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Participatory Institutions and Environmental Protection:
Popular and Prior Consultations in Latin America

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ABSTRACT

This dissertation explores the relationship between institutions of political participation and environmental protection. What is the relationship and how is it constituted? How are participatory institutions put into motion, and how do they operate? What are the effects of these institutions? Are participatory institutions desirable from an environmental perspective and why? This dissertation assesses these questions. In doing so, it engages the broader theoretical question of how institutional analysis can contribute to the study of environmental issues and, inversely, how the study of the environment as an empirical area can enhance scholarship on institutional analysis and participatory democracy.

The two institutions of participation explored here through in-depth case studies are popular consultations (also known as local referendums) and prior consultations. While these institutions differ in origin, nature, and logic, they share the core characteristic of being deployed by citizens (indigenous and non-indigenous) throughout Latin America in the last decade to stop companies from developing mines and other extractive projects in and around their towns and to safeguard the environment.

This dissertation makes four main contributions. First, it identifies an institutional phenomenon I call *citizen institutional activation*, which is the political, contested process through which institutions, formal and informal, go from being dormant to active due to the action of individuals or social groups. Second, it unveils a problem faced by common-pool resources (CPRs), which I call the *common problem of the commons*. This emerges from the

disparity between soil and subsoil property rights, which is common throughout the world, in which the state is the owner of the subsoil and its minerals, regardless of who owns the land. Such incongruence constitutes an external threat to resources on the land inasmuch as the state can confer concessions to those wishing to extract the minerals in the subsoil, which affects the CPRs on the land, regardless of the type of property rights. The threat accentuates the limits of property rights to solve environmental problems. Third, I posit that institutions of political participation, like popular and prior consultations, can be a tool to solve this common problem of the commons. The last finding relates to participatory democracy. By applying a new analytical framework borrowed from sociology of law and comparative constitutionalism, which is attentive to material, direct, indirect, and symbolic effects, to the implementation of these two participatory institutions, this dissertation finds that participatory institutions can produce six effects, which I have labeled deterrent, leveling, awareness, community empowerment, state-building, and creation, which enhance environmental protection.

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GLOSSARY

The following glossary provides a short definition for the concepts that were developed in this dissertation as well as the Spanish terms that appear in the text.

Activation agents: the members of the activation coalition, who are of three types: subversive activators, knowledge bearers, and protesters.

Activation strategies: strategies employed by activation agents to awaken a latent institution.

Awareness effect: the potential of participatory institutions to transform the way a problem is perceived by participants and by others.

Cabildo: indigenous council.

Campesinos: a native of a rural area in Latin American.

Citizen institutional activation: the political, contested process through which institutions, formal and informal, go from being dormant to active as a result of citizen (individuals or social groups) action.

Common problem of the commons: the external threat faced by common-pool resources (CPRs) that originates in the fact that the owners of the land (private or collective) are not the owners of the minerals in the subsoil, and the use of the subsoil affects the CPRs on the topsoil regardless of the governance schemes of the CPRs.

Community empowerment effect: the potential of participatory institutions to improve and expand the participatory skills and knowledge not only of the participants in the institutions but also of other citizens and social groups beyond the immediate case.

Creation effect: the potential of participatory institutions to help raise issues to the political agenda and initiate public debate.

Cross-cleavage coalition: a group of actors, composed of citizens (individuals or groups) who are traditionally divided along class or other social cleavages, who line up in favor or against certain use of rules or practices.

Deterrent effect: the potential of participatory institutions to block the threat that motivated the use of the participatory institution in the first place.

Direct effect: those specifically sought by the actors who activate an institution of participation or those who participate in it.

Indirect effect: the impact that a participatory institution can produce that was not the objective of (or could not even have been anticipated by) the participants.

Institution of political participation (also Participatory institution):

Institutional Activation: the political, contested process through which institutions, formal and informal, go from being dormant to active. Activation can be of four types: judicial, bureaucratic, international, and citizen.

Knowledge bearer: an activation agent who is aware of the institution.

Leveling effect: the potential of participatory institutions to level unbalanced social fields by unsettling the power structure of government practices or by countering disadvantages traditionally faced by marginalized citizens.

Material effect: tangible changes in the conduct of individuals, groups, or the government, among others.

Participatory institution (or Institution of political participation): formal or informal rules that establish and distribute citizens' rights to participate in decision-making processes.

Popular consultation (also known as public consultations, local referendums, or community consultations): institutions of direct democracy that give an electorate the opportunity to vote on a particular yes or no question relevant to their jurisdiction.

Prior consultation (also known as free, prior, and informed consent –FPIC–): the collective right of indigenous and tribal peoples to have the state consult with them when it wishes to take legislative or administrative measures that could potentially affect them or their territory. The right originates in International Labor Organization Convention 169 of 1989 (Article 6).

Protesters: the more visible face of the activation agents. They can play multiple and changing roles, depending on the situation.

Resguardo: property institutions that grant collective land ownership to indigenous communities.

State-building effect: the potential effect of participatory institutions to contribute to state building by triggering the state to be present in areas where it has traditionally been absent or by buttressing its infrastructural power in those areas where it is already present, but weak.

Subversive activators: an activation agent who works within the system to actuate a dormant institution.

Symbolic effect: entail changes in conceptions, ideas, or social constructs.

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Chapter 1. Institutions and the Environment in Latin America: Questions, Approaches and Cases

This dissertation focuses on instances in which citizens in developing countries succeed in blocking large-scale mining projects and protecting the environment by activating institutions of political participation. Environmental degradation is a growing and critical academic and policy concern (Sachs 2015; York and Dunlap 2012; Watson 2016). Hydrocarbon use and extractive activities like mining and timber exploitation are leading causes of environmental degradation (Bridge 2004).¹ Building on the notion of “unequal exchange” introduced by dependency and world-systems theorists (Amin 1976; Cardoso and Faletto 1969; Emmanuel 1972; Prebisch 1949), sociologists have argued that the modern world system structures a dynamic of “ecologically unequal exchange.” In this dynamic, core nations consume the bulk of the world’s natural resources and produce the greatest pollution, but peripheral and semiperipheral nations experience most of the environmental impacts associated with this exploitation of nature (Bunker 1985; Jorgenson, Austin, and Dick 2009; Rice 2007). These impacts usually correlate with contentious politics as environmental destruction comes hand in hand with social conflicts (Bebbington and Humphreys 2008; Peluso and Watts 2001; Svampa and Antonelli 2009).

The most recent commodity super cycle,² which began in the early 2000s and was driven by the swift pace of industrial development and urbanization in China and India, is not an

¹ See Bridge (2004) for an explanation of how mining came to be seen as an environmental threat. Interestingly, “it is only in the past two decades or so that mining’s environmental problem has come to be understood chiefly in terms of its effects on the receiving environment” (Bridge 2004:208).

² According to Erten and Ocampo (2013:14), analyses of real commodity prices suggest that there have been four commodity super cycles between 1865 and 2010. Super cycles share two characteristics: (1) they tend to span a period longer than 10 to 35 years, resulting in cycles of 20 to 70 years, and (2) they occur over a broad range of commodities, which are normally those required for industrial production and urban development.

exception (Canuto 2014; Erten and Ocampo 2013; Harvey 2003). This commodity boom has been unprecedented in terms of its magnitude, duration, pace, and technology, increasing the regions where extractive activities have penetrated (Erten and Ocampo 2013). As a result, there has been a surge in socioenvironmental conflicts in the global South, notably in Latin America, Africa, and India (Bebbington 2012; Ejolt 2016).³ Concerns over issues such as water contamination, respiratory and other illnesses, waste generation, degradation of fragile ecosystems, destruction of subsistence agriculture or other economic activities, and privatization of water, forests, minerals, lands, and knowledge (Harvey 2003) have reconfigured politics. Political contention has followed the path of the extractive industries, moving from the cities and factories where they were concentrated during the second half of the twentieth century (Collier and Collier 1991) to the countryside, where extractive projects arrived in the name of development. Those mobilizing are not only indigenous peoples, who in the late 1990s and early 2000s were the main protesters (Roberts and Thanos 2003; Yashar 2005) and privileged interlocutors of the state (Jung 2003); *campesinos* (peasants/rural communities) and middle-class citizens are also sharing the political stage.

Despite the widespread resistance that accompanies the exploitation of natural resources, the general norm is that extractive industries triumph. Communities or local governments that disagree with decisions taken by central governments seldom have opportunities to veto, stop, or significantly alter projects. However, peppered successful cases exist. This dissertation focuses on two of those cases, in which large-scale gold mine projects were hampered as a result of citizen actions that went beyond mobilization and used institutions of political participation.

³ Environmental Justice Organisations, Liabilities and Trade (Ejolt) is a global research project sponsored by the European Union to catalogue and analyze the ecological distribution of conflict and combat environmental injustice. One of its primary products is the Atlas of Environmental Justice, which maps conflicts according to commodity, company, and type of conflict (exploitation of natural resources, generation of wastes, and degradations of environmental goods). See <http://www.ejolt.org/maps/> [last accessed June 3, 2016].

The two institutions of participation explored here are popular consultations and prior consultations. While these institutions differ in origin, nature, and logic, they share the core characteristic of being deployed by citizens throughout Latin America in the last decade to stop companies from developing mines and other extractive projects in and around their towns and to safeguard the environment.

Popular consultations (also known as *public consultations*, *local referendums* or *community consultations*)⁴ are institutions of direct democracy that give an electorate the opportunity to vote on a particular “yes or no” question relevant to their jurisdiction.⁵ Through these popular consultations, residents of potentially affected communities vote on whether or not they agree with mining (or any other extractive activity) taking place in their area. Popular consultations are a form of direct democracy that does not originate in international law. They are mandated in national laws, like national constitutions or municipal codes, as a means to guarantee civic participation. Depending on the national legislation, they are binding, meaning that the state has to honor the opinion expressed by the majority. They are open to all citizens, including but not limited to indigenous and tribal groups. Decisions are taken by one-time votes (which might or might not be preceded by formal or informal deliberative processes). It is not an obligation of the state to carry out popular consultations when it wishes to carry out extractive projects, as is the case of prior consultations.

⁴ They are known as *consultas vecinales* (neighborhood consultations) in Peru, *consultas comunitarias* (community consultations) in Ecuador, *consultas de buena fé* (good-faith consultations) in Guatemala, or *consultas populares* (popular consultations) in Argentina and Colombia. I find the term *popular consultations* to be clearer and more encompassing; thus I use this term throughout.

⁵ For example, popular consultations have been used in Latin America to ask citizens whether they want a day without cars in capital cities or whether a municipality wants to be part of a greater metropolitan area.

Prior consultation, also known as the right to free, prior, and informed consent (FPIC),⁶ is the right of indigenous and tribal peoples to have the state consult with them when it wishes to take legislative or administrative measures that could potentially affect them or their territory (for example, development projects or exploration or extraction of natural resources located within the territory of the groups). The obligation to undertake prior consultation always falls upon the state. This means that the state must reach out to those communities and initiate a process to guarantee their informed participation in decisions related to their lands and resources. Prior consultation is a collective right belonging exclusively to indigenous and tribal peoples, which originates in international conventions such as the International Labor Organization Convention 169 of 1989 and the 2007 United Nations Declaration on the Rights of Indigenous Peoples and has been developed in national laws and jurisprudence and private regulations. The process consists of deliberation between the state and the communities, regardless of whether some decisions are taken by vote in a specific case.

The use of these institutions to resist extraction raises questions relevant to sociology, which constitute the common thread of this dissertation: What is the relationship between institutions of political participation and environmental protection, and how is this relationship constituted? How are participatory institutions put into motion, and how do they operate? What are the effects of these institutions? Are participatory institutions desirable in general, and from an environmental perspective, in particular, and why? Does the participation of the traditionally dispossessed serve to counter social inequalities, as classic democratic and Marxists theorists propose? What does the surge in the use of institutions of participation tell us about what we

⁶ It is common for scholars to refer to the right to free, prior and informed consent (FPIC) (e.g., Ward 2011), while others prefer to talk about prior consultation (e.g., Falleti and Riofrancos 2013; Rodriguez-Garavito 2011). The debate rises partly because the ILO convention uses both terms (Arts. 6, 6.2, 16.2 and 17.2).

know regarding environmental protection? In this dissertation, I evaluate these questions. In doing so, I engage the broader theoretical question of how institutional analysis can contribute to the study of environmental issues and, inversely, how the study of the environment as a fresh empirical area can enhance scholarship on institutional analysis and participatory democracy.

This dissertation has four main findings. First, it identifies an institutional phenomenon I call *institutional activation*, which is the political, contested process through which institutions, formal and informal, go from being dormant to active. This is different from other institutional phenomena like emergence, change, and reproduction, but it has equally potentially distributive effects. Three types of institutional activation have been identified and incipiently developed — judicial, bureaucratic, and international (Levitsky and Murillo 2013). In this dissertation, I posit that a fourth type occurs when activation results from citizen action by individuals or social groups: *citizen institutional activation*. I hypothesize that citizen institutional activation is likely to occur when a *cross-cleavage coalition* of actors, composed of citizens who under the *status quo* would not normally collaborate and have the resources and strategies to uncover the institution and navigate the system, line up in favor of or against certain rules or practices and disrupt existing institutional arrangements.

Second, the use of these two institutions of political participation in Latin America unveils a problem faced by common-pool resources (CPRs), which I call the *common problem of the commons*. This emerges from the disparity between soil and subsoil property rights, which is common throughout the world, in which the state is the owner of the subsoil and its minerals, regardless of who owns the land. Such incongruence constitutes an external threat to resources on the land inasmuch as the state can confer concessions to those wishing to extract the minerals in the subsoil, which affects the CPRs on the land, regardless of the type of property rights or

governance structure these fall under. Despite being frequent, this threat has not been studied and it accentuates the limits of property rights to solve environmental problems. Third, I posit that institutions of political participation, like popular and prior consultations, can be a tool to solve this common problem of the commons. These institutions of participation allow citizens to be part of the decision-making process related to the subsoil, even without being its owners. In this sense, institutions of participation are a tool for environmental protection, since most resources in the environment are common-pool resources.

The last finding relates to participatory democracy. This dissertation finds that the literature about the potentially transformative effects of institutions of participation is split and fundamentally pessimistic because it lacks a systematic, analytical framework with which to analyze the impact of participatory institutions in relation to environmental protection, in particular, and progressive outcomes, in general. By applying a new analytical framework borrowed from sociology of law and comparative constitutionalism, which is attentive to material, direct, indirect, and symbolic effects, to the implementation of these two participatory institutions, this dissertation finds that participatory institutions produce six effects, which I have labeled deterrent, leveling, awareness, community empowerment, state-building, and creation. These effects develop at different paces and intensities, and together they enhance environmental protection. These effects, along with the rest of the concepts and findings, will be discussed in further depth in the second section of this introduction and in the chapters that follow.

First, it is important to specify how the core concepts of *institutions* and *environment* are used in this dissertation, since both terms are used informally in ordinary parlance and may have several meanings. Regarding the latter, I take a broad understanding of the environment. In general, it refers to “the immediate area surrounding a particular setting or to the global

atmosphere” (Ostrom 2008:25). More specifically, it is the “physical and material bases of all life, including land, air, water, as well as the vital material and energy resources in the surroundings of a society” (Humphrey and Buttel 1995:3).

Regarding institutions, I catalogue popular consultations and prior consultations as *participatory institutions* or institutions of political participation. Drawing on historical institutionalism scholarship (notably Mahoney 2010:15), I define the concept of participatory institutions as formal or informal rules that establish and distribute citizens’ rights to participate in decision-making processes. Because they give access to the decision-making process, these institutions are thus laden with struggle and power consequences (Mahoney and Thelen 2010). In the case of popular consultations and prior consultation, both are formal rules intended to distribute resources to particular kinds of actors and not to others (Mahoney and Thelen 2010:8), such as indigenous peoples, *campesinos*, or citizens often excluded from mainstream arenas of decision making. They influence behavior not simply by stipulating what the actors can do, but also what one can imagine oneself doing in a given context (Hall and Taylor 1996:948). In that sense, participatory institutions are not only constraining, but also enabling (Clemens and Cook 1999:445). Accordingly, we need to see institutions in general and participatory institutions in particular as instruments (Hall 2010:217).

There are two additional important clarifications to be made about the concept of institutions of participation. First, scholars of deliberative democracy often differentiate between institutions in which decisions are made through the deliberative process and those that result from aggregative voting (Fung and Wright 2003:18). I argue, however, that deliberation — understood as a “means to debate alternatives on the basis of considerations that all take to be relevant” (Cohen and Rogers 2003:241) — can occur formally or informally *before* the

constituting act of the institution (for example, if deliberation occurs before the vote) or it can *be* the constituting act of the institution (for instance, in the case of participatory budgeting where decisions are made through reasoned deliberation). In this sense, deliberation occurs at some point in the deployment of the institutions. Hence, I group institutions that might not seem deliberative at first glance (i.e., popular consultations) with those that are unquestionably deliberative (i.e., prior consultations) under the rubric of participatory institutions. Second, scholars also often make a strong differentiation between how an institution was conceived on paper and how it works in reality and is enacted on the ground. However, as Streeck and Thelen (2005:18) argue, “the practical enactment of an institution is as much part of its reality as its formal structure.” In this vein, I use the term *participatory institutions* to refer interchangeably to the formal structure of the institution and to its enactment.

To explore the relationship between institutions of political participation and the environment, the rest of this chapter is organized as follows. In the next section, I review what we know from three main strands of literature that consider the relationship between institutions and the environment: (1) environmental sociology, (2) institutional analysis, and (3) participatory democracy. I identify their main questions, present their arguments, and identify those areas they have been silent about or overlooked and that this dissertation seeks to fill. In the second section, I lay out the main arguments of the dissertation; these seek to fill those academic lacunas and bring together these three fields of inquiry, which, while interested in similar issues, have remained distant. In the third and fourth sections, I present the research design and the order of the dissertation, respectively.

1.1. Environmental Sociology, Institutional Analysis, and Participatory Democracy: Questions, Arguments, and Voids

This dissertation explores the relationship between institutions and the environment. The general argument it advances is that looking at the environment as a substantive field enriches institutional theory. In turn, applying institutional theory to environmental issues enriches our understanding of the environment and of the political economy of the environment. Before developing this argument and showing the specific ways in which this two-way relationship operates, I first examine the leading scholarship about the relationship between institutions and the environment.

1.1.1. Environmental Sociology

Over the course of the twentieth century, most sociologists ignored the natural environment, adopting a position of “human exemptionalism” that denied that modern societies were influenced by the biophysical surroundings (York and Dunlap 2012). This started to change in the 1970s, when environmental sociology formed as a field on the margins of sociology interested in the study of societal–environmental interactions (York and Dunlap 2012). The goal of environmental sociology has been to understand the causes of environmental problems, the social impacts of such problems, and potential solutions to these problems.

However, the scholars in this field, who belong to what is known as the second wave, only recently began to consider the role of institutions in these interactions and solutions. Their goal has been to address a central question directly related to the object of study of this

dissertation: what are the institutional responses to environmental decline? (Rudel, Roberts, and Carmin 2011:226). The second-wave institutional theories made a substantial contribution to the political economy of the environment because they helped see solutions to environmental decline beyond the macro, structural solutions of the first wave. I argue, however, that they employ a limited view of institutions that conceives institutions as organizations, which deprives them from having a full understanding of institutions' potential role in preventing environmental destruction, recognizing the role of agency, and perceiving the more recent democratic innovations that are taking place in particular in less-developed democracies (Baiocchi, Heller and Silva 2011:xiii), where institutions deployed by citizens are contributing to halting environmental decline.

By defining institutions as *organizations*, environmental sociologists share with organizational and economic sociologists a view of institutions that is often “taken to mean formal law and state organizations (e.g., Congress, the Department of Agriculture) or the models of organization they embody” (Clemens and Cook 1999:442). Accordingly, as opposed to the macro-level, structural solutions that naturally sprung from the first-wave theories –for example, curtailing economic and population growth (Meadows et al. 1972; Schainberg 1980)–,⁷ for second-wave scholars, solutions come from institutional actors: large international or domestic environmental nongovernmental organizations (NGOs), corporations that collaborate in making policy or installing cleaner technologies (Mol and Sonnenfeld 2000), state agencies (Buttel 2003; Schneiberg and Bartley 2008), or alliances between these actors (Fisher 2004; Rudel, Roberts, and Carmin 2011:227). In sum, as Rudel, Roberts, and Carmin rightly note, the “theories

⁷ For a detailed description of the potential solutions to address environmental problems offered by first-wave scholars, see York and Dunlap's (2012) detailed review.

focusing on institutional actors consider a privileged strata in society that is regularly represented in the most influential arenas of collective decision making” (2011:228).

