foreign investors who settled in the republican period, and were later updated under the mining regime that has been in place since the 1990s, which protects mainly new foreign investors such as Canadian mining corporations. Moreover, this article concentrates on the current legal and institutional framework governing gold mining in Colombia and analyzes how this apparatus has been inserted within a global governance order led by an "extractivist paradigm" and justified on the premise that the intensification of resource accumulation and extraction brings development.

Furthermore, this article questions the Colombian state's role in configuring the most recent mining regime. More specifically, it interrogates how—via legal and institutional channels—the state is connected to a global economic regime that frames a transnational lawmaking process (Zumbansen 2006) in which mining is tied to classic development discourse. Such a regime has been established in Colombia, causing the intensification of large-scale extraction activities and refashioning certain hierarchies and patterns similar to those that took place during the early phases of colonialism.

This article also contributes to the literature by analyzing the relationship between a global economy based on resource extraction, constitutional states, and our colonial past. Understanding this relationship is important because, as economic historian Ospina Vásquez argues, "our life has been built based on the colonial, the colony that is prolonged and against which we fight" (1978). This is why it is essential to try to understand the continuing influence of the colony on our "independent," "republican," "democratic," and "constitutional" life.

Likewise, it is essential to highlight the conflicts caused by these mining projects that recall the stories about looting, occupations, exploitations, and dispossession in colonial times in the search for "El Dorado." However, given that colonial administrations were "formally" eliminated in Latin America more than two centuries ago, it is necessary to delve deeper into the connections between the resource-extraction activities promoted in the twenty-first century in Colombia and the histories of looting and exploitation of resources in colonial times (Sierra-Camargo 2018).

The remainder of this article will be divided into four parts. In Part II I will present some remarks on the concept of "global coloniality" to explain the continuities of colonial hierarchies in liberal democracies like Colombia, which are strongly connected to extractive economies; in Part III I will explain how the transnational lawmaking process led by actors reshaped the role of states in mining; in Part IV I will explain how the new guidelines enacted by transnational actors were vital to create a new mining regime in Colombia; and in Part V, focusing on the case of Marmato, I will explain deeply how some colonial hierarchies have remained in mining and how these have been updated according to the new laws and political forms.

II. Coloniality in the Mining Regime in Colombia

The current mining regime in Colombia can be better understood from a postcolonial perspective—particularly through the notion of "coloniality," which highlights the continuity of colonial legacies and hierarchies to this day. This concept of "coloniality" starts from the premise that "modernity" is neither a superior stage nor after coloniality; instead, modernity and coloniality are needed and permanently constituted (Grosfoguel 2008). It means that modernity and coloniality are co-constitutive, and therefore coloniality persists in modernity. Postcolonial Latin American studies, also known as "decolonial thinking," and in particular the modernity/coloniality (M/C) program, explains that "contemporary global capitalism resignifies in a postmodern format the exclusions caused by epistemic hierarchies, spiritual, racial/ethnic and gender/sexuality, deployed by modernity" (Grosfoguel 2012, 14).

According to Miguel Mellino, in Latin American contexts, terms such as (neo)colonialism or imperialism have (always) enjoyed a dramatic relevance (Mellino 2008). Mellino explains that these terms are not simple textual or discursive strategies or fashionable theories. Instead, they account, on the one hand, for centuries of the limited sovereignty of the so-called "Third World" countries, their subordination, and (in)subordination to the powers of the day, and on the other hand, for "violence suffered in the name of free trade, of 'civilized' order and progress, of exterminations of natives, ethnic massacres, large estates, looting of natural resources and raw materials, foreign debts, etc." (ibid., 14). Throughout this article, the lens I use to analyze the contemporary Colombian mining regime is mainly Latin American postcolonial theories and decolonial criticism.[1] This perspective implies an understanding that modernity and coloniality are two sides of the same coin, that they constitute each other, and that modernity cannot exist without coloniality (Grosfoguel 2006).

Despite the formal eradication of some institutions of colonialism, their practices and imaginaries have been able to remain through time and space. This has produced a transition from modern colonialism to "global coloniality," where the coloniality of power extends beyond the nation-state to a global scale. Through this process, the forms of domination deployed in modernity have been "transformed, but not the structure of center-periphery relations on a global scale" (Castro-Gómez and Grosfoguel 2007, 14-19).

The dynamics inherent to the current Colombian economic model are closely tied to (neo)colonial logics (Grosfoguel 2006). In the context of "global coloniality," state borders are transcended, and transnational global capital institutions play a fundamental role in maintaining countries in the Global South in a peripheral and semiperipheral position within a global order (Mellino 2008).

The (post)colonial perspective explained above links colonial rationality with the emergence of European industrial capitalism (Harvey 2014); it starts from the "world-system" category but puts it into a dialogue with the notion of "coloniality of power." Thus, it provides an analytical framework to explain the historical continuities of the colonial past that persist. It shows how the colonial past

[1] Latin American postcolonial studies or decolonial criticism emerged in the 1990s to build a new way of producing knowledge and understanding the origin and continuity of modernity and the global order that arose from the conquest of America. In the field of Latin American postcolonial studies, authors from different disciplines converge in dialogue with authors from various currents of thought that emerged both in Latin America and in the United States, such as theology and philosophy of liberation, the theory of dependency, cultural studies, and Anglo-Saxon postcolonial theories, among others. Likewise, criticism or decolonial thought also takes up authors such as Frantz Fanon and Aimé Césaire, among others.

remains present, through processes of resource accumulation and appropriation, the continuation and updating of mechanisms of domination, and the maintenance of a world division based on ethnic-racial hierarchies, and expanded through an economic model that operates as a network of various power regimes (Quijano and Wallerstein 1992).

The problem described in this article is framed in the context of "global coloniality," which has a strong relationship with the phenomenon of reprimarization of the economy and the intensive production of commodities or raw materials that have little value added through processing for export. These goods, produced primarily for the benefit of speculation in financial markets, can generate serious problems such as the so-called "Dutch disease" or processes of "accumulation by dispossession" (Harvey 2004).

The mining projects and activities endorsed by the regulatory framework analyzed in this article have occurred under a world-system logic and involve forms of hoarding goods and natural resources through privatization and commercialization. Transnational companies' interests and states' interests align and collaborate strongly to promote extractivism. This form of re-appropriation of resources under (neo)colonial practices also represents a specific construction of Latin American nature, which is understood as an inferior "other," where the Latin American continent continues to be understood as a space not suitable for "civilized" life and a subaltern space that can be exploited, devastated, and reconfigured according to the needs of the current (neo)extractivist model (Machado-Aráoz 2011). In this context, some ways of life and livelihood that challenge the mainstream logics of the extractivist rationality are understood as "backward" or "subaltern." According to that rationality, those "alternative" views do not contribute to the reproduction and accumulation of capital in the proportions demanded by the current economic model.

To examine the state-colony relationship from a critical perspective such as the one proposed in this article, it is necessary to understand the state as an entity that operates with severe restrictions due to its colonial past. This means that the state, despite its liberal roots, or arguably because of them, still requires, to a certain extent, the reproduction of certain hierarchies and colonial legacies for its constitution and functioning, like the concession agreement in the mining sector (Sierra-Camargo 2018).

From a postcolonial perspective, the state is understood as a contemporary legal-political form that has allowed the continuity of hierarchies and colonial patterns to enable it to function and integrate into the global order. This approach questions the representation of the constitutional state as an emancipatory entity and its purported aspiration to transcend colonial logic. As this article argues, the colonial patterns and hierarchies directly related to the extraction of resources have persisted over time and are constitutive of the constitutional state. This idea is essential to help us understand to what extent such colonial legacies have been able to reproduce not despite the state, but due to its very existence.

This line of inquiry also leads to further questions, not only about why the Colombian constitutional state has not "been able" to escape specific global policies regarding resource extraction, but also why it has not "wanted" to resist such policies. Global policies to promote extraction have been supported first through Colombian legislation and its institutions, despite the severe economic, social, cultural, and environmental damage that these activities cause in its territory, and second through hierarchies and asymmetries of power that are repeated between the former colonies and the former metropolises and that are reproduced through these policies.

In this regard, it is also essential to highlight that the problem of the impact on state sovereignty, as a consequence of the dynamics inherent in an extractive global economy, is closely related to the questioning of the idea of the Westphalian model, which manifests itself primarily in three dimensions: territorial control, control of normative production, and self-determination. The Westphalian state model unfolds primarily in two areas: the internal sphere, which refers to the state's capacity for self-regulation and self-determination and its authority vis-à-vis its citizens; and the external sphere, which refers to the nonintervention of any actor in the affairs of a state, the recognition of other states as sovereign, and an international arena of equality among them (López 2013).

In the context of a global economy, this model is widely challenged. However, the implications for state sovereignty do not necessarily entail the disappearance of the state, but the appropriation of state channels to convert global standards into domestic legislation for the redirection and reconfiguration of the state. This is explained by the fact that the state remains indispensable for global economic processes. Saskia Sassen explains that within the framework of these processes, a new geography of power emerges, with new actors such as international arbitration tribunals, transnational law firms, and capital markets playing a leading role—directly affecting states, whose interests are linked to global market forces (Sassen 1996).

III. From an Operator State to a Regulatory State in the Mining Sector

The Colombian Mining Code (Law 685 of 2001) was a product of specific global political, economic, and legal dynamics that aimed to update and standardize the mining legislation in countries in the Global South. The mining reform was based on guidelines such as those stated in the "Mining Strategy for Latin America and the Caribbean" issued by the World Bank in 1996 (World Bank 1996). This policy, which followed the so-called "Strategy for African Mining" in 1992 (World Bank 1992), was issued within the context of significant global political and economic transformations that took place at the end of the twentieth century (Sierra-Camargo 2024). These transformations led to a "constitutional boom" (Uprimny 2011), which was intertwined with the "mining boom" (Szablowski 2007) that occurred during the same period. As explained in the following sections, this constitutional boom enacted very special conditions for foreign investors in the mining sector and incentivized the massive arrival of mining companies.

These transformations made up part of the configuration of a new economic model that replaced a period in which "developmental" projects were promoted (Eslava 2015). During this time, states in the Global South had a much more active role in shaping the economy, including in the mining sector. The period that began after World War II was characterized by the strong influence of a "development narrative," which was incorporated into the imagination of nations. In particular, a global distinction between developed and developing states or those that were considered to be insufficiently developed was placed at the center of progress narratives. Within such a division, the previous classification between civilized and backward nations was also updated according to modern and new political discourses and devices (Frank 1966; 1967; Amin 1976; Leff 1993; Esteva 1992; Anghie 2000). In that period, a simultaneous wave of decolonization occurred, particularly in the African nations. The politics of resource extraction and resource nationalization played a fundamental role in decolonization debates. Within the framework of the recently created United Nations, a series of resolutions was issued (Gómez-Robledo Verduzco 2008), among them Resolution 1803 of 1962,

which recognized the right to permanent sovereignty over the natural resources that all developing countries had.[2]

This resolution impacted the resource-extraction policies of countries considered "insufficiently developed," including Latin American countries. Despite being acknowledged as independent states a century and a half before African countries were, Latin American countries were still considered "backward" nations and underdeveloped areas according to this emerging development narrative. Furthermore, the new extractive policies aimed for developing states to control and exercise sovereignty over their natural resources directly—as long as they did so "efficiently," according to the demands of the world economy (Sierra-Camargo 2017). Additionally, restraints were placed on developing nations' integration of natural resources into the rising global capitalist economy. Finally, such nations had to cooperate with developed states and compensate foreign companies whose assets were expropriated in nationalizing resources (Schrijver 1997; De Waart 2009).

In this regard, Sierra-Camargo and Suárez-Ricaurte explain that the first investment treaties had a strong relationship with the principle of permanent sovereignty over natural resources (PSNR). They were designed as legal devices to protect European investors from actions abroad that an investor's home state deemed expropriatory. Although the United Nations resolutions between 1952 and 1974 that developed the principle of PSNR[3] recognized the sovereignty of newly independent and developing countries over their natural resources, they also restricted the policy space for these countries to regulate in the public interest. For example, Resolution 1803 of 1962 outlined various elements of the principle of PSNR. However, this resolution also established limits to the exercise of the sovereignty of developing countries over natural resources by requiring them to integrate into the world economy, cooperate with the so-called "developed countries," promote orthodox economic development, and compensate foreign investors for any resource nationalization even before the decolonization process had been completed (Sierra-Camargo and Suárez-Ricaurte 2023).

Sierra-Camargo and Suárez-Ricaurte argue that "[n]ewly independent states, operating as development agents in a postcolonial context, were not allowed to create or rethink their own autonomous development models. Instead of being able to challenge the hegemonic development model, they were expected to acquire capital and equipment from capital-exporting countries, to exploit their own natural resources, and export commodities in accordance with the needs of international trade. Moreover, they were expected to compensate investors in cases where their acquired rights were impaired" (2023, 181).

The origins of investment law and its dispute settlement mechanisms are therefore tightly connected to the history of ongoing foreign control over the natural resources of most countries in the de-colonization period (Sierra-Camargo and Suárez-Ricaurte 2023). In this context, mining policy issues

[2] G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources, UN Doc. A/RES/1803(XVII) (Dec. 14, 1962).
[3] See G.A. Res. 523 (VI), Integrated Economic Development and Commercial Agreements, UN Doc. A/RES/523(VI) (Jan. 12, 1952); G.A. Res. 626 (VII), Right to Exploit Freely Natural Wealth and Resources, UN Doc. A/RES/262(VII) (Dec. 21, 1952); G.A. Res. 1314 (XIII), Recommendations Concerning International Respect for the Right of Peoples and Nations to Self-Determination, UN Doc. A/RES/1314(XIII) (Dec. 12, 1958); G.A. Res. 1515 (XV), Concerted Action for Economic Development of Economically Less Developed Countries, UN Doc. A/RES/1515(IV) (Dec. 15, 1960); G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources, UN Doc. A/RES/3281(XXIX) (Dec. 14, 1962); G.A. Res. 2158 (XXI), Permanent Sovereignty over Natural Resources, UN Doc. A/RES/2158(XXI) (Nov. 25, 1966); G.A. Res. 3281 (XXIX), Charter of Economic Rights and Duties of States, UN Doc. A/RES/3281(XXIX) (Dec. 12, 1974).

in Latin American countries such as Colombia in the second half of the twentieth century contributed to consolidating an "extractivist paradigm"[4] that led to the intensification of resource-extraction and accumulation activities. However, unlike with the mining policy under the neoliberal turn, in the so-called "developmental" period states had a leading role in such activities. They participated directly in extractive activities as operators, not only as regulators.

However, various transformations in the mining sector took place worldwide at the end of the twentieth century; they were materialized in policies such as the Washington Consensus (Woods 2007) and were initially deployed in Colombia through the National Development Plan's so-called "*Apertura Económica*" (DNP 1990; DNP 1991). Due to these transformations, the state went from being an operator state to a regulatory state. As an operator state, the state was allowed to carry out some mining activities directly, and the people had more tools to file claims related to technical and legal challenges of mining activities. On the other hand, as a regulatory state, the state had a restricted role in terms of its participation in mining activities, which are mostly developed by foreign investors and private companies (Sierra-Camargo 2018). In Colombia, this transition, starting in the 1990s, took place under a new legal and constitutional order linked to a system for promoting and protecting foreign investment, under which foreign investors' private interests were especially prioritized (DNP 2001).

Concerning the possibility for states to participate in mining activities directly, as operator states and not only as regulator states, it is essential to mention that although this type of policy came into force in the second half of the twentieth century in much of the Global South, during the first half of the twentieth century various Latin American states, which by then had been independent republics for more than a century, had already experimented with some attempts at sovereignty and direct control over their resources within the framework of "protectionist" policies. These policies were promoted in Colombia in conservative-oriented governments, such as those under the mandate of President Rafael Reyes, and in the liberal-oriented governments of the 1930s (Palacios and Safford 2012; Ocampo 1994). However, despite these attempts, a mining policy that aimed to favor foreign investors prevailed in Colombia during that period. It took shape in institutions like the "concession agreement," which is a typical contract type in colonial and (post)colonial contexts (Sornarajah 2010), precisely because of the privileged treatment that this contract implies for foreign investors, and as a consequence of weak and subordinated Global Southern states.

IV. The Configuration of a New Extractivist Regime in Colombia Under a Favorable Foreign Investment Policy

Transnational actors have played a crucial role in establishing the new mining regime in Colombia since the end of 1990s. For instance, the Canadian Development Agency, which is part of the Ministry of Foreign Affairs and Trade of Canada (Mining Watch Canada 2012) and manages public aid for developing countries, and the Energy Research Institute of Canada both played a vital role. The

[4] This article's "extractivist paradigm" notion is based on Michael Dougherty's (neo)extractivism concept. This author explains that regardless of the political orientation of the governments that implemented a policy of intensive extraction of natural resources in the late 1990s in the Global South, the effects produced by said policy are similar and are caused by the significant transformations of the mining industry globally. Dougherty emphasizes the role of global forces in the face of the emergence of local social and environmental conflicts produced by the phenomenon known as the "mining boom" that began at the end of the twentieth century and continues to this day, due to the reactivation of intensive extraction of natural resources by large companies in the mining industry in the Global South (Dougherty 2016).

Canadian Development Agency recommended strengthening mining institutions in Colombia and establishing ties with Canadian entities in resource extraction (Weitzner 2002). Subsequently, a mining reform project was promoted, and the recommendations of the previous project sponsored by the Canadian government were included. Likewise, as explained below, renowned Colombian law firms in the mining sector with notoriously influential clients arrived to wield influence in Colombia, participating in the preparation of the draft that gave rise to the new Mining Code.