By equating institutions with organizations, environmental sociology does not give sufficient attention to agency, but it also dismisses other potential sources of institutional change that do not come from the organizations. I argue that, if environmental sociology adopts a more historical institutionalist approach to institutions, like the one offered in this dissertation, this would accomplish two things. It would give greater attention to agency, since institutions would be seen as tools employed by citizens to prevent environmental deterioration, and it would focus attention on other sources of change, such as the participatory institutions addressed in this dissertation that do not depend exclusively on organizations like state agencies, environmental NGOs, or corporations.

In addition to focusing on the institutional response to environmental degradation, scholars of the second wave have also focused on the social movements that challenged the agents of destruction. Environmental justice emerged both as a social movement built by sociologists and activists to assist community advocates in their resistance (Brulle and Pellow 2006:110; Mohai, Pellow, and Roberts 2009:406) and as a distinct subfield of scholarship concerned with the disproportionate burden of environmental hazards that is placed on minorities and poor populations (Bullard 1996:445; Carruthers 2008). More recently, U.S. scholarship has shifted its focus to individual actors like green consumers or the anticonsumerist movement (York and Dunlap 2012) as another solution to environmental degradation.

While social movements scholars balanced the field by introducing agency, their oversights are twofold. First, environmental social-movements scholars have focused mostly on mainstream social movements and organizations, such as Greenpeace or the Sierra Club (Pellow

and Brehm 2013:242) and have missed other less organized or grandiose forms of public protest, such as those surrounding the use of popular and prior consultation. Second, these scholars have seldom studied when social movements move beyond their traditional “repertoires of contention” (Tilly and Tarrow 2007) to employ institutions such as popular consultations, which is what this dissertation seeks to do. However, it is not only environmental sociology that has failed to take a more historical-institutionalist approach to the environment. Sociological approaches to institutional analysis have also failed to make the environment, particularly in developing countries, a central substantive object of study, as we will now see.

1.1.2. Institutional Analysis

The three leading schools of new institutionalism or institutional analysis — historical institutionalism, rational-choice institutionalism, and sociological institutionalism — all seek to elucidate the role of institutions in determining social and political outcomes (Hall and Taylor 1996). However, of these three, only the rational-choice school, also known as new institutionalism in economics (Agrawal 2007; Dietz, Ostrom, and Stern 2003; North 1990, Ostrom 1990),⁸ has made the environment a central object of inquiry. In the new institutionalism of economics, the body of work focused on the environment is known as the *new institutional analysis of environmental problems* (Paavola 2007).

⁸ As Hall and Taylor (1996) explain, the new institutional economics could be classified as a fourth school. However, since their theoretical assumptions overlap strongly with the rational-choice school, they can be treated as one school. As we will see in this section, the new institutionalism in economics puts more stress on property rights as the quintessential institution.

Scholars of the new institutional analysis of environmental problems⁹ are interested in “how institutions enhance or adversely affect multiple objects and processes related to ecological systems” (Ostrom 2008:24), which is an object of inquiry shared by this dissertation. They understand institutions as rules that constraint and shape human interaction (North 2005:3; Ostrom 2008:24). Within the large realm of the environment, scholars in this field are interested in common-pool resources (CPRs), since most environmental goods — forests, lakes, oceans, irrigation systems, and fishing grounds, among others — are indeed CPRs.

Common-pool resources share two attributes: rival consumption (that is, consumption by one person reduces the consumption by another) and difficulty of exclusion (Ostrom 2003:253). Because of these attributes, CPRs are threatened by overuse, leading to congestion, degradation, overharvesting, or depletion of the resource (Ostrom 1999:493).¹⁰ The “tragedy of the commons” (Hardin 1968) has been used as a metaphor to describe this central problem of overuse and degradation of the commons.¹¹ Likewise, because of these attributes, CPRs face the problem of interdependence, which occurs “when a choice or reward of one agent influences those of another” (Paavola 2007:94).¹² Externalities are instances of such interdependence (Paavola 2007:95). Interdependence causes environmental conflicts, such as those over who gets to use particular environmental resources, and pressures to resolve these by defining whose interests are to prevail and to what degree.

⁹ Others call this work the *new institutional economics* or the *scholarship of the commons*.

¹⁰ Such threats do not apply to public goods because consumption of such goods by one person does not reduce the consumption of the other. Thus, in public goods, high levels of consumption do not lead to the CPRs’ central problem of overuse and depletion (Ostrom 2003:262).

¹¹ To be sure, in addition to their rivalry–excludability trait, common-pool resources can have other attributes that can affect the challenges or solutions for governing them, including the possibility for multiple uses, mobility of the resource, stability or fluctuation of yields, and facility for storage (Schlager, Blomquist, and Tang 1994:294–299). Yet the key common and defining trait is their rivalry–excludability nature.

¹² Interdependence can also be created and shaped by the attributes of the community of actors involved in the management of the resource, for example, the number of agents involved, the heterogeneity of their values, or their level of social and cultural capital (Ostrom 2005; Paavola 2007:95).

The solution to avoid overharvesting of CPRs is to limit entry or withdrawal through institutions.¹³ “Without effective institutions to limit who can use diverse harvesting practices, highly valued, common-pool resources are overharvested and destroyed” (Ostrom 2008:24). The four main institutions that have been conceived as solutions to avoid the tragedy of the commons are private property (Demsetz 1967; Hardin 1968), government property (Lovejoy 2006; Hardin 1968), common property (McKean 2000), and community control (Ostrom 1990). As Anderson and Libecap argue, “Property rights –informal or formal, individual or groups- help reduce the tragedy of the commons by assigning the costs and benefits of decisions, making the opportunity costs clear, limiting the race to capture rents, and allowing owners to reallocate resources across uses and across time” (2014: 204).

Scholars, however, have gradually recognized that there is not one ideal institutional solution. “No single broad type of ownership — government, private, or community — uniformly succeeds or fails to halt major resource deterioration” (Dietz, Ostrom, and Stern 2003:1908). Against this finding, Ostrom (1990) devised a set of principles to characterize those cases of local CPRs that survived long stretches of time. These principles refer to who governs; the timing, quantity, location, and technology used to exploit the resource; the degree of monitoring; the type of conflict resolution system available; the way to manage risk; and the degree of adaptation. In addition, Ostrom and the commons scholars recognized the need to manage CPRs at “multiple levels, with vertical and horizontal interplay among institutions” (Ostrom 2008:27). This structure was labeled a “polycentric system” (Ostrom, Tiebout, and

¹³ For commons theorists, property rights institutions are best seen as sets of rules that define access, use, exclusion, management, monitoring, sanctioning, and arbitration behavior of users with respect to specific resources (Schlager and Ostrom 1992).

Warren 1961; Ostrom 1999).¹⁴ One of its underpinning ideas is that “innovative rule evaders can have more trouble with a multiplicity of rules than with a single type of rule” (Dietz, Ostrom and Stern 2003:1910).

Despite recognizing the limits of property rights and advocating for more complex governance systems, this scholarship has failed to capture one central issue that affects the governance of the commons and the environment: in most parts of the world, the commons face the common problem of the commons —the problem of overlapping property rights in which the CPR on the soil is regulated in one way and the resources of the subsoil are regulated in another.¹⁵ A CPR can be threatened not only by direct overharvesting of the common-pool resource itself (i.e., the timber, the fish, or the water) — the focus of the scholars of the new institutional analysis of environmental problems — but also by the extraction of another good from the subsoil (i.e., gold, iron, coal, oil), which affects the CPR on top. Regardless of how strongly regulated and monitored they are, commons in many areas of the world (for example, in all countries in Latin America) are subject to a competing property system underneath because the subsoil and its minerals belong to the state regardless of the type of property regime on the soil. This potential use of the underlying resources constitutes a constant external challenge to the commons on the topsoil that is independent of the property regime that governs the commons. In that sense, the tragedy of the commons derives not only from a lack of regulation over particular CPRs (Hardin 1968; Ostrom 1990), but from another source of interdependence:

¹⁴ A polycentric system is a system with many centers of decision making that employs varieties of decision rules and a mixture of institutional types (for instance, market solutions and community self-governance) to increase the information on the resource and the degree of monitoring, and adjust users’ incentives (Ostrom 1999; Ostrom 2010). Polycentric systems imply, importantly, “that citizens are able to organize not just one but multiple governing authorities at different scales” (Ostrom 1999:528), and likewise, that the users of the CPR have authority to make at least some of the rules related to the use of that resource.

¹⁵ To be sure, the issue of overlapping regulations is not just an issue with CPRs. Many other entities face multiple regulations attempting to control different facets of the entity.

what happens to the CPR on the soil is affected by the use and regulation of another resource (whether CPR or not) underneath.

At least five reasons can explain the lack of attention given to this common issue. First, the common-pool scholars have not applied their framework to the study of oil and minerals found in the subsoil. As Ostrom (2012) explained at her last conference,

In terms of minerals, I haven't thought very much about it. Minerals in the ground come very close to private goods... Oil in the ground has the problem of being a commons even though we have not treated it as such very much. Most of the resources that I have looked at are generally renewable. And one of the very difficult problems about minerals is that they are non-renewable. But I have not studied them.

Second, these scholars are also interested in how groups overcome collective-action problems, so they tend to focus on one CPR and how users devise social norms to coordinate and avoid its depletion (Ostrom 2000), disregarding alternative threats to CPRs that do not derive from a collective-action problem. Third, most scholarship studies the subsoil regime independently from the topsoil regimes, reinforcing the division and dismissing its implications (e.g., McHarg et al. 2010). Fourth, most of the theoretical development in the field of common-pool resources took place in the late 1980s and early 1990s, when the world was not experiencing a commodity super cycle (Erten and Ocampo 2013). As such, environmental conflicts that could have indicated that CPRs and communities were being affected by the external threats posed by subsoil property rights were not so widespread (see Bridge 2004). Lastly, as Carruthers and Ariovich (2004) argue, "contemporary sociology has said less about property than its centrality warrants, largely ceding the topic to economics and law," so, not surprisingly, these discussions have been overlooked.

The theoretical and empirical questions that arise regard whether, in the majority of areas of the world where the owner of the soil and the subsoil differ, the tragedy is inevitable. Through

what means can the users and owners of the common-pool resource manage to avoid depletion when faced with the common problem of the commons? Said differently, how can citizens, without being owners of the wealth of the subsoil, avoid the destruction of CPRs?

Section 3 outlines how this dissertation contributes to filling this void in the rational-choice approach of institutional analysis by (1) identifying and conceptualizing the common problem of the commons, and (2) arguing and illustrating how institutions of political participation can be used as tools to solve the common problem of the commons.

Aside from the rational-choice school, the other two schools of institutional analysis have not given the environment the attention it deserves, either as an important outcome worth explaining with institutional-analysis tools or as an empirical case that can enrich institutional theory. Despite the consolidation of environmental sociology as a field of inquiry, sociology “continues to give environmental problems limited attention” (York and Dunlap 2012:2). The two more mainstream institutional-analysis schools in sociology are no exception. They have said much less about the environment than its centrality deserves, essentially surrendering the topic to economists and political scientists within the rational-choice school, as shown above. A review of some of the main works in institutional analysis drives this point home. These analyses have studied substantive outcomes like health care reform (Falletti 2010), the welfare state and social security (Hacker 2005; Jacobs 2010), social policy (Palier 2005), and authoritarian regimes (Slater 2010), for example, but have overlooked environmental protection, environmental destruction, and environmental politics.

The question then is, What would be gained by bringing the environment as a fresh empirical object of study into institutional analysis? Section 2 briefly presents the position expanded in Chapter 2 of this dissertation: bringing the environment into institutional analysis

enables scholars to uncover and explore new institutional phenomena that are distinct from those for which good theories already exist, such as institutional emergence (e.g., Bartley 2007; Hall and Taylor 1996), diffusion (e.g., Dobbin 1994; Scott and Meyer 1994), reproduction (e.g., DiMaggio and Powell 1983; Dobbin 1994; Stinchcombe 1968), endurance (e.g., Clemens and Cook 1999), and change (Mahoney and Thelen 2010; Clemens and Cook 1999). Specifically, it allows us to reveal and explore the concept I call *citizen institutional activation* — the political, contested process through which citizens make institutions go from being dormant to being active. I argue that institutional activation in theory does not occur exclusively in the environmental realm; such a phenomenon could have been identified through an examination of other empirical material. However, it was through an in-depth analysis of an environmental struggle over mining in which citizens actuated a participatory institution that the phenomenon of institutional activation became clear. In other words, it was the in-depth case study of a heated socioenvironmental conflict that revealed the phenomenon of activation.

1.1.3. Participatory Democracy

This dissertation explores the role of participatory institutions in shaping environmental outcomes. It seeks to understand the impact of participatory institutions on environmental protection and to ask whether enhancing political participation is desirable. These objectives situate this dissertation within a third school of inquiry: the scholarship on participatory democracy rooted in sociology, which makes the question of whether and how institutions of political participation and deliberation result in progressive outcomes one of its central objects of inquiry (Fung and Wright 2003).

The sociological and political science literature on participatory democracy in general, and with regard to environmental outcomes in particular, is divided and largely pessimistic regarding the potential of institutions of political participation to create true, transformative effects *because* it lacks a systematic analytical framework through which to analyze the impact of such institutions. Thus, every study analyzes different potential impacts or fails to see some entirely. In addition, most scholars analyze the potential impacts of the implementation of participatory institutions through a very narrow lens. It is common for scholars to define public participation success in terms of either the participatory process (e.g., equitable representation) or its direct outcome (e.g., an increase of the budget for environmental issues) (Murdock and Sexton 2002:2130). Yet these studies generally fail to take into consideration other potential unintended or intangible effects, even beyond the specific case. This creates an analytical handicap that limits the identification of potential progressive effects.

On one end of the spectrum, critics consider deliberation to be an empty promise (e.g., Bourdieu and Thompson 1991; Sanders 1997; Selznick 1949). The most common critique is that participatory instances reproduce societal inequalities and neglect unequal, background relations of power. Although the institutions are intended to broaden participation by including those traditionally excluded and marginalized, the powerful actors (e.g., in terms of income, wealth, education, technical expertise, or membership in certain classes or social groups) may ultimately continue to dominate them. This may occur because the institutions do not end up seriously including “ordinary citizens” or certain participants in the public arena (Abers 2003:200; Gaventa 1980:9) or because, even if they do include them, the participants are not equally prepared to actively participate (Bourdieu 1991; Simmons 2007). Even Habermas, who has defended the idea that everyone capable of speech has an equal opportunity to participate in

deliberations, acknowledges that a “technocratic consciousness” may prevent public and democratic deliberation on scientific issues (Habermas 1970:105). Similarly, the unequal participatory capacity inspired Kaufman (1960), the philosopher who coined the term *participatory democracy* (Mansbridge 2003:177), to nonetheless recognize the “paradox of participatory democracy.” The paradox is that, while participation in democratic venues can enhance citizens’ democratic capacities, those who have never experienced it might not have the required capacity to enhance democracy in turn. But even if ordinary citizens are well represented or have the capacity to participate, powerful actors might use the tools at their disposal to orient this space to their benefit and preclude certain demands or interests from becoming issues in the decision-making process (Gaventa 1980:vii; Lukes 2005).

A second, related critique is that powerful participants may only concede to using participatory instances when it fits their needs or as long as only certain issues are addressed (Fung and Wright 2003:33), and not when it is most necessary or originates from a bottom-up demand. Another common critique argues that participatory institutions are not empowering when the state initiates them (Abers 2003:200). A fourth objection cites participatory venues’ potential to polarize communities rather than unite them (Fung and Wright 2003:37).

Conversely, advocates of participatory institutions acknowledge the limitations of the models of such forms of governance, but they are more confident regarding the transformative power of these institutions. A main argument in favor of participatory institutions contends they help counterbalance power by establishing new channels of participation through which the traditionally disadvantaged (women, racial minorities, poorer people) or those underrepresented in formal political institutions can share their knowledge, voice their concerns, and gain the possibility of influencing a decision (Altman 2014; Baiocchi, Heller, and Silva 2011; Cohen and

Rogers 2003). Participatory institutions also often bring into the public debate issues of importance to disadvantaged people, enhancing the degree of equity, fairness, and quality of public debate and decisions (Estlund 2002:15; Fung and Wright 2003). Additionally, participatory institutions can have democratic educational effects for ordinary citizens by teaching them to see things they may have previously overlooked about policy or political problems, which allows them to reevaluate their preferences, increases their democratic skills, and makes them aware of their powers as citizens and more mindful of the political views of others (Abers 2003; Ackerman 1980; Baiocchi 2001; Cohen 1996, Kaufman 1960; Manin 1987; Mansbridge 2003). Advocates of participatory institutions also recognize that the deliberative process, whether it occurs as part of the participatory institution itself (for example, in a participatory budgeting meeting) or informally around it (for example, before a referendum), is likely to enhance the quality and legitimacy of a decision. This is because participants have the opportunity to offer information, consider alternatives, and ultimately take part in the final outcome (Fung 2004:17; Baiocchi, Heller, and Silva 2011:54).

As anticipated, the balance of the literature is “on the whole pessimistic” (Abers 2003:200). As Cohen and Rogers (2003:243) note, “Empirical literature on deliberation is thin, and not very promising in observed facts.” The critiques and potentials mentioned above apply to a panoply of substantive issues from participatory budgeting to Chicago schools. Case study literature on public participation in environmental public studies contributes to the pessimistic outlook. For scholars in this field, it is normatively desirable to include citizens in environmental policy debates for the same reasons mentioned above. It can incorporate valuable knowledge and make decisions that are more just, legitimate and of better quality. It can also, among other benefits, help neutralize power and increase the chances that community needs are addressed

(Charnley and Engelbert 2005; Coenen 2008; Fiorino 1990; Gustafsson 2011; Harding 2007; Simmons 2007; Thomas 2003). From a legal perspective, participation is a necessary condition for “environmental justice” (Harding 2007:1). However, Simmons’s (2007:2–3) summary of the study of historical and firsthand accounts of public participation practices in environmental decisions echoes many findings of other empirical studies:

These accounts show that citizens’ status is most often marked by low interaction with the technical experts as well as little power in influencing the final policy... Despite requirements that mandate public participation, citizens have very little say and almost no power to influence environmental decisions, even when it affects their own neighborhoods.

Other fields in sociology have attempted to systematically analyze and measure the effects of institutions. As Section 2 notes, Chapter 4 of this dissertation, in particular, applies an analytical framework developed by these other fields (notably sociology of law and comparative constitutional studies) to two institutions of participation in relation to environmental issues as a substantive object of inquiry and aims to fill the analytic void and advance the literature on institutions of participatory democracy. Approaching environmental issues from the perspective of institutions of participatory democracy, as I do in this dissertation, requires enriching existing theories of institutions of participatory democracy since the current approaches do not sufficiently comprehend the full potential effects of such participatory institutions. In short, I advance the theories of participatory democracy by thinking of an alternative and more varied analytical framework to measure the effects of institutions.

The following section develops the main findings and arguments of the dissertation and shows their theoretical and conceptual contribution to filling these academic lacunas.

1.2. Connecting Institutional Analysis, Participatory Democracy, and Environmental Politics: The Arguments

This dissertation posits that an institutional-analysis approach to studying the environment enhances our understanding of environmental politics (Relationship A). It also contends that bringing the environment as a fresh, empirical object of study into institutional analysis enriches the institutional literature by enabling the discovery and exploration of new phenomena (Relationship B). More specifically, the institutional perspective allows us to perceive and explain things about the environment that we would otherwise not be able to see, such as how institutions can avoid environmental destruction when they are conceived as enabling tools rather than as constraining structures (Relationship A). While the environment has not been the central object of study of theories of institutions, with the exception of the new institutional economics, studying it advances theories of institutions because it calls attention to aspects of institutions that would otherwise not be seen (or at least not considered). For instance, it highlights moments in which latent institutions become active as a result of citizen effort or the limits of existing institutions (like property rights systems) to grant environmental protection. But it also forces us to improve existing theories of institutional analysis and participatory democracy because the accumulated literature provides us with little guidance regarding the effects that participatory institutions can have on environmental protection (Relationship B). Put in other terms, the theoretical contributions do not occur by accident but because we look at particular substantive material. Likewise, substantive, empirical contributions happen not by accident but because we adopt the theoretical lens of institutions. They are mutually necessary. In the next section, I develop these relationships and arguments in further depth, starting with

Relationship A, which is a more general claim, and then focusing on three ways in which Relationship B operates.