Based on the recommendations of these actors and the World Bank guidelines in the mining policy issued in 1996, a series of provisions were incorporated to guarantee foreign investors conditions of predictability and legal certainty in mining activities. The new mining legislation not only reincorporated the concession agreement but also established the category of "prohibiting mining," limiting the participation of local communities in mining projects, and eliminated the division between small, medium, and large mining. These new regulations also made the requirements for obtaining permits, such as mining titles and environmental licenses, more flexible and created generous fiscal and tax incentives substantially higher than the royalties paid for mining activities. For instance, the royalties paid in Colombia by the transnational corporations in the gold-mining sector were equivalent to 4 percent. It is estimated that for every 100 pesos paid in royalties, the companies had a discount of more than 200 pesos. This means that the state did not receive between 13 and 33 billion pesos in royalties[5] and that, in practice, it was effectively paying the companies to extract the mineral resources (Villabona Robayo and Quimbay Herrera 2017).

One area of particular reform interest for foreign investors was harmonizing Colombian mining policy with the Constitution. Since the 1990s, a series of reforms have been implemented that have allowed for deregulation of mining resources. A number of provisions of the 1991 Constitution are aimed at regulating mining activity and control over nonrenewable natural resources, including Articles 80, 332, 334, 360, and 361. These constitutional provisions entrenched the idea that ownership of subsoil and nonrenewable natural resources resided in the state, not the nation.[6] Additionally, they introduced an exception regarding the so-called "acquired rights" over such resources held by private individuals. The constitutional provisions also emphasized the role of the state as a planning and regulatory agent in the mining sector rather than an operator allowed to develop mining activities directly, and the importance of sustainable development in the implementation of mining activities. Concurrently, a new institutional framework began to emerge in the mining sector with the creation of the Mining and Energy Planning Unit (UPME) through Law 143 of 1993 and Decree 2119 of 1991.

During the 1990s, several regulations were issued in respect of various constitutional mandates that protected diverse rights and were directly and indirectly related to new mining policies in Colombia. These regulations include Law 70 of 1993, which recognized the rights and protection mechanisms of Black communities; Law 99 of 1993, better known as the General Environmental Law; Law 134 of

[5] See Diario *El Tiempo,* "Fallo judicial tumba medida que le costó 13 billones de pesos a la Nación", 30 de Octubre de 2017. Disponible en: http://www.eltiempo.com/economia/sectores/fallo-judicial-tumba-deduccion-de-impuesto-de-renta-tras-regalias-a-empresas-mineras-146034.

[6] Article 332 of the 1991 Constitution, according to which the "State" is the owner of the subsoil and nonrenewable natural resources, modified the previous Mining Code, which had been issued through Decree 2655 of 1988, according to which resources and the subsoil belonged to the "Nation." With this change, the new Colombian constitutional order, in line with the guidelines that new mining regimes around the world were to follow, sought to ensure "state" control of natural and mineral resources, whether for direct exploitation or by granting their exploitation to private investors. This prevented ethnic groups that sought to claim their status as a "nation" based on a common identity, culture, and territory from claiming sovereignty or control over said resources.

1994, which regulates citizen participation mechanisms; Law 141 of 1994, which created the National Royalties Fund and the National Royalties Commission and regulated the state's right to receive royalties; Law 388 of 1997, known as the Territorial Planning and Development Law; Decree 1320 of 1998, which regulated prior consultation with Indigenous and Black communities for the exploitation of natural resources within their territories; Law 488 of 1998, which established tax regulations and other fiscal provisions for territorial entities; and Decree 879 of 1998, which regulated territorial planning, among others.

The content of the constitutional provisions that recognized both the state's ownership of the subsoil and nonrenewable natural resources as well as the previously acquired rights of individuals was ratified in Law 97 of 1993. Additionally, following the reforms implemented in the mining sector in response to the 1991 Constitution, the project of resource nationalization that had been attempted in Colombia starting in the late 1960s with Law 20 of 1969[7] was substantially modified. The 1969 law had proposed a resource-exploitation model subject to the guardianship and leadership of the state, which began to undergo some transformations in the late 1970s and later, in the late 1980s, with the attempt to incorporate a mixed model in Colombia through the Mining Code of 1988 (Decree 2655 of 1988).

The reforms implemented since the 1990s strengthened private capital participation in state-owned mining companies, which had been converted into mixed entities. Direct state involvement in mining exploration and exploitation activities was discouraged, thereby relegating state participation to the receipt of mining revenues in the form of royalties. This emphasized the role of the state in regulating and controlling mining activities, functions that were primarily guided by an export-oriented enclave model (Sierra-Camargo 2018).

Among the reforms promoted in the mining sector during the 1990s, the most notable were those promoted under the government of former President Ernesto Samper Pizano (1994–1998). Samper formed a working group in late 1995 to draft a reform of the Mining Code. CONPES Document 2898 of 1997 defined some aspects of this reform, such as the elimination of mining contributions, the extension of concession contracts to fifty years, the bidding process for areas with high mining potential, and the discretionary reversion of assets at the end of mining contracts.[8] One objective of this reform was to modify the institutional and legal framework of the extractive industry and correct some of the aspects that represented an obstacle to liberalizing mining policy (Becerra and Álvaro 2013).

In 1999, another reform known as the "Aramburu" project was promoted. This project was led by attorney Luisa Fernanda Aramburu[9] (Colombia Solidarity Campaign 2012) a director of AngloGold

[7] This law limited the recognition of private ownership of oil and mining deposits to those discovered before December 22, 1969.

[8] Ministerio de Minas y Energía y Departamento Nacional de Planeación, "Estrategias para el fortalecimiento del sector minero Colombiano," Documento CONPES 2898. Bogotá, Jan. 15, 1997. https://colaboracion.dnp.gov.co/CDT/CONPES/Econ%C3%B3micos/2898.pdf.

[9] Attorney Luisa Fernanda Aramburu has served as Deputy Director of Concessions and Mining Proposals for the transnational corporation AngloGold Ashanti (AGA) and as legal representative of several mining companies, including Sociedad Exploraciones Pantanos S.A.S., Exploraciones Chaparral Colombia S.A.S., Exploraciones Chocó Colombia S.A.S., B2Gold Colombia Ltd., Compañía Minera de Caldas S.A., Continental Gold Colombia S.A., and Corona Goldfields. It is also important to clarify that some of these companies, such as Exploraciones Chaparral Colombia S.A.S., Exploraciones Chocó Colombia S.A.S., and Sociedad Exploraciones Pantanos S.A.S., are in turn subsidiaries of AngloGold Ashanti, one of the twenty companies with the most mining titles in Colombia. The advantage for the company of having these types of subsidiaries in Colombia is that through them, AGA can carry out low-profile mining exploration activities

Ashanti and an adviser to other companies such as Corona Goldfields, a subsidiary of the North American company Conquistador Mines. It is worth remembering that one of the conflicts in which Corona Goldfields, represented by attorney Aramburu, was involved was the territorial dispute with the small-scale miners of Río Viejo (Duarte 2012). One of the objectives of the "Aramburu" project was to dismantle the state-owned mining company Minercol. This project also encouraged private mining exploitation through tax incentives and the signing of "exclusive exploitation" contracts. If approved, these contracts would primarily benefit companies like Corona Goldfields, which the project's author advised. These economic incentives were complemented by environmental incentives, the granting of new mines to private companies for exploitation, and the relaxation of "excluded mining zones" (Duarte 2012).

Under the government of former President Andrés Pastrana Arango (1998–2002), a further mining reform project was also promoted. This reform project was also strongly influenced by the aforementioned Canadian-funded project and would create the basis for the new Mining Code that would finally be approved at the beginning of the twentieth century through Law 685 of 2001.[10] The Ministry of Mines and Energy entrusted the preparation of the draft project that would give rise to the new Mining Code to the firm Martínez, Córdoba y Abogados Asociados.[11] This firm is known not only for advising important public entities such as the Mining and Energy Planning Unit (UPME) but also for representing several of the major mining companies operating in Colombia.[12]

Thus, the new Mining Code issued in Colombia through Law 685 of 2001 should be recognized as having been produced by a transnational legal process that involved the participation of various actors, both domestic and international. This law substantially modified Colombia's mining policy: It assigned the state the role of oversight and promotion of mining, restricted its role as a business, and limited profits derived from mining activities to a minimum royalty percentage, which is the lowest in Latin America (Sierra-Camargo 2018).

Throughout the terms of former Presidents Álvaro Uribe (2002–2010) and Juan Manuel Santos (2010–2018), the new mining regime continued to be consolidated through the approval of new development plans, new regulations, and the signing of numerous international investment agreements like bilateral investment treaties and free trade agreements. Likewise, under the so-called policy of "mining locomotive" (DNP 2011) promoted by the government of President Santos, the free trade agreement

to avoid social scrutiny in the event of conflicts with the communities settled in the territories targeted for extraction. This strategy could be very useful given the company's poor reputation with communities in projects like La Colosa in the department of Tolima. It also limits the company's liability for operations carried out in the mines (Colombia Solidarity Campaign 2012).

[10] On March 18, 2002, the North-South Institute sent a letter to Canada's Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade, expressing its concern about the influence that the Canadian government agency CIDA (Canadian International Development Agency) had had on the development of the new Mining Code, which was issued in Colombia through Law 685 of 2001, and particularly about the repercussions that the new regulation would have on the territories of particularly vulnerable populations, such as Indigenous communities. The Institute drew particular attention to the lack of an adequate prior consultation process in the code's development process and to the limitations that the new regulation implied for the territories of Indigenous communities (Weitzner 2002).

[11] See https://martinezcordoba.com.co.

[12] Among the companies advised by the firm Martínez, Córdoba y Abogados Asociados are: Acerías Paz del Río S.A., Carboneras California Dos S.A., Carbones Colombianos del Cerrejón S.A., Colombia Global Group, Mining Business S.A.S., Colombia Gold A.G., Eco Oro Minerals Corp. Colombia Branch, International Coal Company Ltd., London Mining Ltd., and New Granada Energy Corporation. See https://martinezcordoba.com.co.

between Colombia and Canada was signed on November 21, 2008, and came into force on August 15, 2011.[13] This treaty intends to protect more than thirty Canadian companies engaged in business in Colombia, including Gran Colombia Gold, which operates in Marmato.

As part of the "mining locomotive" policy, standards approved by previous governments were reinforced. The government created new institutions, such as the National Mining Agency (ANM), the National Environmental Licensing Agency (ANLA), and the Vice Ministry of Mines. Other reforms were implemented, including the issuance of so-called "express" environmental[14] and social licenses (Sierra and Schwartz, 2020); and the "Strategic Mining Areas" designation was created to reserve indefinitely more than a fifth of the national territory, equivalent to 25 million hectares.[15] This land was to be entrusted to foreign investors under concession agreements. The so-called "revolving door" between business and government actors (Rodríguez-Becerra 2011) also played an essential role in shaping the reconfiguration of this regime and in blurring public and private interests in the mining sector.

Under these especially favorable conditions for foreign investors, a kind of "new Dorado" emerged in Colombia, which drove the influx of mining companies. At the beginning of the first period of the mandate of President Santos, about forty transnational corporations were operating in Colombia, with around 70 percent from Canada (Ahumada Rojas 2012). This massive arrival of Canadian companies in Colombia is part of a global context in which 65 percent of the world's mining companies were listed on the Toronto Stock Exchange, alongside a Canadian mining investment boom that in six years grew from $5 to $13 billion US (Canel et al. 2010). Thus, since the early 1990s, around five Canadian companies have arrived in Marmato.[16]

The priority given to foreign investors in the mining sector has allowed for the development of this new extractive regime that has contributed to the reproduction of (neo)colonial hierarchies between the Global North and South. In understanding how this came about it is essential to highlight that in the twenty-first century, the Colombian government has signed a significant number of international investment agreements (IIAs) with different countries, including bilateral investment treaties (BITs) and free trade agreements (FTAs) with investment chapters. The Colombian government has signed approximately twenty-five IIAs, fifteen BITs, and ten FTAs that include investment chapters. This has led Colombia to be perceived globally as a capital-importing country. Furthermore, most of these agreements included measures aimed at protecting investors from potential impacts they might suffer due to the actions of the Colombian state (see UNCTAD n.d.).

The first IIA was signed in 1994 with Mexico as part of the "*Apertura Económica*" policy promoted under the government of former President César Gaviria. The environment of economic liberalization created in Colombia by the National Development Plan, "*La Revolución Pacífica*," promoted under the government of César Gaviria, and the new economic model introduced by the 1991 Constitution, was decisive in justifying the protection of foreign investment as a matter of public interest and in the negotiation of trade and investment agreements that would be signed in subsequent years, based on

[13] Free Trade Agreement, Can.-Colom., Nov. 21, 2008, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3246/canada---colombia-fta-2008.

[14] See Redacción Vivir (2014).

[15] Colombian Constitutional Court, Judgment T-438-2015, July 13, 2015, M.P. Jorge Ignacio Pretelt Chaljub. https://www.corteconstitucional.gov.co/relatoria/2015/T-438-15.htm.

[16] Colombian Constitutional Court, Judgment SU-133-17, Feb. 28, 2017, M.P. Luis Ernesto Vargas Silva. http://www.corteconstitucional.gov.co/relatoria/2017/su133-17.htm.

the idea that the massive influx of foreign investment into the country would bring development and economic growth (Sierra-Camargo 2018).

The signing of IIAs was understood as a guarantee for foreign investors against potential risks that could affect their interests, which could be caused primarily by actions taken by Colombia as a host state. The purpose of these agreements was, on the one hand, to protect investors, mostly from countries in the Global North, and, on the other, to create obligations for Colombian authorities based on the rights and expectations of investors (Velásquez-Ruiz 2016). Investors also expected a scenario of predictability and regulatory certainty under the Colombian government's "investor confidence" policy. The safeguards for foreign investors contained in the IIAs included, first, standards of conduct that Colombia had to rigorously comply with and second, a dispute-resolution mechanism that foreign investors could use to sue the Colombian state before international arbitration tribunals if they considered that the Colombian state had breached its IIA obligations.

The signing of the IIAs established a legal regime for promoting and protecting foreign investment, which was a key element in constructing the export-oriented extractivist model in Colombia. Forming this framework involved adapting the mining sector's regulations and institutions internally to protect private interests and the demands of foreign companies. Some of the constitutional and legal measures adopted by the Colombian state in response to the few remaining democratic controls that have been activated in response to the actions of foreign investors have, in turn, led companies to resort to the dispute-resolution mechanisms provided by the IIAs. The alarming amounts claimed against the Colombian state under these mechanisms, representing a high percentage of the national budget, have also led to even greater pressure on the Colombian government to comply with the companies' demands and thus avoid further actions before the international investment arbitration system. The Colombian state has faced twenty-five Investor-State Dispute Settlement (ISDS) claims. To date, only the compensation claimed by investors in seventeen claims is known, and it is equivalent to $33.137 billion US (UNCTAD 2025).

In this regard, it is important to highlight the Colombian government's reaction to the Colombian Constitutional Court's decision in Judgment C-358/1996. This decision declared the provisions of the investment agreement between Colombia and the United Kingdom relating to the compensation element in expropriation actions to be constitutional, albeit conditionally. According to the Court, the agreement violated Article 58 of the 1991 Political Constitution.[17] In response to the Court's decision, the Colombian government promoted a constitutional reform aimed at correcting the provisions of the 1991 Constitution that were contrary to the interests of foreign companies.

One of the most striking consequences of the consolidation of this regime of protection and promotion of foreign investment, which has been a key element in the structuring of the extractivist development model in Colombia, is the phenomenon of deregulation. This is aimed at inhibiting and neutralizing state controls on the activities regulated by the state and can fade the "public interest" expected in the public policies (Sierra-Camargo 2018). This phenomenon has also resulted in the effect known as "regulatory chill," which refers to the influence or pressure that transnational actors manage to exert on states through the broad clauses of IIAs, to the point that—due to the capital-receiving state's concern regarding the potentially onerous lawsuits that may jeopardize compliance with the clauses contained in the IIAs—the state's regulatory capacity ends up being "frozen" and its ability to

[17] Colombian Constitutional Court, Judgment C-358/1996, Aug. 14, 1996, M.P. Carlos Gaviria Díaz and José Gregorio Hernández Galindo. https://www.corteconstitucional.gov.co/relatoria/1996/c-358-96.htm.

make decisions that benefit the public interest is inhibited (Schneiderman 2008; Tienhaara 2009; Van Harten 2013; Velásquez-Ruiz 2016).

However, despite the great risks faced by the receiving state in signing IIAs due to the clauses such agreements include and the restrictions they imply for its regulatory capacity, and in general, for the exercise of its sovereignty, it is important to highlight that the period between 2006 and 2010 was one of the most intense periods for the Colombian government in terms of the negotiation and signing of IIAs (Sierra-Camargo 2018). This intensive period of IIA negotiation was made possible by the creation of a favorable environment for foreign investment, which involved the adaptation and reform of domestic regulations. This began to take shape in the 1990s with the country's neoliberal shift and the introduction of an economic model consistent with this rationale to Colombia through the "*Apertura Económica*" policy led by former President César Gaviria.

Subsequent governments continued this policy. In 2001, the same year the new Mining Code was enacted through Law 685 of 2001, CONPES Document 3135 was issued, approving the "Policy Guidelines for International Negotiations of Foreign Investment Agreements." These guidelines served as the basis for the Colombian government's massive negotiation and signing of IIAs in subsequent years. Indeed, the purpose of these guidelines was to make the country more competitive among Latin American countries in attracting foreign investment.[18]

The entire regulatory framework that began to be built in Colombia in the 1990s was built with support from international financial organizations. It led to a significant increase in foreign investors in Colombia, especially in sectors such as gold mining. As a result, the Colombian state was considered by the World Bank in its *Doing Business 2015* report as the country in the entire Latin American continent with the "friendliest" regulations for foreign companies, even surpassing countries with a long tradition in this area, such as Brazil and Chile (World Bank 2014).