1.2.1. The Environment Meets Institutional Analysis: Beyond an Organizational Notion of Institutions

As explained above, one of the main areas of research in environmental sociology has been to understand potential solutions to environmental problems (York and Dunlap 2012). A central response to the latter has been that institutions are central to halting environmental degradation (Rudel, Roberts, and Carmin 2011). Yet institutions in this body of work are conceived mainly as organizations. Accordingly, it is NGOs, the policies adopted by state agencies, the changes carried out by corporations, or joint work among the three (Rudel, Roberts, and Carmin 2011) that are seen as able to reduce environmental degradation.

However, I argue that, by opting for an organization-centered conception of institutions, this work misses other potential ways to prevent environmental degradation; in particular, it disregards potential institutional solutions to environmental degradation such as institutions of political participation. These institutions become visible when we adopt the historical-institutionalist approach embraced here, in which institutions are conceived as tools with strong distributional effects. In other words, when institutional analysis is applied to the environment (Relationship A).

In Latin America today, one cannot understand environmental politics in general, or attempts at environmental protection in particular, by focusing on organizations alone (e.g., on the policies adopted by the Ministries of the Environment or the promises made by corporations

to reduce water pollution.) Throughout Latin America, indigenous and nonindigenous populations have turned to two main forms of participatory institutions — popular consultations and prior consultations — as tools to protect agriculture or the environment (rivers, glaciers, lakes, forests, etc.) from contaminating activities, notably large-scale mining.

In the past two decades, Latin America has witnessed a surge in popular and prior consultations. Beginning in towns like Tambogrande, Peru (in 2002), Esquel, Argentina (in 2003), and San José Las Flores, El Salvador (in 2014), communities across the region have used popular consultations to vote against having mining (or other extractive activities) on their territory and in favor of protecting the environment, notably water, and agriculture. Voter turnout and results have been overwhelming, as I will explore in depth in Chapter 2.

Likewise, indigenous communities, appealing to international law (International Labor Organization (ILO) Convention 169 of 1989), national jurisprudence, and private regulations, have demanded that prior consultations be held when the government plans to carry out extractive projects on their land that could adversely affect their lands and natural resources (Rodríguez-Garavito 2011). Through these consultations, communities have requested protective measures to mitigate the detrimental environmental impacts of these projects and have in some cases vetoed the projects altogether. In other cases, when the government has failed to implement consultation prior to the projects, the communities have requested prior consultations even when the projects were underway and have succeeded in halting the projects. In Colombia, for instance, over 3,000 prior consultations have been held with varying degrees of success. Indigenous and nonindigenous people are using both institutions today to attempt to block or mitigate environmental damage caused by extractive industries instead of depending on the more traditional organizational channels. In Chapter 3, I present a case study of a prior consultation

that facilitated the creation of a national park in the western Colombian Amazon and blocked a Canadian transnational corporation from building an open-pit gold mine.

The deployment of these institutions of participatory democracy in turn provides rich empirical material from an institutional-analysis perspective. In the following sections, I show how bringing the environment into institutional analysis (Relationship B) enriches theories of institutional analysis in three ways.

1.2.2. Institutional Analysis Meets the Environment: Citizen Institutional Activation

Bringing the study of popular consultations regarding mining and environmental issues to institutional analysis allows us to identify the new institutional phenomenon I call citizen institutional activation. Certainly, institutional activation does not occur exclusively within environmental issues. However, analyzing environmental politics in Latin America enabled me to discover the phenomenon.

The institutional literature has advanced our understanding of different aspects of institutions, including emergence (Mahoney 2000; Hall and Taylor 1996),¹⁶ endurance (DiMaggio and Powell 1991), reproduction and diffusion (DiMaggio and Powell 1983; Dobbin 1994; Scott and Meyer 1994; Sewell 1992), and change (Clemens and Cook 1999; Mahoney and Thelen 2010; Pierson 2004). However, institutional activation is a different process. In all of the previous processes, institutions are manifest, and thus they change, reproduce, diffuse, or remain stable. However, institutions also emerge and at some point become unknown to most actors as a

¹⁶ See Hall and Taylor (1996) for a summary of how the three different schools of institutional analysis explain the process of institutional creation.

result of the passing of time, regime changes, or changes in the economic and political conditions that make the institution obsolete. It is the contested political process through which the institution comes to life again through citizen action that is of interest here.

Activation has received minimal scholarly attention. Levitsky and Murillo (2013) are among the few who have theorized the issue. However, for Levitsky and Murillo, institutional activation is a synonym for enforcement and in turn is a source of institutional change. In their terms, “institutional change may also be achieved through the *enforcement or ‘activation’* of previously dormant *formal* institutions” (Levitsky and Murillo 2013:103, emphasis added). For them, activation is undertaken by the judiciary or the bureaucracy or it happens because of international pressure.¹⁷ The judiciary is often pressured by civil society groups mobilizing before the courts to demand enforcement. Thus, for these authors, the role of citizens appears to be important in stimulating judicial activism, but is not recognized as an independent agent of activation.

I contend that activation is different from enforcement. Activation can be the result of enforcement (and thus, they can be synonymous), when this is carried out by the usual enforcers — the bureaucracy and the judiciary (Mahoney and Thelen 2010:13). But if we equate activation with enforcement in general, we overlook the fact that actors other than enforcers can activate a dormant institution. In particular, we completely overlook one type of activation: citizen institutional activation. Moreover, equating activation with enforcement limits our understanding of activation to formal rules, which is in fact what Levitsky and Murillo (2013) do, and ignores the possibility of analyzing the activation of informal institutions.

¹⁷ Levitsky and Murillo (2013:104) argue that “Finally, institutional activation may be a product of external pressure, especially in peripheral countries seeking access to international assistance or markets.”

For citizen institutional activation to occur, desire and discovery of the institution are not enough, nor is the existence of a threat. A threat is an enabling background condition, necessary to trigger institutional activation. Citizen institutional activation is the result of a cross-cleavage coalition of actors that manages to disrupt prevailing institutional arrangements. It is not a coalition of “united subordinate elites” (Yashar 1997) but a coalition of actors from different classes or traditionally divided social groups (e.g., union workers and factory owners). The power of the coalition comes from its possession of minimal knowledge of the institution, resources, and knowledge of how to navigate the system to put the institution into action. The coalition does not have to be formal or overt; association can be fluid.

The coalition is composed of activation agents who have activation strategies. The activation agents are of three types: subversive activators, knowledge bearers, and protesters. I borrow the term *subversives* from Mahoney and Thelen (2010) not because the activators want to displace an existing institution, as do the change agents they focus on, but because subversive activators share with change agents their strategy of working within the system (Mahoney and Thelen 2010:25). A latent institution with distributive effects of which people are unaware is prime material for subversive work. Silence and surprise are dominant strategies of subversive activators. Citizen activation requires agents who do not make their preferences or attempts to activate an institution explicit; they avoid triggering the opposition, who are those who will be harmed by the distributional effects of the institution.

In addition to those who know how to silently navigate the state apparatus or whatever is needed to put the institution into motion, the coalition also needs to have knowledge bearers. These actors are aware of the institution because they designed it, work or worked in cognate fields that facilitated learning about these institutions, or participated in the debates that led to its

creation, among other reasons. The knowledge bearers might be the same subversives or at least have links with them, and they must be on the side of the subversives and protesters. While activation implies that there is a quiescent institution that most people are unfamiliar with, activation allows (and even requires) a little knowledge. Someone has to know about the institution in order to put it to use.

Lastly, the protesters, as the name suggests, are the more visible face of the politically contentious process. They can play multiple and changing roles, depending on the situation. For example, they can initially react to the threat by mobilizing traditional repertoires of contention (Tilly and Tarrow 2007), alert the subversives about the threat, or help impose or sustain the institution. Their strategies are thus different from those of the knowledge bearers or subversives, for whom being visible is not desirable. Knowledge bearers might prefer to hide from their traditional allies (for example, powerful actors in the state), while the subversives generally hide as a strategy to be successful. Protesters, however, are not able to achieve activation on their own. First, the institution is dormant and hence not necessarily part of the repertoire; it is not a public strategy that they can observe other social movements employing and then imitate. Second, protesters need the leverage of the other two activator groups; they need agents who know which institution to employ to move beyond mobilization and agents who know how to navigate state structures to put it into motion. Indeed, while protesters are usually involved in activation, activation can occur without them.

In sum, I hypothesize that institutional activation needs a cross-cleavage coalition composed of these three groups. While activation is unlikely to be successful if it lacks popular support, it is also unlikely to attain activation with protesters alone, without actors who can navigate the system and who have the resources to uncover the institution, whether directly or

through other actors. Yet the right actors are not enough either. Successful activation will be more likely to occur if the actors employ a strategy of silence that allows them to navigate the system and put the institution in motion without alerting their opponents. Contrary to the general social-movements argument, according to which political opportunities are structurally present from the start, these hypotheses suggest that political opportunities are created as a result of agency and strategy (Goodwin and Jasper 1999).

Because sociology and political science have not said much about institutional activation as opposed to other institutional processes, such as emergence, change, reproduction, and stability, we know very little about its agents, strategies, and causal processes. Citizen institutional activation might not be very common, but when it happens, it can have substantively important repercussions in outcomes, which are relevant to the social sciences. This dissertation contributes to filling this gap by developing a new theory of those agents and strategies that represent the causation behind institutional activation. Chapter 2 further elaborates this theory and assesses it through the case of the town of Piedras, which held the first popular consultation over mining in Colombia in 2013.

1.2.3. The Common Problem of the Commons and the Institutions of Political Participation as a Solution

The common problem of the commons springs from the fact that CPRs are subject to overlapping property schemes, which creates a permanent threat to CPRs on the land. The threat emanates from the state's ability to authorize mining concessions for exploration and exploitation. Such activities affect the CPRs on the topsoil, regardless of the strength, security,

complexity and degree of monitoring of the governance system devised for their protection.

In that sense, the tragedy of the commons is not internal — it does not come from the exploitation of the common-pool resource itself. Instead, it is external — it derives from the exploitation of the underlying resources (whether common pool or not), which harms the CPR. The division between subsoil and topsoil rights not only facilitates what Paul Collier (2010a) describes as the plundering of natural assets in developing countries, but also to the plundering of the CPRs above. While the commons and property rights literature has earned a prominent place in social science, the most recent literature provides insufficient guidance in making sense of this problem or offering solutions.

I argue that institutions of political participation can be used as tools to overcome such a limitation and can contribute to the protection of common-pool resources on the land. The in-depth case studies presented in this dissertation reveal an institutional means through which citizens, both ethnic and nonethnic, have been able to halt the extraction of minerals from the subsoil and overcome the common problem of the commons. If on the one hand institutional economists argue that property rights are more efficient and timely alternatives to the environmental and natural resources problem than government regulation and taxes (Anderson and Libecap 2014:4), but on the other hand, scholars have found that property rights are insufficient (Dietz, Ostrom, and Stern 2003), I posit that institutions of participation can be a way forward when the threat to CPRs derives from exploiting overlapping resources in the subsoil.

As the name suggests, the common problem of the commons is common across the globe. In most countries in the world, landowners (whether private or collective) are not entitled to the rights over the mineral wealth in the subsoil. Under general international law, states have

permanent sovereignty over natural onshore resources.¹⁸ Hence, states can determine whether the subsoil resources are owned by the state or by the owners of the land. Today, all countries, with the exception of the United States, appear to opt for state ownership (Ronne 2010:65).¹⁹ Most civil law countries vest ownership of the subsoil — with the exception of energy resources such as oil, gas, coal, or minerals — in the surface landowners (Ronne 2010).²⁰ In all of Latin America, the geological resources in the subsoil are vested in the national state or in the provinces, in the case of Argentina.

Institutions of political participation can be used as tools to overcome this limitation and can contribute to the governance of common-pool resources. But how can communities gain control over the subsoil when they are not the owners of it? Based on the ethnographic work, I hypothesize that institutions of political participation can act as such a tool if those institutions are legally binding for the state and participation takes place prior to the start of the extractive project. While it is desirable for participation to be representative, informed, prior to the decision, binding, and voluntary, as scholars of participation have found (Gaventa 1980; Fromherz 2013, Fung and Wright 2003, Rodríguez-Garavito 2011), to avoid the consequences of the common problem of the commons, it is necessary that participation is at least binding and takes place prior to the start of the project.

¹⁸ See, for example, UN Resolution 1803 (XVII) of December 14, 1962. The ownership varies according to whether the resources are onshore or offshore. I focus only on onshore common-pool resources on the land and in the subsoil.

¹⁹ In the United States, property rights to subsoil resources, including minerals, gas, and oil, are regulated by the individual states through statutes and common law, and through some federal laws. As a general rule across states, the surface landowner also owns the subsurface mineral rights (which is used generically to refer to subsoil property rights to valuable subsoil natural resources, including minerals, coal, oil, and gas), unless the mineral rights are severed from surface property rights through a deed or agreement (International Business Publications 2015:41). Such cases are called split estates. So, while the general rule is that surface landowners also own the mineral rights, the federal government has mineral rights on all public land and has also claimed a large portion of mineral rights on privately owned land.

²⁰ In France, for example, ownership of the land involves ownership of what is above and below the ground. However, minerals and oil are vested with the state.

The participatory institutions that meet those conditions allow citizens to gain decision-making authority over activities related to the exploitation of the subsoil minerals. In that sense, participatory institutions “complete” the property right of the owners of the land (private or collective), which is imperfect, given that the ownership of the underlying resources is vested in the state. As Carruthers and Ariovich explain, “Property involves a bundle of rights, including the rights of usufruct, exclusivity, and alienability.... Property rights confer power. They are rules that constrain and enable, and they locate decision-making power over assets” (2004:24). The divided property rights structure privileges the state (and corporations) over the owners of the land or the communities, principally because the latter absorb the environmental and social consequences of extraction. Hence, institutions of political participation work as distributional instruments that level the playing field by empowering communities or private individuals by granting them decision-making authority over subsoil resources.

Chapter 3 illustrates the common problem of the commons and the limits of property rights (in the case of collective property rights) and explores the role that an institution of political participation (prior consultation) played in overcoming the problem in the case of the Amazon. By studying environmental issues in Latin America from an institutional angle, this dissertation theoretically enhances the literature on institutions by enabling discussion about the challenges in governing CPRs across the globe as the result of overlapping property rights schemes. It also illuminates the use of participatory institutions as tools to help attenuate the common problem of the commons, which other institutions, centered mostly on property rights, have not done. In doing so, it also brings the discussion of property rights back to sociology. As Carruthers and Ariovich (2004) noted, this topic has not received the attention it warrants, and it has been ceded to economists and lawyers.

1.2.4. Participatory Democracy Meets the Environment and Sociology of Law: The Direct, Indirect, Material, and Symbolic Effects of Participatory Institutions

Bringing the environment to institutional analysis and specifically to the study of participatory institutions provides new empirical material to use in revisiting the ongoing debate in the field of participatory democracy over the potentials and drawback of participatory institutions and deliberation. As outlined in Section 2, this debate divides detractors who think there is little empirical proof that participatory democracy meaningfully changes relations of power in decision-making processes from proponents who view it as an imperfect way to make policy better informed and more equitable and legitimate. I argue that this division and pessimism result from the lack of analytical frameworks within institutional analysis and participatory democracy scholarship to evaluate the effects of participatory institutions (and other outcomes of interest to the social sciences) in realms like the environment.

Against the need to evaluate the effects of the institutions of participation in relation to environmental protection, and in the absence of an analytic model, this dissertation draws on a conceptual and methodological framework developed by sociolegal scholars who study courts and social change (Rodríguez-Garavito and Rodríguez-Franco 2015) to consider similar questions related to the effects of institutions (in their case, of court decisions.)

The framework offers four types of effects: direct, indirect, material, and symbolic. In adapting this typology to the case of participatory institutions, we have the following. Direct effects are those specifically sought by the actors who activate an institution of participation or those who participate in it (for example, blocking the construction of an open-pit mine on their

land). Indirect effects are all the impacts that a participatory institution can produce that were not the objective of (or could not even have been anticipated by) the participants. These effects are not limited to the issue at stake or the actors involved (for example, they could include an increase in the use of the participatory institutions beyond the immediate case).

Direct and indirect effects can in turn be material or symbolic. Material effects are palpable consequences in the conduct of the state, corporations, individuals, groups, or other organizations. Symbolic effects are harder to grasp because they refer to changes in the ideas and views of actors or organizations with respect to the issue being deliberated or to the participatory institution itself.

By analyzing the impact of popular consultations and prior consultation from this analytic viewpoint, I argue that these institutions have had six effects that together enhance environmental conservation and go beyond some of the directly sought and anticipated results.

Figure 1.1. below summarizes the typology and the six types of effects.

Figure 1.1. The Effects of Popular and Prior Consultations Across the Direct-Indirect, Material-Symbolic Typology

	Direct	Indirect
Material	Deterrent	Community empowerment
	Leveling	State-building
Symbolic	Awareness	Creation

The *deterrent effect* refers to the potential of participatory institutions to block the environmental threat that motivated their use. Through popular consultation, in the case of

Piedras, and prior consultation, in the case of the Amazon, citizens stopped the planned mining activity from occurring in their territory.

The *community empowerment effect* denotes the potential of participatory institutions to enhance the participatory skills and knowledge not only of the direct participants, but also of actors beyond those issues and geographical areas involved. (This is the reason it is classified as indirect.) A perfect example of this effect was the surge in the number of municipalities that attempted to organize popular consultations after the success of the Piedras vote.

The *leveling effect* refers to the potential of participatory institutions to level unbalanced social fields by unsettling the power structure of government practices or by countering disadvantages traditionally faced by marginalized citizens, for example, lack of information, an effective voice, or the possibility of participating in decision-making processes. The popular and prior consultations analyzed here contributed to leveling the field through three mechanisms: giving voice to traditionally excluded actors, restructuring traditional alliances, and offering technical information to the participants. These mechanisms emerged directly from the processes leading up to the popular consultation vote and from the deliberation sessions of the prior consultation, but they also resulted indirectly from the activation of the participatory institutions. For that reason, the leveling effect is a material effect that overlaps the direct and indirect border.

A fourth potential effect of participatory institutions is that they help *create* issues by helping to initiate public debates around issues related to and beyond the specific participatory institution itself, which were not previously being discussed by the media, the courts, or the executive. Activating these debates requires a transformation of the way actors other than the participants perceive the issues and their importance. For this reason, this effect is both indirect and symbolic. Two examples of this effect are (1) the increase in the number of newspaper

articles on popular consultations in one of the country's leading newspapers after the case of Piedras and (2) the presentation before Congress of a bill to guarantee citizen participation in environmental decisions, acknowledging the limited role local governments and citizens had been given in decision making over mining, which became palpable with Piedras.

A fifth effect of participatory institutions is the *awareness effect*, which refers to the potential of such institutions to transform the way a problem is perceived by participants and by others. Through deliberation, participants in the institution can become aware of their own preferences or come to understand an issue differently. Likewise, the ensuing public debates or an increase in the use of participatory institutions can also change the perception of actors outside the participatory process. Because the effect implies a change in the perception of actors within and outside the participatory process, I situate this effect closer to the symbolic rubric, between the indirect and direct effects. An example of the awareness effect is the increase in the number of environmental marches taking place throughout the country on World Environment Day, which in general make reference to the resistance in the case of Piedras.

Lastly, participatory institutions can have a *state-building effect* by providing state institutions with a stimulus to extend their presence to areas where they are absent or inefficient. For example, the dispute over the validity of the prior consultation in the case of Apaporis motivated the Constitutional Court to hold a public hearing in the heart of the jungle and hear firsthand the testimonies of indigenous communities. The judiciary in the Amazon region of Colombia is precarious, and there had never before been a public hearing of the Constitutional Court in that area.

The direct-indirect-material-symbolic analytical framework borrowed from sociology of law scholarship allowed me to systematically analyze the effects of the two participatory

institutions on environmental protection. I hypothesize that this framework, and the six effects, however, are generalizable to institutions beyond participatory institutions and to issues of interest to the social sciences besides environmental politics. In sum, the need to understand the effects of participatory institutions on the environment and the limited analytical and conceptual frameworks within institutional analysis and participatory democracy work available to do so forced me to enhance the theories of institutions of participatory democracy in particular, and of institutional analysis in general.