Among the regulations that, according to the World Bank, comprise this extremely "friendly" regulation for foreign investors are Decree 2080 of 2000, which issued "the general regime for foreign capital investments in Colombia and capital abroad"; Resolution 8 of 2000, which established "the international exchange regime"; External Regulatory Circular D-CIN-83, Chapter 7, which regulated international and financial investments; Law 963 of 2005 and Decree 2950 of 2005, known as the "Law of Legal Stability for Investors in Colombia"; Law 1340 of 2009, which established regulations on competition protection; CONPES Document 3684 of 2010 on "strengthening the State's strategy for the prevention and resolution of international investment disputes"; Law 1563 of 2012, which issued the "National and International Arbitration Statute"; and Decree 1939 of 2013 and Resolution 1305 of 2014, which regulated "the resolution of international investment disputes." As mentioned above, these regulations paved the legal road for foreign investors in strategic economic areas like the mining sector to invest much more easily in Colombia, making the requirements significantly more flexible.

[18] Ministerio de Comercio Exterior, Ministerio de Hacienda y Crédito Público, Ministerio de Relaciones Exteriores, and Departamento Nacional de Planeación, "Lineamientos de política para las negociaciones internacionales de acuerdos de inversión extranjera," Documento CONPES 3135. Bogota, Oct. 9, 1991. https://colaboracion.dnp.gov.co/CDT/Conpes/Económicos/3135.pdf.

V. Coloniality in Marmato in a (neo)Extractivist Model

A. Marmato in Colonial Times

In the territory that today constitutes the municipality of Marmato, mining has been carried out since pre-Hispanic times. The territory is located in the Department of Caldas and has a multiethnic composition. Of its ten thousand inhabitants, 17 percent recognize themselves as Indigenous, and 56 percent as Afro-descendants.[19] When the Spanish conquerors first arrived in that area, some Indigenous groups, such as the Supías and the Cartamas, were already inhabiting the area. At that time, Indigenous groups were practicing artisanal mining activities, washing the gold from the sands in the Supía River and digging the hills later known as Loaiza, Echandía, Quiebralomo, and Mápura. These groups also provided gold for the goldsmiths made by other Indigenous peoples, such as the Quimbayas (Guillén Chaparro [1583] 1889).

Marshal Jorge Robledo arrived in this area in 1537 as part of the Spanish conquering company in search of the so-called "El Dorado," commissioned by Sebastián de Belalcázar, who was, in turn, Francisco Pizarro's lieutenant (Palacios and Safford 2012). The first colonial administrations in the Marmato territory were settled there, specifically in the Quiebralomo and Supía hills located in the Vega de Supía district. At that time, the district, part of New Granada, was considered one of the largest gold producers in the world and provided a significant part of the wealth to the Spanish crown (Boussingault 1985).

To extract the gold, the Spaniards first used the labor of Indigenous populations, who initially had to work in the mines under the institution known as the "*encomienda*" and later through other institutions such as the "*haciendas*" when the "*encomienda*" later declined in usage (Colmenares 1994). However, a monopolistic tradition in the Marmato mines was created under both institutions, and such a monopoly would extend until Republican times (González Escobar 1998).

In the sixteenth century, that region already had several "*encomiendas*" belonging to the Popayán jurisdiction, and many "*reales de minas*" were granted into that jurisdiction. These were the richest gold deposits, around which crucial main trading centers were established. In this regard, it is also important to highlight that these populations gradually died out due to the problematic conditions of the Indigenous peoples who had to work to extract gold. This caused the Spaniards to rely on slaves brought from the African continent, from which various contemporary families in Marmato were descended (Gärtner 2005).

Likewise, in the peak of the mining "*haciendas*," the mines were controlled by very few families who belonged to a rural and semirural upper class, which was made up of Spanish and Spanish-Americans and was able to consolidate a broad political and social power in the region, even though some of them did not have legal rights or deeds on all the mines they owned (Gärtner 2005). Moreover, during the final years of the colonial administrations, some expropriation processes were also promoted to transfer these areas to the so-called "*Real Compañía de la Vega de Supía*," affecting the Spanish families that owned the mines.

[19] Colombian Constitutional Court, Judgment SU-133-17, Feb. 28, 2017, M.P. Luis Ernesto Vargas Silva. http://www.corteconstitucional.gov.co/relatoria/2017/su133-17.htm.

B. Marmato in Republican Times

After the independence process and the republic's birth, the gold mines were expropriated in this "*real de minas*"; there was also a transition from the "*haciendas*" to the foreign mining companies. The Marmato gold mines then began to be exploited by new foreign investors who were originally British. The new republic's government entrusted the mines to British investors at the beginning of the nineteenth century to finance the independence wars (Gärtner 2005). This occurred within the so-called "special reserve regime" (Lopera 2015), under which the Marmato mines were included. For this reason, reporting those mines for exploitative labor practices by third parties was not allowed. This is why, in the republican period and under the rule of the British mining companies, a monopolistic tradition was preserved in the mines from colonial times, lasting until the mid-twentieth century. Under the British companies' rule in Marmato, the English actors also deployed acts in the Canton of Supía mining district, which made the population understand that the foreign investors exploited territory belonging to the British government. This situation reached a point where company managers treated mayors as hierarchical inferiors and exercised control over public order and the central government offices (Gärtner 2005).

Several loans and mining lease agreements were signed between British investors and Colombian authorities in this context. The first agreement on the Marmato mines was signed by Ambassador Francisco Antonio Zea, with the London firm Herring, Graham, and Powles (An Officer, Late in the Colombian Service 1827) to support the promissory notes that had already been issued for the benefit of the new government. Later, the British company B. A. Goldschmidt acquired exploitation rights over the Supía and Marmato mines. Initially, this agreement was for twenty years, extendable to fifty years (Gartner de la Cuesta and Moreno Díaz 1936). At the same time, Powles, Illington, and Company bought some mining rights from Josefa Moreno de la Cruz, a member of one of the most powerful families since colonial times. Those rights were over one of the most productive mines in the region. However, the company bought those mines without knowing they had been expropriated from doña Josefa in 1806 (Gartner de la Cuesta and Moreno Díaz 1936). The Colombian Mining Association (Colombian Mining Association 1825) was created from this transaction, which would later become the Mariquita and New Granada Mining Association (Board of Trade 1852). These and other companies, such as the Marmato Mining Company and the Santa Ana Mining Company (Board of Trade 1885), were the institutional channels and new forms that foreign investors adopted during the republic to extract gold from the territory.

This period was not exempt from conflicts among investors, between the investors and the state, and between these actors and the new partners that had emerged in the so-called "dissolution of *resguardos*." This process was promoted at the end of the nineteenth century. It was considered one of the first attempts to challenge the monopolistic tendency of foreign investment in the gold mines in the region. In 1871, the Marmato mines were bought by a new British investor who later transferred them to the Western Andes Mining Company (Official Gazette 1906).[20] In later years, several mines were expropriated due to the actions carried out within the framework of the protectionist policies led by conservative president Rafael Reyes at the beginning of the twentieth century.

[20] Colombian Supreme Court of Justice, Dec. 3, 1906, *Jucio Posesorio de la Nación contra Western Andes Mining Company Ltd.*, Diario Oficial No. 12.812.

C. Marmato in the First Half of the Twentieth Century

Due to the actions that took place during republican times in Marmato, the conservative president Rafael Reyes transferred the Marmato mines to General Alfredo Vásquez Cobo, to whom he entrusted the resources. However, he never paid the nation for the rent on the acquired mines, alleging that he did not receive the mines in their entirety. Moreover, he later transferred the mines that supposedly had been "recovered" for the nation to a new British company, of which the general became a partner afterward (Sanín Villa 1936). These are just some of the events that occurred at that time that demonstrate how, despite some attempts by the government to regain state control over the mines, foreign investors continued to receive favorable treatment for gold exploitation during the republic. Additionally, this shows how that prerogative gradually shaped mining policy and legislation and, ultimately, the state itself.

Apart from that, it is essential to mention that the investors who continued to come into the country until the first half of the twentieth century to extract gold were part of the so-called "second boom" of foreign investment in the mining sector, which some authors also have called "the second conquest of Latin America." Within the framework of this boom, around 150 mining companies were formed with British capital and established throughout Latin America, thirty of which operated in Colombian territory. These thirty accounted for a fifth of British capital invested, which amounted to £23 million (Rippy 1959).

D. Marmato in the Second Half of the Twentieth Century

This boom lasted until the middle of the twentieth century, when the International Monetary Fund intervened in worldwide gold sales to control the global economy through monetary policy after World War II. Some foreign companies were liquidated, and others signed agreements with the Colombian national government. Then, during the second half of the twentieth century and under the new "development discourse" promoted in the postwar period and discussed above, the Congress of the Republic of Colombia took up a debate that had already emerged in the first half of the twentieth century related to whether the state should recover control of natural resources.