1.3. Case Selection, Methods, and Data

The objective of this research is to explore the relationship between institutions of participatory democracy and environmental protection. This research was conducted as a comparative analysis between two cases. The two cases are cases of participatory institutions — popular consultation and prior consultation — that, while different in origin and logic, share the core feature of being deployed to resist large-scale mining and to protect the environment. Both cases proved successful in doing so. The cases involved the same extractive sector — gold mining — and took place in different regions of the same country, Colombia. As noted earlier, the literature in environmental sociology and the empirical evidence is replete with cases of environmental destruction in which, despite community or international resistance, the extractive project was carried out and brought environmental and cultural harm to communities. In contrast, this dissertation focuses on illustrations of participatory institutions that proved efficacious in protecting the environment. In that sense, it is similar to the approach taken by Fung and Wright (2003) when they aimed to find positive examples of empowered participatory governance or

Espeland's work (1998) regarding the dam that was never built. However, it also includes negative cases as shadow cases to account for variation and to test hypotheses.

The case of Piedras is the case of the first popular consultation held in Colombia, in 2013, in which citizens were asked to vote on whether or not they agreed with mining taking place on their land. Ninety-nine percent of voters said no to having mining activity on their land. The case of Apaporis is a case of prior consultation, held in 2009 in the Amazon region of Colombia, through which indigenous communities, for the first time in Colombia, asked the government to create a national park to deter a Canadian gold company from building an open-pit mine on their land.

Piedras was selected not only because it was the first popular consultation ever used in Colombia to decide mining issues, but because it is representative of the type of socioenvironmental conflicts taking place in the Andean region of Latin America that involve nonindigenous communities. The Andean region, from Colombia to Patagonia, has since pre-Columbian times been the site of extractive activities. The region's economic and social history could be read as a long engagement with extraction (Bebbington 2009:14; Miller 2007). Given the global rise in the prices of these commodities and the increasing global demand and consumption of commodities, notably by China and India, Latin America has returned even more vigorously in the last two decades to commodity production and exports.²¹ As a result, conflicts have grown in Andean regions, in particular around mining. The Environmental Justice Atlas (Ejolt 2016) evinces this point: the highest concentration of environmental conflicts over mineral ores is located in the Andes region.²² Within the region, Colombia is the country with the highest

²¹ These products include hydrocarbons (notably gas and oil) and minerals and agricultural, livestock, lumber, and fishery products with minimal or no processing.

²² See <https://ejatlas.org/>. Last consulted July 2, 2016. See footnote 3 for an explanation about the atlas.

number of conflicts, second in the world only to India, which is the main reason for selecting two cases within the country. Lastly, scholarship has focused on indigenous mobilization (e.g., Yashar 2005). Yet the arrival of extractive activities to areas rich in agriculture, ecotourism, and alternative forms of economic activities and inhabited by nonindigenous communities — e.g., Tambogrande, Peru (Haarstad and Fløysand 2007; Moran 2001), Esquel, Argentina (Urkidi and Walter 2011; Walter and Martínez-Alier 2010), and Yanacocha, Peru (Arellano-Yanguas 2014) — has spurred a rise in nonindigenous, cross-class resistance, which has gone largely unremarked. Piedras, led by *campesinos* and middle-class citizens, is an example of this form of resistance but it is also an example of the growing use of popular consultations as a form of institutional resistance that goes beyond mobilization.

The case of Apaporis was selected because it is representative of the types of conflicts over extractive resources taking place in the Amazon region and involving indigenous communities (Hecht and Cockburn 2010). The Amazon contains the world's largest river system and rainforest and one-fifth of the world's freshwater, and it produces around one-third of the world's oxygen (Cao 2014). It is the immense size of its rainforest that inspired the notion of the Amazon as the "lungs of the earth" and situated the region at the front of the environmental movement. Its preservation has become a global political priority because of its significance for biodiversity and the mitigation of climate change. Conversely, the conspicuous position of the region in the local, regional, and global imagination makes the struggle over its ecological future fundamental to environmentalism in Latin America and beyond. "The current state of the Amazon reflects the tension between the environment and development, between ecology and economy, that has shaped much of the political agenda, especially since the concept of sustainable development was officially embraced at the Earth Summit of 1992" (Cao 2014:51).

This tension is exacerbated by the transformation of the Amazon (particularly the Western Amazon²³) into a new extractive frontier (Finer, Jenkins, and Powers 2013; RAISG 2012).²⁴ The Amazon region has experienced other extractive cycles (Bunker 1985; Hecht and Cockburn 2010), but this boom is remarkable for its breadth in terms of types of resources and for its extension over the land (Dourojeanni et al. 2009; ECLAC 2012). The Colombian Amazon comprises 6.2 percent of the total Amazon region, the third largest percentage following Brazil (64.3%) and Peru (10.1%) (RAISG 2012:9). Hence, studying a case of indigenous resistance through institutional means in this region offers a privileged vantage point for understanding the type of political struggles present in this region and the increasing use of legal (Rodríguez-Garavito 2011) and institutional methods of resistance.

In addition, this case allows us to explore the role of indigenous peoples in the protection or transformation of the Amazon, which so far has gone largely unexplored. “The invisibility of the indigenous peoples ... is connected to the notion of the Amazon as a pristine forest, undisturbed by human activity, until the arrival of the Europeans. Increasing evidence indicates that this ‘pristine myth’ ... does not reflect this historical reality of the Amazon” (Cao 2014:61). Existing scholarship in general overlooks any past indigenous agency in conservation but especially denies any future indigenous agency related to shaping the Amazon in particular or the environment in general (Hecht and Cockburn 2010). In short, such visions reinforce the idea of environmental conversations as having no human component and as being incompatible with humans. Focusing on a case in which protection was the direct intention of indigenous peoples and other agents overcomes that limitation and explores the logic of agency. Global and local economic dynamics are also at play in both case studies explored in this dissertation: struggles

²³ The Western Amazon includes parts of Bolivia, Colombia, Ecuador, Peru, and a small fraction of western Brazil.

²⁴ Extractive activities include fossil fuel extraction, mining, hydroelectricity production, and forestry.

over open-pit mines in the Apaporis in the Colombian Amazon and in the agricultural lands of the Andes in central Colombia.

Two negative shadow cases were also selected. For the popular consultation, the negative case is the failed popular consultation of Cajamarca — a town 56 miles from Piedras, where the mining company plans to build the open-pit mine of *La Colosa*, the same one resisted by the people of Piedras. While resistance to the project began in this town in 2007, soon after the people learned about the existence of the project, it was the town of Piedras that carried out the popular consultation first. In 2014, when Cajamarca's social movements, composed mainly of *campesinos*, pushed for a popular consultation, the municipal council vetoed it. The case of Cajamarca allows us to explore the mechanisms that led to citizen institutional activation while controlling for multiple variables that could explain variations between the situations in Piedras and Cajamarca, such as region, timing, nationality and ethics of the mining company, mineral explored, and political parties.

The negative case for the prior consultations is the case of Port Brisas, on the Colombian Caribbean coast, in which the absence of a prior consultation allowed the mining company to proceed and cause environmental and cultural destruction. After years of legal struggles, the Colombian Constitutional Court ruled in favor of the communities of Port Brisas, arguing that prior consultation should have been carried out, but the moment of the prior consultation came too late.

The in-depth case studies selected allow for a combination of theory building and theory testing. I draw on seven main sources of data:

- (1) seventy in-depth, semistructured interviews carried out between August 2013 and July 2016 with public officials (mayors, municipal council members, former officials of the

Ministry of the Environment, and others), citizens involved in the consultation processes, indigenous leaders, and NGO leaders;²⁵

- (2) participant observation of debates in Congress, popular consultation debates in five municipal councils, marches against the mining company, and workshops in the Amazon region;
- (3) focus groups with *campesinos* and rice growers who participated in the popular consultation;
- (4) audio and video recordings of the prior consultation process;²⁶
- (5) a systematic newspaper analysis of popular consultations, including coverage of two nationwide Colombian outlets (*El Espectador* and *Semana* magazine) from July 2010 to May 2016;
- (6) judicial decisions from the Constitutional Court; and
- (7) archival data from the National Parks Division about the creation of the national park.

The case of Cajamarca draws on participant observation and semistructured interviews, and the case of Port Brisas draws on secondary literature and analysis of judicial decisions on the case. Triangulating these sources of information, I reconstructed the cases of the popular consultation and of the prior consultation to understand logic and effectiveness.

²⁵ All interviews were conducted by the author, in Spanish, and translated by the author. Interviewees gave informed consent and permission for their real names to be used, except where noted otherwise. Audio files and transcriptions of the interviews are available from the author upon request. Because the interviews asked people to remember a time in the past (and thus there might be inaccuracies in their memories), I use newspaper data to offer support for findings generated from the interviews.

²⁶ The audio recordings were made available by the Gaia Amazonas foundation that accompanied the process.

1.4. Organization of the Dissertation

This dissertation unfolds as follows. Chapter 2 offers a new conceptual framework for understanding an understudied phenomenon in institutional analysis: citizen institutional activation. This framework is then used to make sense of the activation, for the first time in Colombia, of a popular consultation over mining issues. In evaluating a general theory with a case study, this chapter follows a long and distinguished tradition of research (e.g., Adams 1994; Evans 1979; Loveman 2005).²⁷ Although the case of Piedras is obviously not sufficient by itself to fully test the general theory of institutional activation proposed here, it does serve a number of heuristic purposes. It provides an empirical check on the utility of the concepts formulated in the general theory and allows us to analyze the relationship between institutions of participation and environmental protection, providing insight into the mechanisms that link the two. The case of Piedras is especially useful for these purposes because, as mentioned above, it was the first case of popular consultations held in the country. If the mechanisms of the general theory are operative, they should be present and observable in this specific case. However, to test the operation of the mechanisms beyond the case of Piedras, this chapter also offers a negative case study of the case of Cajamarca, where the popular consultation failed.

Chapter 3 turns to the case of a prior consultation in the Amazon region of Apaporis and engages with the literature on common-pool resources and property rights. The chapter's main argument is that collective property rights are insufficient to protect common-pool resources against the common problem of the commons — the constant external threat faced by CPRs on the land because of the effects of activities in the subsoil (e.g., through mining). The findings from the in-depth case study show that participatory institutions like prior consultation can prove

²⁷ See Gerring (2004) for additional references of single case studies.

to be an effective tool in overcoming this common problem by granting the owners of the land power over decision making related to the subsoil, even though they are not the owners. To elaborate this argument, the chapter is divided into two parts. The first part uses analytical concepts from institutional analysis to explain the creation and gradual change of the indigenous territories (*resguardos*) in the Colombian Amazon region. *Resguardos* are property institutions that grant collective land ownership to indigenous communities. It shows how the institution of the *resguardo*, which originated in Spanish colonial times, has endured and undergone a process of gradual change through drift, conversion, and layering (Hacker, Pierson, Thelen 2015; Mahoney and Thelen 2010); while insufficient, this has served as the basis of indigenous strategies to resist large-scale mining. The second part shows how the participatory institution of prior consultation proved to be a fundamental tool to overcome the common problem of the commons and protect the environment by deterring open-pit mining by involving the indigenous people in the decision-making process.

Chapter 4 addresses the question of the effects of participatory institutions on the environment. It asks what difference participation makes in protecting the environment and how we measure its effects. To do so, the chapter develops the debate introduced in this chapter regarding the potential impacts of participatory democracy in general to show that the debate is split and negative because of a lack of analytical framework. Then it presents the conceptual and analytical framework developed by the comparative constitutional literature on courts and social transformation (notably McCann 1994; Rodríguez-Garavito and Rodríguez-Franco 2015) to explore the impact of law and judicial decisions. By analyzing the impact of popular consultations and prior consultation from this analytical frame, the chapter argues that these participatory institutions have had six effects that together contribute to greater environmental

conservation that goes beyond some of the directly sought and anticipated results. The chapter illustrates each of the effects in detail and concludes by analyzing possible limitations of the participatory cases and placing the findings within the broader literature of participatory democracy.

Lastly, the conclusion summarizes the main findings and suggests possible avenues of future research.

Chapter 2. The Institutional Activation of Popular Consultations in Latin America: Environmental Protection through Political Participation

The prolific work on institutional analysis has contributed greatly to our understanding of institutional emergence (Hall and Taylor 1996; Westenholtz, Jesper, and Dobbin 2006), stability (DiMaggio and Powell 1991; Mahoney 2000), change (Mahoney and Thelen 2010; Levitsky and Murillo 2013; Pierson 2004; Sewell 1992), and diffusion (DiMaggio and Powell 1983; Dobbin 1994). However, another institutional phenomenon that can have profound distributional consequences when it occurs has been largely overlooked.²⁸ Institutional activation is the political, contested process through which institutions go from dormant to active.²⁹ In all the other processes, the institutions are visible. But both formal and informal institutions can become latent — whether because of the passing of time, changes in the political regime, the explicit goal of a ruler, or because a change in the political, social or economic scenario makes the institution obsolete — and latent institutions can be resuscitated at a later point.

As explained in the introductory chapter, we know from the preliminary work by Levitsky and Murillo (2013) that institutional activation can be of three types: judicial, bureaucratic, and international. Yet using institutional analysis to study environmental issues in Latin America — in particular, the rise of popular consultations — has allowed us to identify another form of activation: *citizen institutional activation*. This phenomenon, which I conceptualize as the political, contested process through which institutions go from dormant to active as a result of citizen action, is the focus of this chapter.

²⁸ One exception is Levitsky and Murillo (2013).

²⁹ While this definition resembles the definition offered by Levitsky and Murillo (2013), it differs on two points: first, these authors do not frame it as a contested political process and second, they equate activation with enforcement. However, as I will argue below, activation can be equated with enforcement at certain moments but is not limited to it.

The advancement of the extractive footprint through Latin America has reconfigured politics and prompted diverse political responses from a wide array of actors beyond indigenous movements (Jung 2003; Yashar 2005). This chapter analyzes a new form of political response taken up mostly by nonindigenous movements: popular consultations, also known as local referendums or *consultas populares*. Popular consultations are institutions of direct democracy that provide electorates with the opportunity to vote on “yes or no” questions relevant to their jurisdictions.³⁰ Since the early 2000s, popular consultations have become increasingly common in Latin America as a way for citizens to resist extractive projects, notably mining, from taking place in and around their towns.

Mining generates multiple externalities that threaten common-pool resources (like water), property rights, livelihoods, and economic interests. Mining causes water pollution, which can have irreversible impacts on water availability and agricultural production (Ballard and Banks 2003). Mining also requires large amounts of land that could otherwise be used for agricultural production or activities like ecotourism. In that sense, large-scale mining comes into direct competition with a predominant form of economic development in those areas (both small- and large-scale agriculture) (Murillo and Mangonnet 2013) and with the environment, notably water and landscape. Tensions over control of the land and water prompt social environmental conflicts and classic forms of resistance, like uprisings, protests, and blockades (Tilly and Tarrow 2007). “Yes to life, no to mining,” “Yes to agriculture, no to mining,” and “Yes to water, no to gold” are rallying cries heard across many parts of rural Latin America for the past decade. But in some areas, communities moved beyond mobilization. *Campesinos*, landowners, and citizens in general — rich and poor, traditionally marginalized and not — who were potentially affected by

³⁰ For example, popular consultations have been used to ask citizens whether they want a day without cars in capital cities or whether a municipality wants to be part of a greater metropolitan area.

the decision to build extractive projects have looked for ways to block the projects or set conditions. They have been especially motivated since, throughout Latin America, the owners of the land are not the owners of the subsoil so they do not have decision-making power over the subsoil (Cárdenas 2013; Ronne 2010). But protesting and even violent confrontations often prove insufficient. Marches and strikes can dissuade companies and disturb the government, but it is unclear how much and for how long. Many of these places are remote: too far from the capital city to have any real effect on the national government. As a result, nonindigenous communities searched for institutions that would channel their claims in a legitimate, formal manner and guarantee more permanent and binding results. Indigenous communities have used their right to free, prior, and informed consent, which is grounded in international law (ILO Convention 169 of 1989) and national jurisprudence, to attempt to block these projects (Rodríguez-Garavito 2011; see also Chapter 4). Nonindigenous communities, who are not entitled to that right, have tried to identify similar tools. Through popular consultations, inhabitants of potentially affected communities vote on whether or not they agree to have mining (or any other extractive activity) take place in their town.

In the towns of Tambogrande, Peru (in 2002), Esquel, Argentina (in 2003), Sipacapa, Guatemala (in 2005), and San José Las Flores, El Salvador (in 2014), communities across the region — most of them nonindigenous³¹ — have deployed this institution to overwhelmingly resist extractive activities in favor of protecting the environment. See Figure 2.1. which maps a sample of popular consultations held since 2002.) The cases of Kitimat, Canada, and Denton, Texas, both related to fracking in 2014, suggest this surge is moving north.

³¹ The exception is Guatemala, where the population that has had the local initiative is mostly indigenous.

Figure 2.1. Popular Consultations in America, 2002-2014



Source: Author's elaboration. Note: not all popular consultations are included.

Voter turnout has been overwhelming. In Tambogrande, for example, the ballot asked whether the voter agreed with the development of mining activities in urban or agricultural areas in the Tambogrande municipal district (ELI 2004). Approximately 73 percent of Tambogrande's eligible voters participated, and 98 percent of them voted against mining (Boyd 2002; McGee 2009:607). In Esquel, Argentina, roughly 75 percent of registered voters participated in the consultation, with 81 percent voting against allowing a Canadian company to develop an open-pit mine. In Sipacapa, Guatemala, an overwhelming 98 percent of voters said "no" to mining activities on their territory (Van de Sandt 2009). Similarly, the recent referendum in the village

of San José Las Flores, El Salvador, banned mining when 99 percent of the voters said “no” to the establishment of metallic mining, exploration, and exploitation (Hufstader 2014).

The effects on mining, while varying, have also been powerful. For example, within one month of the Esquel referendum in Argentina, the city council acted on the results of the referendum (despite its nonbinding authority) and passed Law 5001, which banned open-pit mining and cyanide use in mineral exploitation. While a subsidiary of the company challenged Law 5001 in court, the Supreme Court of Argentina upheld Law 5001 in April 2007. By 2007, Meridian Gold had dismissed the idea of developing an open-pit mine in Esquel. In Peru, six months after the Tambogrande referendum, the national government found that Manhattan Minerals failed to comply with some provisions of the mining contract and canceled the project (De Echave 2011). The national government does not claim to have revoked Manhattan Minerals’ concessions because of the 2002 referendum. However, local scholars and the media argue that the local referendum provoked negative media exposure and exerted considerable pressure on the mining company and mining authorities.³²

The rise of popular consultations across the continent presents us with three questions. First, how do citizens go from traditional protesting to actuating institutional tools of resistance? Second, what conditions enable institutions to go from latent to active as a result of citizen action — a contested process I call *citizen institutional activation*? And third, why do communities go beyond mobilization to activate a specific institution in some places and not in others?

Traditional variables used to explain mobilization, such as democratization (Yashar 2005), international help (Keck and Sikkink 1998), or existing political opportunities (Tilly and

³² For example, Salazar (2007) cites the Tambogrande consultation as “decisive in building awareness that the community had a right to decide what kind of economic activity it wished to pursue, and the Canadian company eventually withdrew from the area.” Likewise, De Echave (2011) argues, “Without any doubt, one of the determining moments of the conflict was the organizational neighborhood consultation.”

Tarrow 2007) do not explain how communities move beyond mobilization to institutional activation. If democratization were the key, we would expect all communities affected by mining within the same country to hold popular consultations, but this is not the case. International help, such as providing a certain language or tools (and which is usually understood as coming from the North) or exerting international pressure on governments, does not apply because popular consultations in mining appear to be a Southern invention spreading north. In the case of popular consultations, as I will show below, the political opportunity was not structurally present from the start but rather was constructed as a result of agency and strategy (Goodwin and Jasper 1999). I propose, in other words, that institutional activation does not necessarily occur because there is a fixed, structural political opportunity but because activation agents create the opportunities by using activation strategies.

In the following section, I present a theory of citizen institutional activation that attempts to uncover the necessary conditions for a dormant institution to be awakened, paying particular attention to those agents and their strategies that represent the cause behind institutional activation. In section two, I focus on one particular popular consultation: the case of Piedras. Piedras municipality was the site of the first popular consultation regarding mining in Colombia: in July 2013, citizens put to a vote whether large-scale mining activities should be permitted in their territory. This in-depth case study draws on two and a half years of fieldwork and provides fertile ground for theoretical and empirical reflection on the key mechanisms through which popular consultations are activated. Before a brief conclusion, in the third section, I assess the analytical model by presenting a negative shadow case, in which a popular consultation was not activated due to the absence of certain mechanisms that I argue are central in facilitating activation.

Studying popular consultations broadly is important because they are a novel area of innovation in local development, democracy, and environmental politics — one which has received scant scholarly attention. In addition, by offering an institutional explanation for environmental protection, I seek to go beyond theories centered on social mobilization to explain “green” outcomes (Mohai, Pellow, and Roberts 2009). Institutional activation also merits scholarly attention for several reasons. First, as argued in the introduction to this chapter, activation is different from the other institutional phenomena mentioned above, such as emergence or change, and it can have profound distributional consequences. Second, while citizen institutional activation may not be very frequent — particularly participatory institutions, which are hard to get off the ground — once they are activated, they can be a source of bottom-up democratic deepening and a way to attain social change and progressive outcomes like environmental protection. Thus, understanding the conditions under which this activation happens is of interest to scholars of environmental politics, political sociology, and development. Finally, understanding institutional activation can help us recognize under what conditions resistance and interactions between governments and citizens can move beyond force and rebellion to deliberation and democratic practices.

2.1. A Theory of Citizen Institutional Activation

Institutional activation is the political, contested process through which institutions go from dormant to active as a result of the pressure of actors. It can stem from the actions of four groups: courts, bureaucratic institutions, international actors,³³ or citizens. According to Levitsky

³³ As explained in the introductory chapter, “[I]nstitutional activation may be a product of external pressure, especially in peripheral countries seeking access to international assistance or markets” (Levitsky and Murillo 2013:104).

and Murillo (2013), activation is synonymous with enforcement and, in turn, is a source of institutional change: “Institutional change may also be achieved through the *enforcement or ‘activation’* of previously dormant *formal* institutions” [emphasis added] (Levitsky and Murillo 2013:103). Equating activation with enforcement is logical when the usual enforcers — the judiciary and the bureaucracy — perform the activation (Holland 2015; Mahoney and Thelen 2010:13). However, activation can also be undertaken by nonenforcers, for example international NGOs or other countries that pressure a government to implement a norm, in the case of international activation. Activation by citizens (individuals or social groups) is a form that has not been studied.³⁴ This section contributes to filling this gap by developing a new theory of those agents and their strategies that represent the causation behind citizen institutional activation.

For citizen activation to occur, discovery of the institution in disuse or a desire to put it in motion is not enough, nor is the existence of a threat. A credible threat is an enabling, background condition for any sort of response, whether it is mobilization (Goldstone and Tilly 2001), activation, or both. Citizen activation is a contested process and a product of a *cross-cleavage coalition* of actors that manages to disrupt existing institutional arrangements and put the institution in action.

A cross-cleavage coalition is formed by traditionally distant individuals from different social classes or social groups (e.g., unionized workers with factory owners, peasants with landowners, historically rival tribes, etc.) who, drawing on Hall’s (2010:207) general definition of coalitions, line up in favor of or against a certain use of rules or practices. The literature has emphasized the importance of cross-class alliances (Sewell 1980). But threats can also cut across

³⁴ Levitsky and Murillo (2013) refer to the role of citizens in activation. However, for them, civil society, in particular civil society monitoring, plays a role in triggering judicial-based activation, but not in triggering as independent activators.

ethnicity, economic sectors, expertise, and geographical locations. Since disunity appears to be the generic condition of classes (Higley and Burton 1989) and of social groups with traditionally opposing interests, when unification occurs across unexpected cleavages, it disrupts the dominant institutional arrangements and the balance of power, enabling change (Knight 1992:145; Thelen 1999). The transfer of actors, resources, knowledge, connections, information, and time between and within classes or groups disrupts power.

These coalitions are unusual because they are made of actors who under the *status quo* would not normally unite. Also, they do not have to be formal, overt (for example, have a name), or have a permanent composition. Some members of a coalition might not be aware of the membership of others; they might be struggling in favor of the same institution but in a loosely organized fashion. In fact, “In the real world, however, politics and institutions are frequently messy compromises abounding with inconsistencies and contradictions based on coalitions of convenience and ‘ambiguous alliances’ (Palier 2005)” (Hacker, Pierson, and Thelen 2015:192). Moreover, different individuals or groups may support the same cause or institutions but for different reasons and with different interests, and may have a different vision of the problem (Palier 2005:131).³⁵ With the emergence of such coalitions, even if they are short-lived or informal, the opponents lose allies or a previously established balance.

A cross-cleavage coalition necessary for citizen institutional activation is created by three types of activation agents, who bring different forms of capital, strength, and activation strategies to the coalition: subversive activators, knowledge bearers, and protesters. The coalition’s

³⁵ I use the term *cross-cleavage coalition* instead of Palier’s term *ambiguous agreement* (2005) because the latter refers to the acceptance of new measures by a wide range of groups (political parties, administrations, trade unions, employers and others), who agree on the new measure for different reasons and interests (Palier 2005:131). With the term *coalition*, I want to signal something broader than agreeing on a specific measure. It might so happen that the coalition forms around a specific measure and that the different groups explicitly agree on it, but it might also consist in supporting a cause indirectly without ever formally agreeing with the other groups involved. In short, while *agreement* refers to a specific measure that is explicitly accepted, *coalition* widens the possibility and leaves room for informal, tacit forms of collaboration.

strength is additive (Caplow 1956), and the different members need the leverage of the others. I use the term *subversives* from Mahoney and Thelen's (2010) theory of gradual institutional change not because the subversive activators seek to displace an institution as do subversive change agents, but because, like them, subversive activators work against the system from *within* it (Mahoney and Thelen 2010:26). They bring to the coalition the resources and expertise in navigating the system in order to put the institution in motion, either because they are part of the bureaucracy (Falleti 2010), were part of it, or have the resources (e.g., the connections) necessary to gain access to it. Silence and surprise are the dominant strategy of subversives because successful activation is more likely if they avoid alerting those within the bureaucracy or other power holders who will be affected by the institution's distributional effects. If opponents are not taken by surprise and are given enough time to react, they will likely attempt to block the activation, either through legal means, like interpreting the institution differently (Mahoney and Thelen 2010) or changing the law to restrict or eliminate the institution, or through illegal means, like granting benefits to the groups interested in activation.

Silence, as a strategy, is generally in opposition to the strategies envisioned by social movements. The "social movement repertoire" (Tilly and Tarrow 2007) is replete with public demonstrations whose shared goal is to disrupt power by making issues visible. Instead, because activation is not automatic, silence buys activators time and reduces the opponent's chances of employing countervailing measures. Also, subversives are not necessarily looking for public recognition for using certain rules or practices. On the contrary, subversives often prefer to keep their actions and interests unknown because of their relationships with the bureaucracy or the power holders or because they are embedded in a multiplicity of institutions (Mahoney and Thelen 2010:9).

While activation by definition requires an institution that is hidden and in disuse, it also permits and even requires a minimum degree of knowledge about the institution. Thus, an activation coalition needs knowledge bearers — that is, someone who is aware that such an institution exists in order to trigger it. Knowledge can come from having created the institution (e.g., a former legislator), having been exposed to it (e.g., during debates about the institution or as a member of the system), or having the resources to gain access to someone who knows about it or can unveil it (e.g., connections with NGOs, legislators, or bureaucrats). The knowledge bearer and the subversive can be the same actor. Otherwise, there must be links between them, and the goals of the knowledge bearer and the subversive must align. As in the case of the subversives, visibility is not knowledge bearers' main strategy. Activating the institution might have considerable distributive consequences for those with power under the dominant institutional arrangement, and these actors may be related to the knowledge bearers. While knowledge bearers may favor activating certain rules with profound disruptive consequences, maintaining their social capital and existing networks is also an objective.

The last set of actors is the protesters. They are the visible face of the activation process. They can play multiple roles, from being the first to react to a credible threat, to alerting the subversives, to guaranteeing the implementation of the activated institution, in particular in cases in which participants are required. As opposed to the subversives and the knowledge bearers, protesters seek visibility. Notoriety and recognition are generally signs of success. However, while protesters are commonly present in coalitions, they are not able to achieve activation alone. They need the leverage of the other two actors to go beyond mobilization or, even in the absence of mobilization, to reach activation.

In sum, citizen institutional activation occurs when there is a political struggle over a dormant institution. It is the result of a cross-cleavage activation coalition of actors that normally would not cooperate, composed of, at least, strong subversive activators and knowledge bearers, and normally including protesters as well, with each agent contributing its own activation strategies. The coalition's power comes from actors who have resources, expertise in navigating the system, and knowledge of the institution.

I now turn to the case of Piedras to illustrate this theory in action.

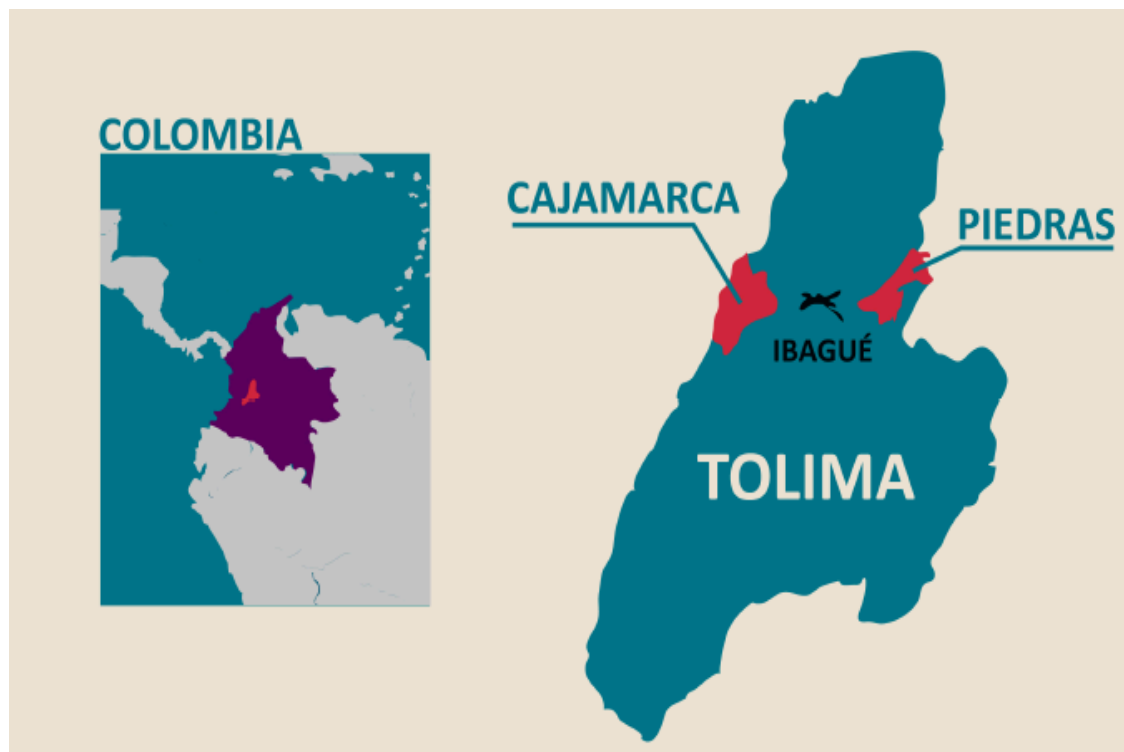
2.2. The Popular Consultation of Piedras: A Case of Citizen Institutional Activation

Popular consultations have existed since 1986³⁶ as mechanisms of civic participation in Colombia. (There is even a 1994 law that explicitly says they should be held in cases of mining projects.) However, between the 1991 Constitution, which gave them constitutional status, and the 2013 Piedras consultation, only 28 popular consultations had been held in the country over diverse topics, and none had been held against mining or any other extractive activity, despite the upsurge in mining activities. How then was the institution of popular consultations activated? How did a small, remote rural community resist the world's third-largest mining company and catch the attention of elites and power holders sided with the mining companies?

³⁶ In Colombian law, the popular consultation can be traced back to Legislative Act No. 1 of 1986 (Article 6), which introduced the possibility of carrying out popular consultations over issues of interest to the inhabitants of a municipality. The legislative act was strongly supported by the executive as part of its effort to incorporate mechanisms of direct democracy, which was a growing tendency throughout Latin America amidst the democratization process (Hevia de la Jara 2010). The legal procedure for holding popular consultations was specified three years later through Law 42 of 1989. The same law defined the mechanism as “an institution that guarantees the effective intervention of the community to directly decide over matters of local interest.” The 1991 Constitution (Articles 103–105), drawing on Law 42, incorporated the popular consultation into the new regime. These mechanisms were further developed in Law 134 of 1994, which underwent minor modifications in 2015 (Law 1757).

In 2013, Piedras, a small municipality of close to 6,000 inhabitants in the Colombian highlands, became the first in the country to hold a popular consultation regarding mining. On July 28 of 2013, 99 percent of Piedras's 5,105 eligible voters voted against having mining in their territory. Piedras, a community traditionally dedicated to agriculture and livestock in the central state of Tolima, dubbed "Colombia's breadbasket," could soon be part of one of the 10 biggest open-pit mining projects in the world. The South African transnational AngloGold Ashanti (AGA), the world's third-largest producer of gold, announced plans to exploit gold reserves by building an open-pit mine called La Colosa, estimated to contain 24 million ounces with a current market value of around \$31 billion, in the town of Cajamarca — 56 miles from Piedras (Map 2.1.) At the Gold Forum held in Denver in 2012, AGA's former chief executive officer, Mark Cutifani, referred to the project intended to begin in 2019 as "the world's most prospective new gold district" (quoted in Colombia Solidarity Campaign 2013:23).

Map 2.1 Ibagué, Cajamarca, and Piedras, Tolima, Colombia



While the mine would be located in the town of Cajamarca, because of the area's steep, mountainous geography, the company announced that the tailings dam that collects the mine waste would be located close to the township of Doima (in the municipality of Piedras), where the land is flatter, rich in water, and covered with rice fields. A giant conveyor belt would transport the rocks from the mine to the tailings dam. The size and breadth of the project make it representative of the type of extractive projects that are characteristic of the most recent commodity boom (Erten and Ocampo 2013).

In Piedras, as in other cases of popular consultations, the *campesinos* and landed elite (*hacendados*) of the towns of Piedras and Doima feared that La Colosa's massive tailings dam would pollute and reduce their water supply and cover the existing rice fields with mining waste,

wrecking their main economic activity. In the following sections, I trace the evolution of the case from the company's arrival in the state of Tolima to the first mobilizations, focusing in the last sections on how Piedras went from traditional mobilization to institutional activation as a result of a cross-cleavage coalition.

2.2.1. The Threat Arrives and Resistance Begins

AngloGold Ashanti (AGA), operating at that time under the name Khedada, secretly began exploration in the town of Cajamarca in 2006 without formal environmental licenses. It was only in December of 2007, when Colombia's president announced on national television that AGA had discovered what could be one of the world's largest gold mines that the people of Tolima learned about the project. "I finished listening to the president's speech and told my wife, 'We have to go back to Cajamarca and do something to stop the mine,'" said Evelio Campos, one of the founders of Ecotierra, the first organization created specifically to bring attention to the effects of gold mining and resist La Colosa.³⁷ People like Evelio initially feared that mining would pollute their water sources and destroy agriculture, the main economic activity of the area. Knowledge about the contaminating effects of mining increased over the years as seminars were organized and national and international experts were invited to speak in different venues. Meanwhile, a nation-wide newspaper reported that the company had begun multiple projects in the municipality, including painting schools, fixing roads, buying the town's first ambulance, and sponsoring the local soccer team and the state's folklore festival (Rico 2010). The company also paid for a trip for the mayor of Cajamarca, local news reporters, and a few municipal council members to visit Mina Gerais to learn about their projects in Brazil (Rico 2010).

³⁷ Interview with Evelio Campos, February 24, 2015.

For the following four years, multiple manifestations of resistance to the mine took place in the town of Cajamarca and in Tolima's capital city, Ibagué. The first event was a public hearing to request government officials and environmental authorities to guarantee the protection of natural resources. As a result of that hearing, a petition against AGA and La Colosa mine was signed by 20,000 people.³⁸ Also in 2009, a class action suit against the environmental and mining state agencies was filed by an association of users of the land and rivers in a neighboring municipality (Usocoello). The following year, the Environmental Committee was founded at the University of Tolima in Ibagué by a group of organizations, environmental associations, students, academics, and individual citizens. The committee became a key actor behind the popular consultation at Piedras and others that followed in the state of Tolima and in other provinces. Likewise, members of Ecotierra and geology professors at the local university, with the support of the international NGO Pax Christi, visited the open-pit gold mine of Yanacocha in Peru and AGA's mines in Brazil to learn about the risks of open-pit mining.³⁹ The environmental committee organized marches in the capital city, generally framed in defense of water, but also targeted against open-pit mining. The first "Carnival March," was held on World Environment Day in the capital city of Ibagué.⁴⁰ People chanted, "Yes to Life, No to Mining" and held signs that read, "No to La Colosa." Four marches were organized between 2011 and 2012 in Ibagué; the third brought together close to 20 thousand people.

During these four years, resistance took the usual forms: protests, petitions, marches, and distribution of information and reports by existing or newly created NGOs. However, there was

³⁸ See the following link, where citizens could sign the petition online: <http://conciencia-ambiental09.blogspot.com.co/2009/09/20000-firmas-contra-anglo-gold-ashanti.html> [last accessed August 17, 2016].

³⁹ Interview with Luis Carlos Hernandez, founding member of NGO Ecotierra, February 24, 2014.

⁴⁰ See the flyer of the first march: <https://notiagen.wordpress.com/2011/06/02/audio-carnaval-en-ibague-para-impedir-la-colosa/>.

never an idea to hold a popular consultation in Cajamarca or in Ibagué until after Piedras.⁴¹

Tellingly, the senator from the state of Tolima at the time, who is currently mayor of the capital city of Ibagué and is advancing a popular consultation, in 2010 said, “We are going to have to mobilize because the government is negligent and does not sanction them [AngloGold]” (Rico 2010). This quote reveals that, at the time, a popular consultation was not one of the tools of resistance in the politician’s repertoire. It was only when the threat reached Piedras that the conditions for institutional activation of the popular consultation materialized. Why then did we get institutional activation in Piedras while the threat had been present for over four years in Cajamarca and Ibagué, and protests had been developing?

2.2.2. The Threat Reaches Piedras

Despite their relative geographical proximity to the sites of the struggles and marches, the inhabitants of the municipality of Piedras (who are mostly *campesinos* who work in agriculture and cattle raising or for a small oil company in the area) only became aware in the middle of 2012 that their territory was projected to be part of a big gold district. *Campesinos* began to hear a rumor about an oil company or multinational company having interest in projects in the area.⁴² Mr. Rodríguez, a *campesino* who received a few years of basic education and was a municipal council member for eight years and leader of the area, had worked at the neighboring oil company and was quick to discover that the oil company had no interest in the region. Soon after, AngloGold contacted him because of his role as president of the community action board (*Junta de Acción Comunal*):

⁴¹ Several interviewees mentioned this point, including Renzo García, Environmental Committee of Ibagué, July 26, 2015 and Julio Roberto Vargas, Environmental Committee of Cajamarca, November 1, 2013.

⁴² Interview with Javier Rodríguez, president of the community action board, May 2, 2015.

Two people from the company showed up at my house. They did not explain they wanted to do a tailings dam on our land. They simply said they wanted to do an assessment of the fauna and flora in the region and intermittently spoke of building some sort of infrastructure. That sounded suspicious. My ‘indigenous malice’ told me something was wrong. The company asked me to organize a town hall meeting because they wanted to announce the process.⁴³

The first community meeting held in the municipality of Piedras took place on July 15, 2012, in the rural settlement of Pantano. Mr. Rodríguez, along with presidents of the neighboring community action boards, convened the meeting. The company canceled at the last minute, but over 20 people, including the mayor of Piedras, a few municipal council members, and leaders from the different townships, congregated at a neighbor’s house. By that meeting, Mr. Rodríguez had conducted research on the company.