This debate around monopolistic trends in the mining sector persisted since colonial times. Afterwards, a state model of control and exploitation over natural resources was adopted, lasting almost half a century until the end of the 1980s and the rise of neoliberal economic policy. During the period in which the state model prevailed, a series of norms were issued in Marmato to regulate the distribution of mines between the upper and lower parts of the prominent mining hill and create a system of coexistence between small-scale and medium-scale mining (Lopera 2015). This is also explained by the population's interest in avoiding the reproduction of monopolistic tendencies and the policies of concentration of mines under a few companies, as occurred in previous centuries.

This coexistence system was created by Law 66 of 1946, which divided the Marmato mining territory into two parts: the upper zone and lower zone. The first was reserved for small-scale mining and the second for medium-scale mining (Sierra-Camargo 2018). This distribution of the Marmato Hill served two primary purposes: first, to allow for the coexistence of two scales of mining exploitation, and second, to attempt to reconcile the two positions that emerged from a historical debate about whether mining activity should be carried out by the state or by private individuals (Lopera 2015). From that moment on, programs began to legalize small-scale mining activities, along with a territorial division

model that allowed small-scale mining to be carried out on the upper part of the Marmato Hill, now known as "El Burro" Hill, and medium-scale mining to be carried out on the lower part, where the "El Llano" area is currently located. Likewise, the Marmato mines began to be leased to national entrepreneurs, who subleased their mines to small-scale independent miners (Sierra-Camargo 2018).

Under the new model promoted in the 1940s, small-scale mining associations were initially established as de facto groups and later legalized. Some of these groups signed exploitation contracts in the upper part of the Marmato Hill under Law 66 of 1946. Subsequently, Decree 2223 of 1954 confirmed the territorial division model established by Law 66 of 1946. According to Lopera, this system of mining territorial division "contributed to a relatively successful resolution of the social problem caused by the dependence of a single company in charge of production" (Lopera 2015).

Under this new division system, the state actively participated in mining activities as an operator and provided working equipment to small-scale miners. In the second half of nineteenth century, there was a relative calm in Marmato—until the 1990s, when a sort of "abandonment" of the state occurred. At this point, under a new mining policy and with the support of the first Canadian mining companies like Corona Goldfields arriving in the region, the state began to promote processes of mining title legalization.

Due to this process, Canadian investors subsequently acquired 90 percent of the mining titles in the upper part of the hill, which, according to the division system acknowledged since the mid-twentieth century, was intended for small-scale mining. The new monopoly by Canadian companies allowed the promotion of a "unification process" between the upper and lower parts of the mountain to carry out a single large-scale open-pit mining project that required the demolition of the entire Marmato Hill and relocation of the inhabitants of the upper part (Lopera 2015).

It should be noted that Gran Colombia Gold, the Canadian company that was able to acquire 90 percent of the mining titles in the upper part of the Marmato Hill and the fifth company to arrive in Colombia since the 1990s, became the largest shareholder of another company operating in the lower part of the hill, where medium-scale mining activities were carried out. Due to this new monopoly, new economic and social conflicts emerged. This led the company to deploy different tactics, claiming possession of the mining titles it had previously acquired. The actions undertaken by the company ranged from those aimed at earning the "social license" of the communities to others employing force, such as the destruction of the "mills" where gold is processed and the closure of various mines, leaving more than eight hundred miners unemployed (Lopera 2015). Moreover, the state implemented new norms and requirements that restricted small-scale miners' access to some supplies and working equipment for mining and other related activities such as gold commercialization and sale (Caracol Radio 2015).

Before this situation, due to the restrictions on access to their primary means of livelihood, the population in Marmato started promoting social mobilization and legal actions to defend their territory, mainly traditional small-scale mining. Among these actions was a massive protest in 2010 in which around five thousand people took to the streets (Sierra-Camargo 2018).[21] In addition, some

[21] Author interview with Darío Arenas Villegas, a social and political leader from the Department of Caldas and former candidate for the House of Representatives, October 10, 2017.

Marmato Traditional Miners Association members filed a legal action called a "writ to tutela," alleging the violation of various fundamental rights, including the right to prior consultation.[22]

E. Marmato: Between the Constitutional Jurisdiction and the International Investment Law and Arbitration System

As a result of these demands lodged by the communities, the Colombian Constitutional Court ruled in favor of the Marmato communities' rights to prior consultation and participation.[23] However, following this decision, the company Gran Colombia Gold, in coordination with some state authorities, filed a legal action requesting the annulment of the Court's decision. The Court denied the request, and the company then filed a new legal action to appeal the decision denying the annulment request. The Court rejected this second annulment request and clarified that an annulment request should not be used as an appeal procedure. Finally, the ruling to protect the local communities' rights was ratified and became final.[24]

After these two Constitutional Court decisions, the company decided to resort to the international investment arbitration system to sue the Colombian state within the framework of the Free Trade Agreement between Colombia and Canada, claiming that its rights and its "legitimate expectations" had been violated.[25] In this sense, the Canadian investor estimated its damages were up to $700 million US. Moreover, the actions promoted by the company brought other consequences in terms of so-called "regulatory chill" (Tienhaara 2011; Schneiderman 2008; Van Harten 2013), intended to inhibit the Colombian authorities themselves from regulation and fulfilling other constitutional and international obligations that could conflict with the international obligations under the international investment agreements (Sierra-Camargo 2019).

Ultimately, this case study demonstrates the immense pressure that transnational companies exert on states in the Global South, mainly via the mining sector, through mechanisms such as ISDS. These end up determining the resource-extraction policies of the Global South states and even the increasingly favorable conditions for new empires, now represented by different actors like the transnational mining corporations and states in the Global North, which can continue controlling the resources of the former colonies under new legal and institutional forms.

VI. Conclusion

Although the process of coloniality—or the continuation of the colonial legacies and hierarchies through "modernity"—of the gold-mining regime in Colombia has not been linear, there are elements that have persisted over time and that continue to re-enroll the state in a (neo)colonial logic based on

[22] Colombian Constitutional Court, Judgment T-438-2015, July 13, 2015, M.P. Jorge Ignacio Pretelt Chaljub. https://www.corteconstitucional.gov.co/relatoria/2015/T-438-15.htm.

[23] Colombian Constitutional Court, Judgment T-438-2015, July 13, 2015, M.P. Jorge Ignacio Pretelt Chaljub. https://www.corteconstitucional.gov.co/relatoria/2015/T-438-15.htm; Colombian Constitutional Court, Judgment SU-133-17, Feb. 28, 2017, M.P. Luis Ernesto Vargas Silva. http://www.corteconstitucional.gov.co/relatoria/2017/su133-17.htm.

[24] Colombian Constitutional Court, Judgment SU-133-17, Feb. 28, 2017, M.P. Luis Ernesto Vargas Silva. http://www.corteconstitucional.gov.co/relatoria/2017/su133-17.htm.

[25] Aris Mining (formerly Gran Colombia) v. Colombia, ICSID Case No. ARB/18/23 (discontinued after settlement, Dec. 2, 2025). See https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/866/aris-mining-formerly-gran-colombia-v-colombia.

the regulation of gold mining. As explained above, this logic has entailed the adaptation of the legal and institutional channels according to each period's legal and political forms and collaborating with the local so-called "creole" elites to continue the exploitation of gold to satisfy the demands of old and new empires, which today are represented mainly by Global Northern states and other vital actors in the global governance mining system.

Foreign investment has also been strongly present throughout Colombian history. Moreover, the state, even though it is not a uniform actor, has acted as an intermediary agent, and it continues to be indispensable in the functioning of this global system. From a (neo)colonial position, the state entity has adjusted its apparatus so investors may operate. Although this position, in some periods, has been loosely linked with nationalist policies to defend the protection of "national" interests, the protection of "foreign" interests in mining policies has persisted (Ospina Vasquez 1978).

Likewise, through the changes that legal and political forms have experienced over time, the highly favorable conditions for foreign investors, the discourses of progress, development, and modernity, and the dispossession that attends large-scale gold-mining activities and its impacts on the territories and the lives of subordinate actors such as Indigenous and Afro-descendant communities have persisted over time. This is due to legal and institutional guarantees provided both locally and globally to foreign companies, which are increasingly sophisticated.

In the gold-extraction processes, some trends have also been maintained, such as monopoly control of the mines by foreign investors and the state's need for foreign exchange currency, which makes the state entity grant conditions extremely favorable to these actors. Moreover, actors such as Indigenous people, Afro-descendant people, peasants, and small-scale miners have historically found forms of agency to resist, including through legal channels. However, on the whole, these subjects continue to be excluded from their territories both by legal means and by force, and the legal tools that they can use to resist extractivism remain limited. Their relationships with gold, the mountains, the communities, the mining companies, and the state itself continue to be mediated by law, which continually adopts and updates colonial rationalities of exploitation. These rationalities are framed in the relationships of hierarchy and division of the world and not only remain but are resignified according to the political and legal forms of each period.