That day I told everyone that there was no oil company and that AGA was the same company interested in building La Colosa mine in Cajamarca.... Many years ago, in 1975, as a soldier in [the state of] Antioquia, in northern Colombia, I saw firsthand the terrible consequences of gold mining. Mining destroys your water and the land.... So that day, in front of the mayor, I spoke as president of the community action board in name of my township and said we were not going to allow the mine to come into our territory, regardless of what they really wanted to do.⁴⁴

His statement was recorded in the meeting’s minutes:

As representative of the community, I am opposed to any project that may affect the water resources, flora, and fauna of this rural settlement and of the Municipality in general, and propose to call all living forces in our Municipality to stand in awareness regarding this project, so this way we can prevent any type of activity that could affect the wellness of the living beings of our region either directly or indirectly (Community Action Board of Pantano 2012).

The company asked for another meeting to be scheduled. On August 4, in Piedras’s town hall, 50 people congregated, including leaders from other townships, *campesinos*, the mayor and other council members. This time, the company mentioned its intentions to carry out a study and build infrastructure but did not explain exactly what it intended to do. That day, Mr. Rodríguez

⁴³ Interview with Javier Rodríguez, May 2, 2015.

⁴⁴ Interview with Javier Rodríguez, May 2, 2015. See also Community Action Board of Pantano (2012).

again stood up against the mine. At the end of the meeting, and given the company's vagueness, all the members present agreed to reject the presence of the company (Community Action Board of Pantano 2012a).

The two initial meetings and manifestations of resistance took place in the capital town of the municipality (also called Piedras) and in the neighboring settlements, but awareness and resistance increased when the company installed exploration platforms on a private farm in the township of Doima. Doima is located 40 minutes away from Piedras by dirt road, and its geography is very different. While Piedras, as its name suggests, is full of rocks, Doima is covered in rice fields. Piedras holds the mayor's office, the municipal council, and is slightly bigger. Doima is a very small township, with a main square shaded by five massive ceiba trees, a school, no supermarkets or chain stores, and just one unpaved road. "As identical cars started to go in and out of town, people unknown to the community started to rent⁴⁵ homes in town and offered to pave the main road, we got suspicious," explained Angela Mendez, the president of Doima's community action board, who had been present at the previous meetings.⁴⁶

Simultaneously, AGA contacted one of Doima's leading rice growers. The rice grower explained the encounter to a national newspaper:

A person came looking for me. Told me they wanted to do an environmental management plan on our land, to evaluate the fauna and flora in the area. Initially I gave them permission. But I realized they were evading my questions. When he finally told me that this mining company — whose name I did not recognize at the time — wanted to build a mine in [the town of] Cajamarca and have support near the Doima creek, I immediately withdrew the permit. (Bermúdez 2013)

The company managed to convince another rice grower, who allowed them to install their exploration platforms. However, the company failed to ask for the proper licenses from the

⁴⁵ A resident of Doima, known as "Pepe," also mentioned that the company rented houses for elevated prices both in Doima and in Piedras (Interview May 4, 2015).

⁴⁶ Interview with Angela Méndez, May 4, 2015.

regional environmental authority, Cortolima. Later, the landowner reported to a local newspaper, “First they asked me for permission and told me they were looking for a mineral, [but] when they arrived, nobody had said anything...I was not aware of the resistance” (*El Nuevo Día* 2013). In an interview, Angela Méndez, a leader of the area, recalled the sight:

I went with the director of Cortolima and the ombudsman to the farm where the company had set up the illegal platforms. It was a mess: big trashcans, hoses, oil, gas, and tires. They had cut the roots of the big trees and opened a hole so all the residue would flow into the river. I am telling you, that looked like those pictures you see of a FARC [left-wing guerrilla group] illegal campground.⁴⁷

Meanwhile, representatives of the company or people hired by the company, without disclosing their identity, approached the school’s teachers saying they would like to develop recycling programs with the children. They also hired laborers in town to sweep the streets for 40 thousand pesos (approximately USD16 at the time), close to three times the daily wage (*El Nuevo Día* 2012).

The illegal platforms, the devious explanations about recycling programs and fauna and flora investigations, and the high rents and wages generated wariness and raised alarms. During the next few months, community members, in particular a schoolteacher and a few community leaders, rushed to learn about the project, connect with other social leaders and organizations of Ibagué and Cajamarca, and ignite a process of resistance. In the following sections, I analyze in detail how the community learned about the threat, mobilized, and then formed a cross-cleavage coalition that enabled it to activate, for the first time in Colombian history, a popular consultation regarding mining.

⁴⁷ Interview with Angela Mendez, May 4, 2015.

2.2.3. The Community Mobilizes in Reaction to the Threat

Three public meetings were crucial for the community to learn about the threat. The first meeting called by the schoolteachers was held at the school of Doima during the students' break in mid-October. In September, when technicians hired by AngloGold gave talks about recycling and waste management at the school, Elida Barcenas, a schoolteacher who was already suspicious about the other events that were taking place in town, insisted on asking for whom they worked. "When they mentioned AngloGold, I realized I had heard the name from my friend, Juan, from the Environmental Committee at Ibagué."⁴⁸ Elida reached out to the environmental committee of Ibagué. Taking advantage of the school break, the teachers organized a meeting in which members of the environmental committee spoke about the company, its environmental and social records, and its plans to build the open-pit mine in the town of Cajamarca, 56 miles away, with the tailings dam to deposit all residues in Piedras.

The company then convened a second meeting in the town hall of the township of Chipalo, close to Doima, and only invited presidents of the community action boards. However, the presidents extended the invitation to the community. The governor of the state of Tolima, the mayor of Piedras, members of the environmental committee of Ibagué, and a few of the leading rice growers attended. The company canceled at the very last minute. Members of the environmental committee of Ibagué, who had been organizing seminars about and protests against La Colosa for several years and had visited AngloGold's mines in Brazil and similar mines in Peru (per invitation of the company and NGO Pax), gave a presentation illustrating mining's contaminating effects, which served to raise awareness of the perils of the mine. In reaction, the mayor of Piedras and the governor of Tolima publicly took a stand against mining.

⁴⁸ Interview with Elida Barcenas, July 2015.

“I will not accept open-pit mining that jeopardizes the quality of water and oxygen, the environmental balance and sustainability. I come from a rural background, I am not lured by the idea of money flowing into the region,” exclaimed the governor before the local residents (Delgado Peñon 2012).

The company convened a third meeting at Doima’s school in early December 2012. This time, company members attended and were publicly and vehemently criticized for having begun the exploration work secretly and for having disguised the real plans behind the flora and fauna assessment reports — a tailings dam. “In December, when the company’s employees called a meeting in the town’s school, the assistants asked them to leave nearly without giving them a chance to be heard,” reported a nation-wide newspaper (Bermúdez 2013). “Most residents — except a few that work with them — do not want any type of mining activity. We are very scared that they contaminate the water, the creeks, and the underground wells with their open water pools and that this becomes a desert,” a retired farmer of Doima who attended the meeting told the same newspaper (Bermúdez 2013). A municipal council member of Piedras explained the concerns:

We are especially worried about environmental degradation because it is not ten truckloads of rock that are going to land here but all of the rock and dirt that is extracted from the 515 hectares that AngloGold has in Cajamarca. They say they will manage the process very well, but we do not have any guarantee that that residue will not end up in our drinking water and the water we use every day (Bermúdez 2013)

The antimining sentiment spread quickly in the last few months of 2012. As mentioned in several of the quotes above, Doima is a water-rich valley, which is the reason why it has traditionally been a rice-growing area, and it is also known for having a unique ecosystem that hosts fresh water oysters. *Campesinos*’ daily living and recreational activities revolve around the rivers and rice fields or other forms of agriculture. The farmers of the towns of Piedras and

Doima feared that La Colosa's massive tailings dam would pollute and reduce their water supply. Gold ore processing, which uses large amounts of water and requires chemicals, often including cyanide, could diminish and pollute local water supplies. Additionally, as I explain in detail below, the rice growers saw their economic interests directly threatened by a tailings dam.

Resistance to the mining project displayed the full “repertoires of contention” (Tilly and Tarrow 2007): public meetings, demonstrations, vigils, rallies, pamphlets, statements in the press, and the formation of associations. Mobilization was new among the people of Piedras. “Piedras has never been an activist arena. We had never done a strike, a demonstration, nothing of that sort. But people got together, and now ‘people are not head, but heart.’ And controlling peoples’ hearts is more difficult,” explained Marina Guevara, a retired farmer who participated actively in the different demonstrations.⁴⁹

Banners saying, “The Mine Should Leave” quickly filled the towns of Doima and Piedras. People flew Colombian flags in their home patios as a sign of opposition to the company.⁵⁰ In Doima, close to 300 protesters gathered on the day before Christmas Eve to demonstrate against the consideration of their municipality for a tailings dam, in what was called a “carnival march”.⁵¹ The march, organized by the people of Doima with the support of the environmental committee of Ibagué, was inspired by the marches that had taken place in Ibagué for three consecutive years.⁵² Demonstrators chanted, “*Queremos Chicha, Queremos Maiz; AngloGold fuera del País*” (We want ‘chicha’ [a local maize-based drink], we want maize;

⁴⁹ Interview with Marina Guevara, May 2, 2015.

⁵⁰ Interview with Juan Camilo Gómez, a student of the University of Tolima who was involved in the popular consultation process from the beginning as part of the environmental committee of Ibagué, May 3, 2015.

⁵¹ See video of the march, “1a Marcha Carnaval en Doima-Piedras-Tolima-Colombia contra la Anglo Gold Ashanti – La depredadora de América Latina – Diciembre 23, 2012” Available at: <https://www.youtube.com/watch?v=Ed4EYw2LOTU>.

⁵² At the time, there was no social movement organization in Piedras or Doima. The environmental committees of these two towns formed in February of the following year (Interview with Cesar Riaño, environmental activist, one of the founding members of the environmental committee of Ibagué, who was one of the first to visit Doima and start to talk about the threats, February 24, 2015).

AngloGold out of the country) and “*Doima no se vende; se ama y se defiende*” (Doima cannot be sold; it will be loved and defended).⁵³ “We only have one source of water: the river,” said one protester. “If they pollute the river and streams, it will be the end of everything [...]. And we are scared because this is a big company doing business all over the world” (Stringer 2013).

Despite the march and the unwelcoming signs and flags flooding the towns, AngloGold continued to drill on private property near the land chosen to build the tailings dam. Likewise, as they had been doing in Cajamarca for years, they promised new, well-paid jobs, and visited the houses of the villagers of Piedras municipality, giving away TV sets and other electronics.⁵⁴

In reaction, town leaders blocked the only bridge giving access to the town to prevent the company’s cars and machinery from entering or leaving. On January 31, 2013, Doima and then Piedras reached the national headlines for what became known as “The Blockade” (“*El plantón*”). The blockade started at four o’clock on a Thursday morning. The locals placed a metal chain across the bridge, put up a Colombian flag, and tied two plastic chairs to the bridge on which people took turns sitting. Close to 500 people, mostly women, blocked the dirt road. People’s distress and fear continued to grow. Felix Bonilla, one of the farmers who coordinated the blockade, recreated the first day:

Not even the children went to school that day. The next day the company’s workers tried to leave using an alternative road, but at the other town, at Piedras, they blocked them too. The company’s workers were unable to enter or leave town for a week. [...] The blockade at the bridge lasted four months. We would take turns on the bridge from dusk to dawn. We only allowed people who were sick to go through. If people arrived down the road, we would ask them where they were going. It worked like a checkpoint.... Everyone participated. The rice growers sent

⁵³ See video of the march at <https://www.youtube.com/watch?v=Ed4EYw2LOTU> and also press coverage at <http://www.elnuevodia.com.co/nuevodia/tolima/regional/167117-en-doima-reiteran-su-rechazo-a-anglogold>.

⁵⁴ Interview with Felix Bonilla, rice grower of Doima, February 24, 2015.

us rice and meat during those months. Even the poorest people would bring eggs or bottles of milk.⁵⁵

A president of one of the community action boards, Hernando Jimenez, told a regional newspaper, ““We fear the consequences. [But] the process has begun. He who does not defend his land does not deserve it and we are going to maintain a rejection attitude. We are not going to allow that they use our water”” (*El Nuevo Día* 2013). The blockade caught the government’s attention. Five days later, the resistance at Piedras was one of the security issues discussed during the extraordinary Security Council meeting held by the president in the city of Ibagué.

The company filed a legal action against the mayor of Piedras for violating the right to freedom of movement, and antiriot police were sent (*El Nuevo Día* 2013a). In response, the blockade moved to the patio of the first house after the bridge to monitor any activity on the road without occupying public space. Marina Guevara explained the scenario the day I visited Doima four months after the popular consultation:

We would sit on the patio, vigilantly watching who came in or out. We set up this alarm [pointing to a street post] so whenever a car from the company approaches, or anyone that seems unfamiliar, whoever is in charge can set it off and people rush out from their houses to block the road regardless of the time of day or night.⁵⁶

The “blockade” at the house lasted close to eight months. The protesters who participated in the blockade then exerted their citizenship even more radically by voting against mining in the popular consultation. But how did the marches and the blockade evolve from traditional mobilization into a popular consultation?

2.2.4. A Cross-Cleavage Coalition Begins to Coalesce: The Rice Growers Join the Cause

⁵⁵ Interview with Felix Bonilla, February 24, 2015.

⁵⁶ Focal group with *campesinos* of Doima sitting next to the bridge, Marina Guevara, November 10, 2013.

Resistance went beyond mobilization to institutional activation when the rice growers joined the cause and a cross-cleavage coalition began to form informally. As the framework suggests, the coalition at Piedras had three sets of actors who joined at different moments. First, the protesters, who were the visible face of the resistance up to this point, deployed traditional contention strategies that caught the attention of media and the local politicians. They also played two key roles: raising awareness among the landed elite, who would become subversive activators, and acting as the main participants in the popular consultation, guaranteeing its success. Second, the subversive activators, a trio of rice growers, had the resources to access the knowledge bearers. This last group of actors, the knowledge bearers, identified the institution and pressured the local administration to put it into motion. This group comprised several actors, notably, a former lawyer from the Ministry of the Environment and his colleagues, who silently helped pinpoint the institution. The line between the subversives and the knowledge bearers in this case was not so neat, and a few of the latter fell into both categories.

The leading rice growers learned about AngloGold Ashanti's plans to build a tailings dam in Doima through the community. A few became aware because the company contacted them directly, but as two of the testimonies above show, at that point they did not even know who AngloGold was. The real involvement of the rice growers began after the community alerted them and at the meetings at the town hall and the school.

After the first meeting at the school, in October 2012, the community leaders reached out to a few members of the landed elite. Ties between some landowners and peasants of Doima are close. Many of the landowners were born in the area, and others are from the capital city, Bogotá, but have had their land for years. A *campesino* leader from the area put it in the following terms:

In the region of Doima, rice growers do not sell [their land] to strangers. Their lands belonged to their parents. Here they are born, they grow, reproduce, and die. They are always around the area. They do not abandon the region; they are part of the community. For instance, if someone's house burns down, they help set it up.⁵⁷

The schoolteacher and the president of the community action board served as the main liaisons between three rice growers, who were central in activating the popular consultation: Felix Bonilla, a landowner from the region, who is a medium-sized rice grower with close ties to the *campesinos* and community leaders and who coordinated the blockade; Julián Viña, a landowner who is no longer in the rice business but remains active in the area and has close ties with lawyers and public officials, who uncovered the institution of the popular consultation; and Enrique Rodríguez, a landowner born in Doima, who was twice mayor of Piedras, is one of the largest rice growers in the area, and had close ties with the incumbent mayor at the time of the consultation. The three of them live in Tolima's capital city of Ibagué (many of the larger rice growers live in Bogotá), and Felix and Enrique are active in agriculture and visit the Doima area often.

The landowners were not present at the first meeting in the school of Doima (nor at previous meetings organized in Piedras), but through the schoolteacher and other leaders, they became aware of the company's interests. For example, a president of the community action board told Felix Bonilla about the company. He in turn called a famous geologist of the area, who had drilled most of the water pumps for the rice growers and had already visited the mines of Peru and Brazil in the company of the NGO Ecotierra, and met with him to show him information.⁵⁸ Members of the landed elite attended the second meeting where the company canceled at the last minute, in which the environmental committee of Ibagué presented the

⁵⁷ Interview with Angela Méndez, president of the community action board of the township of Campoalegre, in Doima, May 4, 2015.

⁵⁸ Interview with Felix Bonilla, February 24, 2015.

company's plans and outlined the environmental risks, and the December meeting at the school. Following the first meeting, some of the rice growers conducted online research about tailings dams and the company and learned about its negative track record.⁵⁹ Both rice growers and other citizens began to spread the word. "I went everywhere with a megaphone in hand, telling everyone I could about the company's real interests and the risks," recalled one of the rice growers.⁶⁰

While the *campesinos* of Piedras and Doima resisted loudly and publically, the landowners began to move quietly and discreetly. A tailings dam on their rice fields meant the end of their business and a threat to their large properties. As in other parts of Latin America, the landed elite shared concerns about water availability but mostly because extractive activities represented a direct threat to their economic interests (Bebbington 2012). While the protests and banners in the streets were important expressions of resistance, the rice growers realized the need to channel their concerns and those of the community through a mechanism that went beyond mobilization if they were to have any chance of hindering the project. *Campesinos* and other rice growers alike recognized Julian Viña, one of the three rice growers from the region, as one of the strategists behind the popular consultation. As he explained,

People protesting and banners on the streets were important to show the company was not welcomed. But when we heard about the size of the project and the potential impacts, we realized we needed to do something else, something that could effectively stop the mine, something that the national government and the company could not ignore, something that would be obligatory. I myself proposed a plebiscite at one of the first meetings with the community. Protests in a remote town, far away from the capital city, were not going to stop the government or the company.⁶¹

⁵⁹ News archive from Julian Viña. Available upon request. Also, interview with Felix Bonilla, February 24, 2015.

⁶⁰ Interview with Felix Bonilla, February 24, 2015.

⁶¹ Interview with Julian Viña, February 23, 2015.

In addition to trying to find an alternative beyond the protests, the rice growers also supported the blockade. “The owners of the mill sent rice. Other would send meat. The cars that would go in and out would bring salt, sugar, eggs, something...”⁶² “There was never a day in which there wasn’t breakfast, lunch, or dinner for the people standing on the bridge. Maintaining the blockade would have been impossible without the help of the *hacendados*.”⁶³ As the analytical framework suggests, each group of actors needed the support of the other actors.

In sum, while the support of the rice growers was not overt or formal, this group aligned itself with the cause and began to look for an alternative to the blockade and to gradually contribute to the coalition forming to prevent mining activities in the municipality. This coalition was unusual because it cut across traditional social and class cleavages. The landed elite were on the same side of the conflict as the people who worked on their lands without needing to be part of the cause for exactly the same reasons or to employ the same strategies.

2.2.5. The Knowledge Bearers Join the Coalition

Holding a popular consultation, however, was not the immediate solution, especially since popular consultations in general were not common and a popular consultation regarding mining had never been held. The institution had remained dormant for close to 30 years. Yet a group of landowners, two in particular, sensed that some sort of institution of civic participation was an adequate method to channel concerns, especially given the community’s relatively united stance. In terms of the model presented above, two of Doima’s landowners had general

⁶² Interview with Felix Bonilla, February 24, 2015.

⁶³ Interview with Julián Viña, July 30, 2016.

knowledge of the type of institution that could serve their purpose. Yet, it took them several months to identify the precise institution.

“At that first meeting I attended, I blurted out the need to do a plebiscite to stop the mine,” explained Julian Viña, one of the rice growers and a key subversive activator.⁶⁴ Likewise, the two-time former mayor of Piedras recalled having a sense about needing to use some form of participatory mechanism: “At that school meeting, I put an idea on the floor. ‘I don’t know exactly what form we could use as citizens, but we are going to use it.’ I was not sure if it was a plebiscite, a consultation, or something else, but it was definitely a mechanism of civic participation because we were all there.”⁶⁵

For the former mayor, the 1991 Colombian Constitution was a strong institutional reference. “I was the first publically elected mayor of Piedras under the Constitution of 1886.⁶⁶ I was elected mayor a second time under the Constitution of 1991. I remember that one of the things that struck me the most under the new regime was all the mechanisms of civic participation that were incorporated into the new Constitution.”⁶⁷ Recognition of which specific institution they should use would come months later, but it was clear from the start that this group of landowners imagined institutions of civic participation to be among the tools available to them. In that sense, in terms of the analytic framework, these two rice growers straddled the roles of knowledge bearers and subversive activators.