This article used a postcolonial perspective to question the constitutional state as an emancipatory and modern entity meant to transcend the hierarchies and relations of domination of colonial times. This perspective allowed us to observe hidden dimensions of the state and understand specific legacies and colonial patterns still imbued in the state. Adopting a postcolonial perspective also required examining the state-colony relationship and trying to understand its continuities and discontinuities beyond traditional history. This approach enables a questioning of the state itself, its nature, and its role in understanding the reemergence in the twenty-first century of a legal and institutional regime based on the intensive extraction of natural resources, where the Colombian constitutional state has played an essential role in its own reintegration within this regime under a continued colonial logic.

The endorsement that the Colombian constitutional state has provided for this neocolonial system of resource-exploitation regime has manifested in different ways, including through the creation of new norms at the national level due to the strong influence of key actors in the global economic order. In discussions concerning the links between constitutionalism and neoliberalism, there are continuing scholarly debates about the strong influence that transnational economic actors have exerted. This article shows that such support has been essential in the lawmaking processes and in enacting

standards at the domestic level to develop certain economic activities such as large-scale mining projects.

In recent scholarship the idea of a new transnational law and the revival of *lex mercatoria* has gained traction (Del Cabo and Pisarello 2000). Through these, a legal architecture has been configured so that the private economic actors that make up the global economic order, such as transnational mining companies, can act freely and make their own rules without the sovereignty of the states representing an obstacle for them. The Colombian constitutional state has played an essential role in reproducing a (neo)colonial logic based on the intensive extraction of resources because it has been the state itself that has shaped the norms and institutions of this extractive industry, accommodating its interests to the needs of the economic forces of the global market. These interests have been reflected in the configuration of a supportive regulatory framework and institutional apparatus, which correspond to the demands of the neoliberal economic model. In this context, the state has shaped its legal system to provide legal security for foreign investors' property rights and expectations in the mining sector.

As explained above, the figure of the state, in its traditional meaning of Westphalian origin, has ceased to be a reference to sufficiently explain the dynamics of current law and the interests that it protects (López 2013). To a certain extent, the law emanating from the state has been replaced by a transnational law. This article has shown how much national law has been produced as a part of the dynamics of the global economy under the strong influence of powerful actors such as international financial organizations and transnational corporations, whose actions are fundamentally guided by private economic interests (Sassen 1996). In the long run, it is private interests that define the standards that guide state actions, and how notions such as "public interest" should adjust to these standards.

REFERENCES

Ahumada Rojas, Omar. 2012. "El 'boom' apenas empieza en el país." *El Tiempo*, November 30.

Amin, Samir. 1976. *Unequal Development.* Monthly Review Press.

Anderson, Gavin. 2005. *Constitutional Rights After Globalization.* Hart.

Anghie, Antony. 2000. "Time Present and Time Past: Globalization, International Financial Institutions, and the Third World." 32 *NYU Journal of International Law and Politics* 243.

An Officer, Late in the Colombian Service. 1827. *The Present State of Colombia.* John Murray. British Library.

Becerra, Pardo, and Luis Álvaro. 2013. "Propuestas para recuperar la gobernanza del sector minero Colombiano." *Minería en Colombia. Fundamentos para superar el modelo extractivista.* Contraloría General de la República.

Board of Trade. 1852. Board of Trade: Companies Registration Office: Files of Dissolved Companies. Actas de Registro de las Compañías. Compañía No. 470. *Provisional Registration. Return of*

the Name, Business, and Promoters of the Mariquita and New Granada Mining Company. London. UK National Archives.

Board of Trade. 1885. Board of Trade: Companies Registration Office: Files of Joint Stock Companies Registered Under the 1884 and 1856 Acts. Actas de registro de las Compañías entre 1884 y 1856. *Provisional Registration. Return of the Proposed Capital of the Marmato Mining Company*, London, 1850; *Return of copy of Agreement for the Dissolution of the Marmato and Santa Ana Mining Companies*, London. UK National Archives.

Boussingault, Jean Baptiste. 1985. "Cordillera Central y Cordillera Oriental—Valle del Cauca—Minas de oro de la Vega de Supía—Provincia de Antioquia." In *Memorias IV (1824-1830)*. Banco de la República.

Canel, Eduardo, Uwafiokun Idemudia, and Liisa L. North. 2010. "North Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims." 30 *Canadian Journal of Development Studies / Revue canadienne d'études du développement* 5.

Caracol Radio. 2015. "Personería denuncia grave crisis en Marmato, Caldas, por venta de oro." February 10. https://caracol.com.co/radio/2015/02/10/regional/1423569660_626709.html.

Castro-Gómez, Santiago, and Ramón Grosfoguel, eds. 2007. *El giro decolonial: Reflexiones para una diversidad epistémica más allá del capitalismo global*. Siglo del Hombre Editores.

Colmenares, Germán. 1994. "La formación de la economía colonial (1500–1740)." In *Historia económica de Colombia*. TM Editores.

Colombia Solidarity Campaign. 2012. *La Colosa: Una muerte anunciada. Informe alternativo acerca del proyecto de Minería de Oro de AngloGold Ashanti, en Cajamarca, Tolima, Colombia*. https://www.slideshare.net/slideshow/la-colosa-una-muerte-anunciada/28655068

Colombian Mining Association. 1825. *Colombian Mining Association. A Prospectus and Notice of Transfer of Shares*. British Library.

Del Cabo, Antonio, and Gerardo Pisarello, eds. 2000. *Constitucionalismo, mundialización y crisis del concepto de soberanía. Algunos efectos en América Latina y en Europa.* Alicante Publicaciones.

De Waart, P. J. I. M. 2009. "Permanent Sovereignty over Natural Resources as a Corner-stone for International Economic Rights and Duties." 24 *Netherlands International Law Review* 304.

DNP (Departamento Nacional de Planeación). 1990. Documento CONPES 2494 de 1990. "Decisiones sobre el programa de apertura económica." Imprenta Nacional de Colombia.

DNP (Departamento Nacional de Planeación). 1991. *La revolución pacífica: Plan de desarrollo económico y social 1990–1994*. Imprenta Nacional de Colombia.

DNP (Departamento Nacional de Planeación). 2001. Documento CONPES 3135 de 2001. "Lineamientos de política para las negociaciones internacionales de acuerdos de inversión extranjera." Imprenta Nacional de Colombia.

DNP (Departamento Nacional de Planeación). 2011. "Crecimiento sostenible y competitividad." In *Plan nacional de desarrollo 2010–2014: Prosperidad para todos; más empleo, menos pobreza y más seguridad*, 61. Imprenta Nacional de Colombia.

Dougherty, Michael. 2016. "From the Global Peripheries to the Earth's Core: The New Extraction in Latin America." In *Mining in Latin America: Critical Approaches to the New Extraction*, edited by Kalowatie Deonandan and Michael Dougherty, 3. Routledge.

Duarte, Carlos. 2012. "Implementación y crisis del actual sistema de gobernabilidad minera en Colombia: El modelo de enclave exportador." 25 *Análisis Político* 3. https://revistas.unal.edu.co/index.php/anpol/article/view/43715.

Eslava, Luis. 2015. *Local Space, Global Life: The Everyday Operation of International Law and Development.* Cambridge University Press.

Esteva, Gustavo. 1992. "Development." In *The Development Dictionary: A Guide to Knowledge as Power*, edited by Wolfgang Sachs. Zed Books.

Frank, André Gunder. 1966. "The Development of Underdevelopment." 18 *Monthly Review* 4.

Frank, André Gunder. 1967. *Capitalism and Underdevelopment in Latin America.* Monthly Review Press.

Gärtner, Álvaro. 2005. *Los místeres de las minas. Crónica de la colonia europea más grande de Colombia en el siglo XIX, surgida alrededor de las minas de Marmato, Supía y Riosucio.* Editorial Universidad de Caldas.

Gartner de la Cuesta, Carlos, and Héctor Moreno Díaz. 1936. "Informe del Doctor Carlos Gartner de la Cuesta y del Representante Héctor Moreno Díaz." *Supía y Marmato ante la Cámara.* Imprenta Nacional. National Library.

Gómez-Robledo Verduzco, Alonso. 2008. "Significación jurídica del principio de la soberanía permanente sobre los recursos naturales." In *Derecho internacional. Temas selectos*, 549. Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México (UNAM).

González Escobar, Luis Fernando. 1998. "Ocupación, poblamiento y territorialidades en la Vega de Supía, 1810–1950." Master's thesis, Universidad Nacional de Colombia.

Grosfoguel, Ramón. 2006. "La descolonización de la Economía Política y los Estudios Postcoloniales: Transmodernidad, pensamiento fronterizo y colonialidad global." 4 *Tabula Rasa* 17. https://doi.org/10.25058/20112742.245.

Grosfoguel, Ramón. 2008. "Developmentalism, Modernity and Dependency Theory in Latin America." In *Coloniality at Large: Latin America and the Postcolonial Debate*, edited by Mabel Moraña, Enrique Dussel, and Carlos A. Jáuregui, 307. Duke University Press.

Grosfoguel, Ramón. 2012. "Colonialidad del poder y dinámica racial. Notas para la interpretación

de los latino-caribeños en Nueva York." In *Lugares Descoloniales. Espacios de intervención en las Américas,* edited by Ramón Grosfoguel and Roberto Almanza-Hernández, 125. Pontificia Universidad Javeriana.

Guillén Chaparro, Francisco. (1583) 1889. "Memoria de los pueblos de la Gobernación de Popayán y cosas y constelaciones que hay en ellos." 1 *Anales de la Instrucción Pública* 11.

Harvey, David. 2003. *The New Imperialism.* Oxford University Press.

Harvey, David. 2004. "El 'nuevo' imperialismo: Acumulación por desposesión." 40 *Socialist Register* 99. https://socialistregister.com/index.php/srv/article/view/14997/11983.

Harvey, David. 2014. *Seventeen Contradictions and the End of Capitalism.* Oxford University Press.

Leff, Enrique. 1993. "Marxism and the Environmental Question: From the Critical Theory of Production to an Environmental Rationality for Sustainable Development." 4 *Capitalism, Nature, Socialism* 1.

Lopera, Gloria. 2015. "La parte alta del cerro es para los pequeños mineros. Sobre la vigencia del régimen minero especial para Marmato y su influencia en la construcción de territorialidad." 35 *Revista Derecho del Estado* 101. https://dx.doi.org/10.18601/01229893.n35.05.

López, Henrik. 2013. *Transformaciones en el espacio de la soberanía.* Ediciones Uniandes.

Machado-Aráoz, Horacio. 2011. "El auge de la minería transnacional en América Latina. De la ecología política del neoliberalismo a la anatomía política del colonialismo." In *La naturaleza colonizada. Ecología política y minería en América Latina*, edited by Héctor Alimonda, 135. Clacso.

Mellino, Miguel. 2008. *La crítica poscolonial. Descolonización, capitalismo y cosmopolitismo en los estudios poscoloniales.* Paidós.

Mining Watch Canada. 2012. "Poor Mining Companies? Parliamentary Committee Report Calls for CIDA Giveaway to Canadian Private Sector." http://www.miningwatch.ca/news/2012/11/8/poor-mining-companies-parliamentary-committee-report-calls-cida-giveaway-canadian.

Ocampo, José Antonio. 1994. *Historia económica de Colombia.* TM Editores.

Ospina Vásquez, Luis. 1978. *Industria y protección en Colombia 1810-1930.* Biblioteca Colombiana de Ciencias Sociales FAES.

Palacios, Marco, and Frank Safford. 2012. *Historia de Colombia. País fragmentado, sociedad dividida.* Universidad de los Andes.

Quijano, Aníbal, and Immanuel Wallerstein. 1992. "Americanity as a Concept, or the Americas in the Modern World-System." 134 *International Social Science Journal* 549.

Redacción Vivir. 2014. "Licencias ambientales exprés." *El Espectador*, September 17.

Rippy, James Fred. 1959. *British Investments in Latin America, 1822–1949: A Case Study in the Operations of Private Enterprise in Retarded Regions*. University of Minnesota Press.

Rodríguez-Becerra, Manuel. 2011. Interview: "Estamos ad portas de una tragedia ambiental: Ex Ministro de Minas." Interview by María Isabel Rueda. *El Tiempo*, July 11. http://www.eltiempo.com/archivo/documento/CMS-9866464.

Sanín Villa, Gabriel. 1936. "Informe rendido por el mismo Representante Sanín Villa." *Supía y Marmato ante la Cámara*. Imprenta Nacional. National Library.

Sassen, Saskia. 1996. *Losing Control? Sovereignty in the Age of Globalization*. Columbia University Press.

Schneiderman, David. 2008. *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise*. Cambridge University Press.

Schrijver, Nico. 1997. *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge University Press.

Sierra-Camargo, Ximena. 2017. "Desarrollo y gobernanza global: Una revisión histórica de la construcción del nuevo paradigma extractivista en el sur global." In *Construyendo el futuro: Conversaciones jurídicas sobre la globalización*, edited by Mercedes Alda Fernández and Susana Galera Rodrigo, 205. Atelier Libros Jurídicos.

Sierra-Camargo, Ximena. 2018. "Derecho, desarrollo y extractivismo: La disputa por el oro en Colombia en un contexto de colonialidad global." PhD diss., Universidad del Rosario. https://doi.org/10.48713/10336_19123.

Sierra-Camargo, Ximena. 2019. "Los desafíos del estado constitucional Colombiano frente al sistema internacional de arbitraje de inversiones inversionista-estado: El caso de Marmato." In *Derechos humanos y la actividad empresarial en Colombia: Implicaiones para el estado social de derecho*, edited by Julián Tole Martínez, 241. Universidad Externado de Colombia.

Sierra-Camargo, Ximena. 2024. "Problematizing the Role of the World Bank in Latin America Mining Reforms." In *The Roles of International Law in Development*, edited by Siobhán McInerney-Lankford and Robert McCorquuodale, 273. Oxford University Press.

Sierra, Jimena, and Brendan Schwartz. 2020. "Mining Reforms Have Left Colombia's Artisanal Miners Behind." *International Institute for Environment and Development blog*. April 15. https://www.iied.org/mining-reforms-have-left-colombias-artisanal-miners-behind.

Sierra-Camargo, Jimena, and Federico Suárez-Ricaurte. 2023. "The Right to Regulate." In *Rethinking Investment Law*, edited by Schneiderman David and Gus Van Harten, 180. Oxford University Press.

Sornarajah, M. 2010. *The International Law on Foreign Investment*. 3rd ed. Cambridge University Press.

Szablowski, David. 2007. *Transnational Law and Local Struggles: Mining, Communities, and the World Bank*. Hart.

Tienhaara, Kyla. 2009. *The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy*. Cambridge University Press.

Tienhaara, Kyla. 2011. "Regulatory Chill and the Threat of Arbitration: A View from Political Science." In *Evolution in Investment Treaty Law and Arbitration*, edited by Chester Brown and Kate Miles, 606. Cambridge University Press.

UNCTAD (UN Trade and Development). n.d. "Colombia." Investment Policy Hub. https://investmentpolicy.unctad.org/country-navigator/46/colombia.

UNCTAD (UN Trade and Development). 2025. "Colombia." Investment Dispute Settlement Navigator. Investment Policy Hub. https://investmentpolicy.unctad.org/investment-dispute-settlement/country/45/colombia.

Uprimny, Rodrigo. 2011. "Las transformaciones constitucionales recientes en América Latina: Tendencias y desafíos." In *El derecho en América Latina. Un mapa para el pensamiento jurídico del siglo XXI*, edited by César Rodríguez Garavito, 109. Siglo XXI Editores.

Van Harten, Gus. 2013. *Sovereign Choices and Sovereign Constraints*. Oxford University Press.

Velásquez-Ruiz, Marco Alberto. 2016. Doctoral Dissertation: "The Colliding Vernaculars of Foreign Investment Protection and Transnational Justice in Colombia: A Challenge for the Law in a Global Context." PhD diss., Osgoode Hall Law School of York University. https://digitalcommons.osgoode.yorku.ca/phd/26.

Villabona Robayo, Jairo Orlando, and Carlos José Quimbay Herrera. 2017. "Tasas efectivas del impuesto de renta para sectores de la economía Colombiana entre 2001 y 2015." 27 *Revista Innovar Journal* 66. https://doi.org/10.15446/innovar.v27n66.66805.

Weitzner, Viviane. 2002. "Appendix 4: Canada's Role in Mining Development in Colombia." In *Through Indigenous Eyes: Toward Appropriate Decision-Making Processes Regarding Mining on or Near Ancestral Lands*, 71. North-South Institute.

Woods, Ngaire. 2007. *The Globalizers. The IMF, The World Bank and Their Borrowers*. Cornell University Press.

World Bank. 1992. "Strategy for African Mining." World Bank Technical Paper No. 181. Africa Technical Department Series. Mining Unit, Industry and Energy Division. https://documents1.worldbank.org/curated/en/722101468204567891/pdf/multi-page.pdf.

World Bank. 1996. "A Mining Strategy for Latin America and the Caribbean." World Bank Technical Paper No. 345. Industry and Mining Division, Industry and Energy Department. https://documents1.worldbank.org/curated/en/650841468087551845/pdf/multi0page.pdf.

World Bank. 2014. *Doing Business 2015: Going Beyond Efficiency*. World Bank. https://documents.worldbank.org/en/publication/documents-reports/documentdetail/777141468156865874.

Zumbansen, Peer. 2006. "Transnational Law." In *Elgar Encyclopedia of Comparative Law*, edited by Jan Smits, 738. Edward Elgar Publishing.