The specific institution was identified after several closed meetings between a group of rice growers and experts who had a clearer idea of the institutional and legal alternatives

⁶⁴ Interview with Julian Viña, February 23, 2015.

⁶⁵ Interview with Enrique Rodríguez, May 5, 2015.

⁶⁶ Under the 1886 Constitution, the president appointed mayors and governors. The constitutional reform of 1986 (Legislative Act No. 1) introduced public elections. This was the same act, mentioned above, that introduced popular consultations.

⁶⁷ Interview with Enrique Rodríguez, May 5, 2015.

available.⁶⁸ The first meetings, held in January and early February of 2013 at the rice cooperative Serviarroz, in Ibagué, were informational. Approximately 10 of the Doima and Ibagué region's leading rice growers and the members of the board of directors of Serviarroz attended the February meeting. The NGO Ecotierra, from Cajamarca, was invited to explain AngloGold's project and mining's potential impacts, based on information gathered during trips to Peru and Brazil.⁶⁹ The rice growers shared information that they had gathered individually through Internet searches regarding open-pit mining in South Africa and other parts of the world.

Once the rice growers agreed to implement some sort of strategy, they asked for help from other actors, the cluster of knowledge bearers. The former director of the environmental agency Cortolima and a member of the state assembly of Tolima who specialized in mining law were consulted. According to one of landowners present at the first meeting, the director of Cortolima suggested that “the solution is to try to involve indigenous communities because only then does the State have to hold a prior consultation and there is a legal means to stop the project.”⁷⁰ The reference to prior consultations, even though the population in Piedras is nonindigenous, demonstrates that institutional activation requires some knowledge of the array of possible institutions available. While the former director and the assembly member did not pinpoint the exact institution, they acted as knowledge bearers inasmuch as they gave advice on how to navigate the legal and political landscape. The subversives consulted them frequently.

The definitive solution came when, after exploring multiple institutional alternatives, one of the rice growers, who was strategically located between the community of Piedras and powerful actors close to the system, contacted a family member who is a lawyer who had worked

⁶⁸ Interviews with Enrique Rodriguez, former mayor of Piedras, May 5, 2015, and Felix Bonilla, a Doima rice grower, February 24, 2015.

⁶⁹ Interview with Luis Carlos Hernandez, member of Ecotierra, May 4, 2015.

⁷⁰ Interview with Felix Bonilla, a Doima rice grower who was the economic coordinator of the blockage, February 24, 2015. The same idea was supported by Julian Viña, another rice grower, who participated in all meetings.

at the Ministry of the Environment until 2003. This lawyer is an expert in environmental impact assessment, had worked for a large oil company, and had been deputy minister in charge during the discussion in Congress of the 2001 mining statute. It was this lawyer's idea to deploy a popular consultation. "After I told him about the different institutions of participation that we had in mind, he specifically told me, 'You have no other alternative but to carry out a popular consultation,'" explained the rice grower.⁷¹ With the advice of this lawyer based in Bogotá and a group of high-level judges and public officials he convened, the trio of rice growers finally settled on a popular consultation. According to the lawyer,

I told them [the rice growers of Doima] that the key issue was the framing of the question. The objective was not to prohibit mining but to prohibit activities related to mining, like the tailings dam, which had a high environmental risk in terms of contamination and use of the soil. It was not [a consultation] against the company AngloGold either. It was against a type of activity that can generate environmental risks. So with the help of these other colleagues we thought of a question to go on the ballot. But that question underwent several changes as different advisors and politicians each wanted to leave their print.⁷²

In accordance with the characteristics of knowledge bearers, both the lawyer and his colleagues who helped identify the institution and frame and justify the specific question requested absolute anonymity.⁷³ Visibility was not a strategy because public recognition of their contribution was not their goal. As anticipated by the model, knowledge bearers often hold strategic positions within the system or close to it. Thus, activating an institution is likely to have strong distributional consequences on powerful actors close to them, such as corporations or the government. Accordingly, they were willing to support the cause secretly but not jeopardize their networks and sources of social capital.

⁷¹ Interview with a rice grower whose identity cannot be disclosed to protect the lawyer's identity, May 5, 2015.

⁷² Anonymous interview, September 7, 2015.

⁷³ Tellingly, the lawyer was one of the few interviewees who did not allow me to use his real name because he feared jeopardizing key personal and political ties. In fact, it was only after a year of conversations and interviews about the popular consultation process that the rice grower finally agreed to put me in contact with the lawyer.

Between March and April of 2013, the lawyer and one of the rice growers negotiated several possible wordings of the question.⁷⁴ During this period, they also consulted the former director of the local environmental agency and a member of the state assembly. As one of the rice growers explained, it was strategic for the rice growers to have local politicians and public officials on their side both to gain access to their legal advice and to ensure that the politicians felt that they were part of the idea (that it was not imposed from the capital city).⁷⁵

While the subversives and the knowledge bearers jointly activated the dormant institution, setting the consultation in motion required the local administration.⁷⁶ With a draft of the ballot question and justification in hand, the rice growers were strategically located to pressure the state. The mayor of Piedras had been against the mining project since the first town hall meeting, yet he was hesitant to implement popular consultation. The mayor sat on the proposition for nearly two months until Enrique Rodríguez, a former mayor of Piedras and a major political and financial supporter of the incumbent mayor's campaign, used this political capital to pressure him. As one of the three rice growers who attended the decisive meeting with the mayor explained,

In particular, Enrique Rodríguez, who cultivates 600 to 700 hectares of land in Doima, was mayor of Piedras twice, and supported the incumbent mayor in his campaign, was central in persuading the mayor... Around April, Enrique called the mayor, and we held a meeting at Hotel Casa Morales, the political meeting place in the center of Ibagué. Three of the mayor's lawyers participated. They decided to change the preamble we had written, in which we made reference to the protests and the popular discontent as reasons for the necessity of the consultation. Instead, they put in references to laws that support the consultation. After that meeting, the mayor decided to present it to the municipal council.⁷⁷

⁷⁴ See copies of email communications between the rice grower and the different actors discussing different versions of the question. Emails available from author upon request.

⁷⁵ Interview with Julián Viña, February 23, 2015.

⁷⁶ According to Colombian law (Law 134 of 1994 and Law 136 of 1994), the mayor must present the popular consultation proposal to the municipal council for the council to determine whether it is convenient to hold a popular consultation. Once the council gives its favorable opinion, the administrative court decides whether the question to be submitted to popular vote is constitutional or not. If it is upheld, the National Registrar's office sets a date for the consultation.

⁷⁷ Interview with Julian Viña, February 23, 2015.

The combined action of knowledge bearers (secretly supporting the cause and helping identify the institution) and rice growers (doing subversive work to navigate the system to reach the mayor) were keys to activating the popular consultation. But the protesters were again fundamental in guaranteeing the success of the participatory mechanism.

2.2.6. The Protesters Support the Activation

Once the mayor presented the proposal to the municipal council in mid-May, the process moved quickly.⁷⁸ The protesters, who had played an initial role by contacting the eventual subversives, guaranteed the success of the institution by influencing voter turnout and results. In addition, the seminars and protests that took place in the region added momentum to the popular consultation at Piedras.

By the time of the popular consultation, the process that had begun in Doima and Piedras had developed more broadly in Ibagué and Cajamarca, and this strengthened the consultation. In February, the regional environmental agency (Cortolima) organized the First Environmental Citizens' Roundtable in Ibagué to discuss the implications of La Colosa. The roundtable brought together over 500 people, including farmers from Doima, Piedras and Cajamarca; NGOs from Ibagué and Cajamarca; the governor of the state of Tolima; and representatives from the Ministries of Mining and the Environment, the Comptroller's Office, the local universities, and AngloGold Ashanti. Resistance was so strong that participants jeered AngloGold's representative off the stage before he could finish his presentation. That day, the governor

⁷⁸ In Piedras, the mayor handed the popular consultation proposal to the municipal council on May 15, 2013, the council returned the question with a suggested change to the wording, and the mayor presented the new version on May 18, 2013. The council issued the favorable concept on May 22, 2013, the administrative court handed down its decision on June 26, 2013, and the vote was held on July 28, 2013.

announced the idea of holding a state-level popular consultation (*El Tiempo* 2013). This roundtable contributed to explaining the threats of the project and gaining additional supporters.

Until that roundtable, the idea of any sort of popular consultation had remained undisclosed because the rice growers, adopting standard subversive strategies, had purposely agreed to secrecy.⁷⁹ This case shows what the analytic model predicts: that taking the opponent by surprise is instrumental for successful activation. Silence allowed the coalition to activate the institution and the mayor to set the institution in motion before the national government — more specifically, the Ministry of Mining, which in this case was the principal opponent, along with the company — could react. Indeed, once plans for the consultation became public, the ministry activated its countervailing mechanisms. In May of 2013, it handed down a decree (Decree 934 of 2013), which prohibited municipalities from banning mining on their territory. While the decree was not about popular consultations, it produced a paralyzing effect among mayors of other municipalities who, following the example of Piedras, sought to hold popular consultations but became hesitant. In Piedras, while the decree was handed down a week before the mayor presented the consultation proposal to the municipal council, it came when the mayor was already committed to holding the popular consultation.

In addition to the public forums, between the blockade and the actual election, NGOs worked in Piedras and Doima to raise awareness of mining's environmental impacts and offer technical information. Ecotierra and the environmental committee worked in the towns of Piedras and Doima, respectively. In the months leading up to the consultation, they went from house to house and to public spaces, explaining the institution of the popular consultation. Likewise, with support from the Dutch NGO Pax and financial resources from leading rice

⁷⁹ Interview with Enrique Rodriguez, May 5, 2015.

growers, Robert Moran, a globally renowned hydrogeologist and geochemist who has worked for over 40 years in the mining sector, visited Piedras to explain to the citizens and the municipal council members the risks of open-pit, large-scale mining. His interview was published in the country's main newspaper, helping raise awareness of such impacts (Reinoso 2013).

Furthermore, in March, the residents of Doima, including some who were still present at the blockade, submitted to the local environmental agency a brief demonstrating that the company had violated environmental norms while conducting exploratory work on private land. Consequently, Cortolima sanctioned the company and ordered it to remove all machinery from the area.⁸⁰

Finally, the president and some departments of the public University of Tolima joined the cause. A group of 30 students went around town and to the remote townships for a whole month before the elections explaining the procedure of the popular consultation and the importance of voting.⁸¹

In the midst of blockades, on a hot Sunday morning, voting took place in four townships of the municipality of Piedras.⁸² Of the 5,105 eligible voters, 3,007 voted, and 2,971 of these voted against mining. Many of those who voted had been present at the blockade for the past six months. Their presence guaranteed that voter turnout reached the majority required by law.

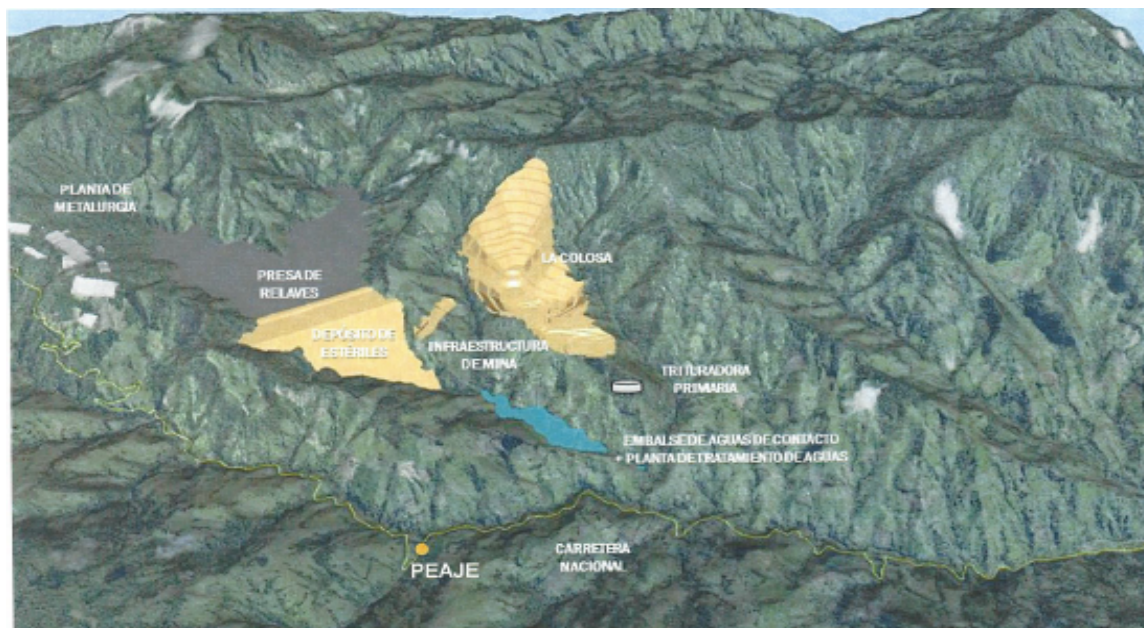
⁸⁰ Cortolima, Resolution 433 of March 11, 2013.

⁸¹ Interview with Juan Camilo Gómez, one of the students who camped in Doima for a month, May 3, 2015.

⁸² The question on the ballot read, "Do you agree, as a resident of the Piedras municipality, Tolima, with the development of exploration, exploitation, treatment, transformation, transport, and washing of materials resulting from large-scale gold exploitation activities in our territory; storage and use of substances harmful for health and the environment, like cyanide and/or any other toxic substances or material associated with these activities; and for these to use surface and underground water resources from our territory in mining activities or any other similar development that can affect or limit the provision of drinking water for human consumption and the traditional productive agricultural activities of our municipality?"

Following the vote, resistance soared. The company reacted by saying that the ballot question was biased and challenged the Administrative Court's decision that declared the ballot question constitutional. The court's decision was upheld. The inspector general's office filed a disciplinary action against the municipal council members of Piedras arguing they had exceeded the scope of their functions by approving a referendum that aimed to ban mining, but it went nowhere. President Juan Manuel Santos claimed in an interview with *El Espectador* (García, Gutiérrez, and Herrera 2013) that popular consultations like the ones in Piedras (and the one that was held six months later in Tauramena municipality) are “illegal and have no legal effect. The subsoil belongs to all Colombians. There is no room for discussion”— although Colombian law allows consultations over mining issues (Law 136 of 1994, Article 33) and says that it is obligatory for national authorities to respect the results of popular consultations (Law 134 of 1994, Article 8). Despite the opposition and the attempts to strike down the consultation results, in 2014, when the company presented a new layout for the mining project to the municipal council of the capital city of Ibagué, there was no tailings dam intended in Piedras; the entire project would be located in Cajamarca (see Figure 2.2.). For the first time in Colombian history, a small rural community thwarted plans for large-scale mining in its territory through a popular vote. The activation of such an institution was made possible as a result of a cross-cleavage coalition of subversives, knowledge bearers, and protesters.

Figure 2.2. Infrastructure Project La Colosa, Year 2045



Source: AngloGold Ashanti. 2014. “*Gracias — Los invitamos a seguir conociendo la verdadera minería*” (“Thank You — We invite you to continue learning about true mining”). PowerPoint presentation. December 2014. Presentation made before the municipal council of Ibagué. Slide 10/20. *Presa de relaves* is another name for “tailings dam” in Spanish.

Why was activation possible in Piedras and not in Cajamarca, where resistance began years earlier? In the following section, I return to the town of Cajamarca, where the case study presented in this section began, to show how the absence of certain actors who were essential for a cross-cleavage coalition prevented the activation of a popular consultation in Cajamarca.

2.3. The Absence of Cross-Cleavage Coalitions: The Case of Cajamarca

The case of Cajamarca shares many core characteristics with the case of Piedras.⁸³

Because it allows us to control for key relevant variables, it is a good negative case to analyze how the absence of key mechanisms of the theory of citizen institutional activation prevented the

⁸³ This chapter was completed before the popular consultation initiative that emerged from in 2016 was carried out. The vote is expected to take place in 2017.

activation of the popular consultation in Cajamarca. Both towns are located in the state of Tolima, and they are equidistant from the state's capital, Ibagué. Both are affected by the same mining project of La Colosa. (Cajamarca is where the open-pit mine would be located, and Piedras is where the initial tailings dam was planned.) Many of the same social movement organizations were present in both areas (e.g., the environmental committee of Ibagué, the international NGO Pax Christi, and Ecotierra, one of the first environmental organizations founded explicitly against AngloGold Ashanti's project).

As explained above, resistance to the La Colosa project began in Cajamarca soon after Colombia's president announced the project on national television, four years before contention arose in Piedras. Social organizations like Ecotierra and Conciencia Campesina were created to help organize social protests and gather and disperse information about the risks of open-pit mining. For example, between 2011 and 2012, several organizations jointly published a magazine called *Bios & Ecos*, which explained in simple language the risks mining would bring to the region's water sources and fragile ecosystems, published interviews with internationally renowned mining experts, shared the experiences of similar mining projects in other parts of Latin America, and distributed information about La Colosa. Likewise, multiple seminars were held in Cajamarca and Ibagué. In October of 2011, for instance, the fourth International Congress of the Observatory of Mining Conflicts in Latin America was held, bringing together representatives from social and environmental organizations from Latin America, Brazil, Canada, Holland, and Belgium and focusing attention on Cajamarca. Furthermore, resistance to the project gained international support from international NGOs and parliaments. In July 2011, 38 members of the U.K. Parliament expressed their "concern about the devastating environmental impacts that the proposed La Colosa opencast goldmine in Colombia will have on

a region of considerable biodiversity and importance for food production” (U.K. Parliament 2011). Not only was there widespread resistance to the project, but Cajamarca is a much more visible town than Piedras. It is located on the main road that connects the center of the country with the Pacific coast. Thus, one would have expected that protests in Cajamarca would have caught the central government’s attention or contributed to activating an institution that could have thwarted the project. However, the popular consultation process was only activated four years later in Piedras.

The consultation process was not activated in Cajamarca because a cross-cleavage coalition never formed. While there were protesters, subversive activators and knowledge bearers were absent. Resistance in Cajamarca remained the concern of social movements. There were no cross-class alliances like those that formed in Piedras. Unlike in Piedras, the landed elite in Cajamarca did not silently align with the cause or search for institutional tools of resistance. Merchants who owned the local supermarket and the convenience stores, who represented Cajamarca’s economic elite, remained indifferent. One of the subversives in Piedras set up the contrast beautifully:

The *hacendados* were key in Piedras. If it had been ordinary people, most likely the mayor and the council members would not have taken them seriously. Plus, it is harder for the ordinary *campesino* to know who to ask or where to look for legal solutions.... The rice growers were key. But in Cajamarca, the powerful are the businessmen. And at that time, they did not offer their support.... Now, they are offering their support to the popular consultation initiative [presented in 2016 to the municipal council]. Yet they do not want anyone to recognize them or the government to find out.... But before, this elite support was absent.⁸⁴

In sum, as the model predicted, a credible threat is not enough to activate an institution, nor is mobilization. A cross-cleavage coalition, in which different actors contribute with different

⁸⁴ Interview with Julian Viña, July 2016.

resources and forms of capital, is necessary for citizen institution activation and disruption of the existing institutional arrangement.

2.4. Conclusions

Institutional analysis has gone a long way in identifying phenomena like institutional emergence, change, reproduction, and diffusion. Institutional activation, however, is a different phenomenon — one that remains largely unexplored, despite its potentially distributive implications. In particular, citizen institutional activation, one of the four types of institutional activation, has received no attention. This chapter seeks to fill this void by integrating coalitional analysis and institutional analysis (Hall 2010:207) and by offering an in-depth study to show the mechanisms in motion. In this chapter, I define *citizen institutional activation* as the contested process through which institutions go from dormant to active as a product of action by citizens (individuals or social groups). I propose that it occurs when a coalition of actors who under the *status quo* would not normally cooperate, informally line up in favor of or against a set of rules or a cause. Citizens do not wait for the opportunity to emerge, but they create such opportunities (Goodwin and Jasper 1999). The association of these actors disrupts the dominant institutional arrangement, producing social and institutional change. As illustrated in the case of the popular consultation of Piedras, three actors normally integrate the coalition — subversive activators, knowledge bearers, and protesters — each following different activation strategies and bringing different capital to the coalition. Such a coalition proved instrumental in activating the popular consultation through which citizens managed to thwart the plans of the world's third-largest gold

mining company to build a tailings dam on their land, which would have implied water pollution, shortage, and the end of the distinctive rice fields.

The use of the popular consultation raises a question related to another central issue of this dissertation: the role of participatory institutions in protecting the environment. Why was a participatory institution necessary to deter the threat? The response takes us back to an issue introduced in the previous chapter: *the common problem of the commons*. Since owners of the soil in Latin America are not the owners of the subsoil, they do not have decision-making power over mining concessions or environmental licenses granted on their land to extract resources from the subsoil, and this puts at risk the common-pool resources on the land. Thus, regardless of the extent of their land (for example, one of the leading rice growers in Piedras, who acted as a subversive, cultivates approximately 700 ha of rice), they had no means to block a mining project. Thus, they made use of a binding participatory institution that, through popular vote, granted them decision-making power. In the following chapter, I analyze in depth the issues that emerge from the discrepancy between topsoil and subsoil property rights and illustrate how a community that faced the consequences of this discrepancy also used a type of participatory institution to deter the threat.

Chapter 3. The Common Problem of the Commons and the Role of Political Participation in Environmental Protection: The Case of Apaporis Park in the Amazon

“A gold mine in Apaporis is like drilling for oil in the Sistine Chapel”
Wade Davis

Today, in the far eastern Colombian Amazon, near the border with Brazil, stands a national park called the Yaigojé-Apaporis (hereafter Apaporis), which entirely overlaps with an indigenous *resguardo* (a legally recognized territory that is collectively owned by indigenous communities). In 2008, amidst the global commodity super cycle (Erten and Ocampo 2013), an association of indigenous groups in this region asked the national government to create a park to prevent mining from expanding into the indigenous territory and, in doing so, to protect the ecosystems and contribute to the conservation of the Amazon. The threat came from a Canadian multinational mining corporation that was planning to construct an open-pit gold mine on their sacred waterfalls. It was the first time in Colombian history that indigenous groups demanded that their entire *resguardo* be declared a national park. “For the first time an area classified as a *resguardo* is asked by the indigenous traditional authorities to be turned into a National Park,” read the press release of the National Parks Division (2009), highlighting the rarity of the event. Indigenous groups customarily despise parks because they conceive them to be a white man’s institution that restrains their autonomy to govern their territory through their traditional forms of government and cultural traditions. In fact, 10 years earlier, the national government had attempted to create a national park over the same territory as a means to protect the area’s ecological richness, and the same association of traditional indigenous authorities categorically rejected it. Instead, they successfully requested the expansion of their *resguardo* to cover the complete ancestral territory.

What changed in those 10 years that led the indigenous people to adjust their strategy and made them sympathetic to parks? Why was the collective property institution of the *resguardo* not enough? How did a small, dispersed group of 1,500 people living in the remoteness of the jungle, in an area the size of Puerto Rico,⁸⁵ successfully thwart the plans of a large multinational corporation that was backed by a government that declared mining an “engine for development”? And ultimately, how did the indigenous communities prevent the extraction of minerals from the subsoil without being the owners of the subsoil?

This chapter attempts to answer these questions and, by doing so, to contribute to two goals. The first, broader goal is to conceptually and empirically reveal a common problem faced by common-pool resources (CPRs) due to the incongruity between subsoil and topsoil rights and the complications resulting from this incongruity. This issue, which I will call the *common problem of the commons*, has been overlooked by scholars of the commons, property rights, and environmental politics. The second goal is to contribute to the analysis of the potential role of institutions of political participation in working as a solution to attenuate the consequences of the common problem of the commons and enhancing environmental protection. The remainder of this section briefly outlines the case of the creation of Yaigojé *resguardo* and park and anticipates the main theoretical arguments.

The indigenous authorities resorted to a national park when the *resguardo* property structure proved insufficient to protect their cultural traditions and safeguard their forests, rivers, and sacred sites from mining. The *resguardo* is a property rights institution that grants collective ownership of the land to the indigenous people, recognizes their forms of government, and excludes the application of national law. It is constitutionally inalienable (it cannot be sold),

⁸⁵ According to the 2001 census, 1,500 people from 7 indigenous peoples (Macuna, Tanimuca, Letuama, Cabiari, Barazano, Yujup-Macu, and Yauna), organized into 19 communities, live in the Yaigojé-Apaporis *resguardo*.

nonseizable (it cannot be taken away from the owners to pay their debts), and imprescriptible (ownership is never lost, even if the property is occupied for a long time by someone other than the owners); this means that indigenous groups who are granted a *resguardo* are perpetually the owners of the massive expanse of land. Hence, the *resguardo* had been enough for the indigenous authorities to keep the white man out and safeguard the territory for over 20 years, without the need of another institution like a national park. In fact, the nongovernmental organization (NGO) that accompanied the indigenous association in resisting the first attempt to create a national park and fighting for the expansion of the *resguardo* thought similarly. And, according to commons theorists and the new institutionalism in economics, the collective property structure should have sufficed or helped considerably.

From these perspectives, property rights have traditionally been the quintessential institution to protect CPRs like the forest. The literature on common goods argues that property rights solve environmental problems because they internalize externalities (Libecap 2009; Ostrom 2008). As clearly stated by Libecap (2009:129), “all environmental and natural resource problems associated with overexploitation of public goods, arise from incompletely defined and enforced property rights, whether they be informal or formal, group or individual.” For some scholars, private property,⁸⁶ like an individual transferable quota system, is the ideal solution (Raymond 2003; see Ostrom 2008:25–27 for a summary). For others, state ownership,⁸⁷ like national parks or other protected areas, works best (Lovejoy 2006; Ostrom and Nagendra 2006).

⁸⁶ Under private property, “the rights to exclude others from using the resource and to regulate the use of the resource are vested in an individual (or group of individuals such as a corporation)” (Feeny et al. 1990:4).

⁸⁷ Under state property, “rights to the resource are vested exclusively in government, which in turn makes decisions concerning access to the resource and the level and nature of exploitation” (Feeny et al. 1990:5).

Still others defend collective ownership⁸⁸ (Bray et al. 2005; Bromley 1992; Western and Wright 1994). *Resguardos* fall into the latter category. They are an institution of collective property in which property rights of an indigenous group are legally recognized and autonomous government structures are respected. They have profited from a strong enforcer since the early 1990s: the Colombian Constitutional Court. Yet, in the case of Apaporis, a collective ownership structure was not enough.

This finding that collective ownership was insufficient to prevent environmental damages resonates with more recent work on CPRs, which concluded that no single form of property rights acts more effectively than any other (Bromley 1992; Campbell et al. 2006; Dietz, Ostrom, and Stern 2003; Grafton 2000; Ostrom 2008). “From full ownership to community-rights concessions on public lands to private management, can be effective if they are well tailored to the particular attributes of a resource” (Ostrom 2008:27). In sum, property rights alone are not enough to regulate common-pool resources. As explained in Chapter 1, multilevel governance systems (Ostrom 2008) or what have been called polycentric systems (Ostrom, Tiebout, and Warren 1961) rather than one-size-fits-all property prescriptions have emerged as solutions. These systems take into consideration other elements that matter for the governance of the commons. Agrawal (2003, 2012) surveyed the extensive scholarship on common-pool resources (including Balland and Plateau 1996; Dietz, Ostrom, and Stern 2003; Gibson, McKean, and Ostrom 2000; Ostrom 1990; Wade 1994) and identified four clusters of variables that are relevant to successful governance of the commons: (1) the characteristics of the resource system (e.g., the size of the resource, its boundaries, its mobility, and the ease of monitoring conditions);

⁸⁸ Under collective or communal ownership, “the resource is held by an identifiable community of interdependent users. These users exclude outsiders while regulating use by members of the local community” (Feeny et al. 1990:5). The rights of the group can be legally recognized, but in other cases the rights are *de facto*.

(2) the characteristics of the user group (e.g., the size of the group, whether the boundaries of the group are clearly defined, the nature of heterogeneity among group members, and whether the group possesses sufficient resources to meet the costs of initiating and maintaining collective action); (3) the characteristics of the institutional arrangements (e.g., whether rules are easy to understand and enforce, whether they are locally devised, and whether they help deal with conflicts); and (4) the characteristics of the external environment (e.g., demographic, cultural, technological, and market-related factors and the level of involvement of other actors and forces, such as NGOs and international aid flows).

I argue, however, that there is an additional reason why property rights are not enough, and that this has been overlooked by scholars of the commons and property rights. As anticipated in Chapter 1, common-pool resources — and the environment in general, since almost all environmental resources fall into the class of common-pool resources (McKean 2000:32) — face the *common problem of the commons*. This term refers to the discrepancy between overlapping topsoil and subsoil property rights and the problems this discrepancy causes for CPRs. The problem emerges when the CPRs on the topsoil (e.g., forests, water, lakes, fishing grounds, irrigation systems, pastures) are regulated with one type of property rights, and the minerals in the subsoil are regulated with another. As a result of this incongruity, CPRs on the land, regardless of the strength of their property rights regimes and multilevel governance systems, can be endangered by the extraction of another good from the subsoil (e.g., gold, coal, oil), which affects the CPR on top. The threat of depletion, destruction, congestion, or pollution, which is regularly faced by CPRs due to their subtractability and the difficulty of exclusion (McKean 2000) and frequently denoted the *tragedy of the commons*, does not derive exclusively from the absence or weakness of enforcement of access and use limits on the CPRs, as studied by scholars

of the new institutional analysis of environmental problems. Rather, the threat originates from the extraction of an overlapping resource (whether CPR or not), which affects the CPR on top. Said differently, it derives from an external threat — that is, a threat external to the use and harvesting of the resource itself.

There are three main legal systems that organize ownership of subsurface minerals and the right to mine them: (1) the land ownership or accession system; (2) the concession, *regalia*, or royalty system; and (3) the claim or *res nullius*⁸⁹ system (Johnson 2001). In the land ownership system, the right to use and exploit minerals runs with the ownership of land. The basic principle in a land ownership system is that any mineral belongs to the owner of the land where the deposits are found. The concession system is based on a distinction between ownership of the surface and subsoil, in which the state has absolute ownership of the minerals or holds such minerals in the name of the collective. In either case, the state determines in which cases or to whom it grants or confers rights to mineral resources. In the claim system, minerals in the subsoil belong to no one, and they are granted to whoever discovers them first (Johnson 2010:13).⁹⁰

The common problem of the commons is cognate with the concession system,⁹¹ because there is no concurrence between the ownership of the topsoil and that of the subsoil, and thus, the extraction of the mineral wealth can jeopardize the CPRs on the topsoil regardless of the property rights regimes that govern them. As the name suggests, the problem is common because most countries in the world have a concession system (Johnson 2001; Ronne 2010). In fact, only the United States and a few other countries have a land ownership system (Ronne 2010:165).

⁸⁹ The Latin term *res nullius*, literally “nobody’s property,” means that the land is not yet property of any specific subject.

⁹⁰ The free entry system, a legal tradition of the United States, Canada, New Zealand, and Australia, includes elements of the claim system. The free entry system permits individuals to explore public lands for minerals and acquire the rights to those found by staking a claim (Johnson 2010:15).

⁹¹ Also to the claims systems, but I focus on the two most common ones.

In Latin America, for example, the subsoil property regime dates back to Spanish colonial times (Cárdenas 2013). Under Castilian law,⁹² subsoil and topsoil rights to the land were separated, and individuals could hold only topsoil rights. Subsoil or mineral rights belonged to the Crown, which would grant exploration and development rights to extract minerals. Despite independence and numerous contemporary constitutional changes, the soil and subsoil regimes endure throughout the region. Even in present-day Spain, all mines and other geological resources located in the Spanish national territory continue to be vested in the state (Ronne 2010).

The problem of the commons is becoming even more common and an even higher threat for CPRs. Countries under a land ownership system are shifting to the concession system. “When replaced by modern legislation, all countries are opting for State ownership” (Ronne 2010:65). One example of this shift is South Africa, one of the world’s leading mining countries. Prior to 2002, South Africa operated under a landowner system, in which the surface landowner also held the mineral rights, although these could be severed from the surface land rights and sold independently (van der Vyver 2012).⁹³ In 2002, South Africa passed the Mineral and Petroleum Resources Development Act (MPRD), which went into force in 2004. This act ended the landowner system in South Africa and introduced a concession system in which “mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans” (MPRD, Art. 3). The MPRD, in addition to expropriating the mineral rights of landowners, does not give them the right to veto or

⁹² Spain’s evolution into an empire after 1492, with the kingdom of Castile as the center of royal authority, meant that Castilian law would become the law of the Spanish colonies.

⁹³ During this time, the state exercised control over the exploration and mining of minerals, namely with respect to safety and environmental protection measures (van der Vyver 2012:127).

control mining activities on their lands when the state authorizes them, but only provides landowners the right to compensation for loss or damage as a result (MRPD, Art. 54).

The general idea behind keeping the subsurface in the hands of states was to ensure the benefits of that subsoil would serve the public interest. Yet public ownership of the subsoil has enabled states to hand the exploitation of natural resources to private national and international corporations in return for royalties, in the same way that, during colonial times, it guaranteed that minerals would reach the coffers of the Spanish Crown. However, royalties are in general very low (Lall, Albaladejo, and Mesquita 2004; Heidrich 2013). In most of Latin America, for example, the rates at which royalties are applied to the mining industry were significantly lowered with the establishment of new mining codes during the neoliberal market reforms in the 1980s and 1990s. In most countries, they went from 10 to 15 percent of revenues to 1 to 5 percent of revenues (Heidrich 2013). When these policies were implemented, international mineral prices were low. However, the rates remained low with the new commodity super cycle because of governments' fear of capital flight; thus there is a stark asymmetry between the gains of mining companies and those of governments. The entry of these companies tends to have detrimental effects on the CPRs on the land and the livelihood of the communities, whether indigenous or not. Some also argue that it has facilitated a resource curse in many countries (Collier 2010; Ross 1999; Wenar 2008).

The *resguardo* epitomizes the common problem of the commons. While the *resguardo* confers ownership of the land and its resources to the communities, it does not grant them ownership of the subsoil or its minerals. The *resguardo* and the subsoil regime are two overlapping institutions that have endured from the Spanish colonial tradition, and they have contradictory distributional affects. For some time, collective property structures have enabled

indigenous groups to impose their traditional forms of government in their territory and control overexploitation of natural resources. But when the threat transformed and actors outside the community were interested in the mineral wealth, collective property structures failed to protect CPRs.

Under Colombian law, only the institution of the national park (or the state's abstention from granting mining concessions) perpetually bans mining or other extractive activities. But how did indigenous authorities manage to get a national park built over their *resguardo* and in doing so control the subsoil when they are not the owners of the subsoil? As explained in Chapter 1, environmental sociology scholarship shows that mobilization and social protest is a common explanation behind progressive environmental outcomes (Rudel, Robert, and Carmin 2011). Yet as an indigenous leader of the area succinctly put it,

mobilizing in the Amazon is useless. We do not have the Panamerican Highway here [in the Amazon], as do the indigenous peoples of Cauca [in southern Colombia]. We don't have any significant roads to block. If we block a road or the river, nobody cares; nobody even realizes it.⁹⁴

In addition, only 1,500 people live in this 1,120,000 ha *resguardo*, and getting from one part of the area to another can take more than two days by boat, making mobilization difficult and costly. Thus the most useful approach to explain the type of environmental protection attained in this case is not one based in social movements, but an institutional approach.

The answer to how they gained decision-making power over the subsoil is institutions of political participation. Against the threat posed by the interest of an international mining company to extract gold through an open-pit mine within the *resguardo*, the indigenous communities resorted to an institution of participation — free, prior, and informed consent (FPIC), or prior consultation — to overcome the limitation posed by the subsoil property regime,

⁹⁴ Interview with Reinaldo Marchena, Puerto Inirida, Guainía, November 2013.

which does not allow the community to make direct decisions over the extractive activity.

Prior consultation is the collective right of indigenous and tribal groups, grounded in international law, to be consulted by the government before it initiates economic projects within their territories or adopts legislative measures that may directly affect their rights (Rodríguez-Garavito 2011). While the participatory institution does not make them owners of the subsoil, it grants indigenous communities decision-making power over the extraction of the subsoil wealth.

The object of the consultation was the national park, but the enabling mechanism was a participatory institution that permitted the community to have a say before the government and voice its environmental and cultural concerns. The National Parks Division, the Ministry of the Interior, and the indigenous leaders were aware that, because of International Labor Organization (ILO) Convention 169 of 1989, national laws, and the jurisprudence of the Constitutional Court, the park would not be legitimate without a prior consultation process, and it could easily be struck down. Likewise, the mining company and the dissenting communities knew that if they could undermine the participatory process (as they effectively tried to do), the park would be struck down. They could have followed other routes to obtain the mining concession, but they knew that the key aspect would be participation. If they could effectively prove that participation was flawed, then there would be no park. Meaningful participation, characterized as informed, representative, prior, free, and binding, proved to be a solution to the common problem of the commons in this case.

The case study presented here thus reveals a tool that communities in different regions of Latin America (Rodríguez-Garavito 2011) are deploying to prevent the consequences that derive from the common problem of the commons. The participatory institution serves to “complete” the property right of the owners of the land, which is imperfect given that the ownership of the

underlying resources is vested in the state. The divided property rights structure privileges the state (and the corporations) over the landowners, principally because the latter absorb the environmental and social consequences of extractive activities. Institutions of political participation that are binding, like the prior consultation in this case, can work as distributional instruments that level the playing field by empowering communities or private individuals by granting them decision-making power over subsoil resources. In sum, participatory institutions do not make them owners of the subsoil, but in terms of the bundle-of-sticks analogy (Alexander and Peñalver 2012; Carruthers and Ariovich 2004), they grant them one stick: decision-making power over the extraction of subsoil resources.

With this analytical focus and case study in mind, this chapter puts forward two main arguments. First, as explained above, I argue that scholars of the commons and property rights have overlooked a problem that is common to common-pool resources (under both private and collective property regimes), which derives from the discrepancy between topsoil and subsoil rights and creates an external threat to CPRs and environmental resources. Second, I argue that participatory institutions with certain characteristics have emerged as a tool communities can deploy in attempts to overcome the limits of property rights and hamper the consequences of the common problem.

To develop these arguments, the chapter is divided into five sections. The first two sections describe the creation and gradual transformation of the collective property institution of the *resguardo* in Colombia from the colonial period until the 1991 Constitution and then in the Amazon region during the last third of the twentieth century. I argue that, while this institution was created from above, it nonetheless empowered subordinate groups rather than elites because

the actors were neither aware of the distributional effects of the institution nor could they clearly foresee them.

Against this backdrop, the third section illustrates how the common problem of the commons materialized in a region of the Amazon. It explains how, as the threats to the territory transformed into an external threat derived from mining interests, the collective property institution fell short as a means to deter them. Thus, it confirms the finding of commons theorists that property rights alone are not sufficient to protect CPRs, but it shows that they do so for another reason that has been overlooked. As a result of the limitations of collective property structures, the communities opted to layer the institution of a national park over the *resguardo* to ban mining from their territory, even though that meant sacrificing certain autonomy because the territory would have to be comanaged with a government institution.

The fourth section focuses on the participatory process that led to the creation of the national park and the characteristics of that participation. The centrality of the participatory process in the creation and legitimacy of the park demonstrates how actors are resorting to institutions of political participation like prior consultation to overcome the consequences of the common problem of the commons and the limits of property rights for environmental protection.

Before a brief conclusion, the fifth section presents a negative case that shows how the absence of prior consultation can lead to environmental destruction derived from the concession system in which the state can authorize extraction of subsoil wealth regardless of the type of property regime on the soil.

3.1. The Origins and Transformation of the *Resguardos* in Colombia

Resguardos, indigenous territories legally recognized and collectively owned and managed by the indigenous communities, cover one third (31.5%) of Colombia's territory and close to half of its Amazon region (23 million ha, or 47.9%) (Cepal and Patrimonio Natural 2013). Today, the *resguardos* of the Amazon belong to approximately 81,000 people of 62 ethnic groups (Von Hildebrand and Brackelaire 2012:14). As seen above, the *resguardo* lands are inalienable, nonseizable, and imprescriptible, which means that a few indigenous groups are the perpetual owners of these massive expanses of land. More than 50 percent of that land, including the Apaporis *resguardo*, was granted in just two years (1988–1989).

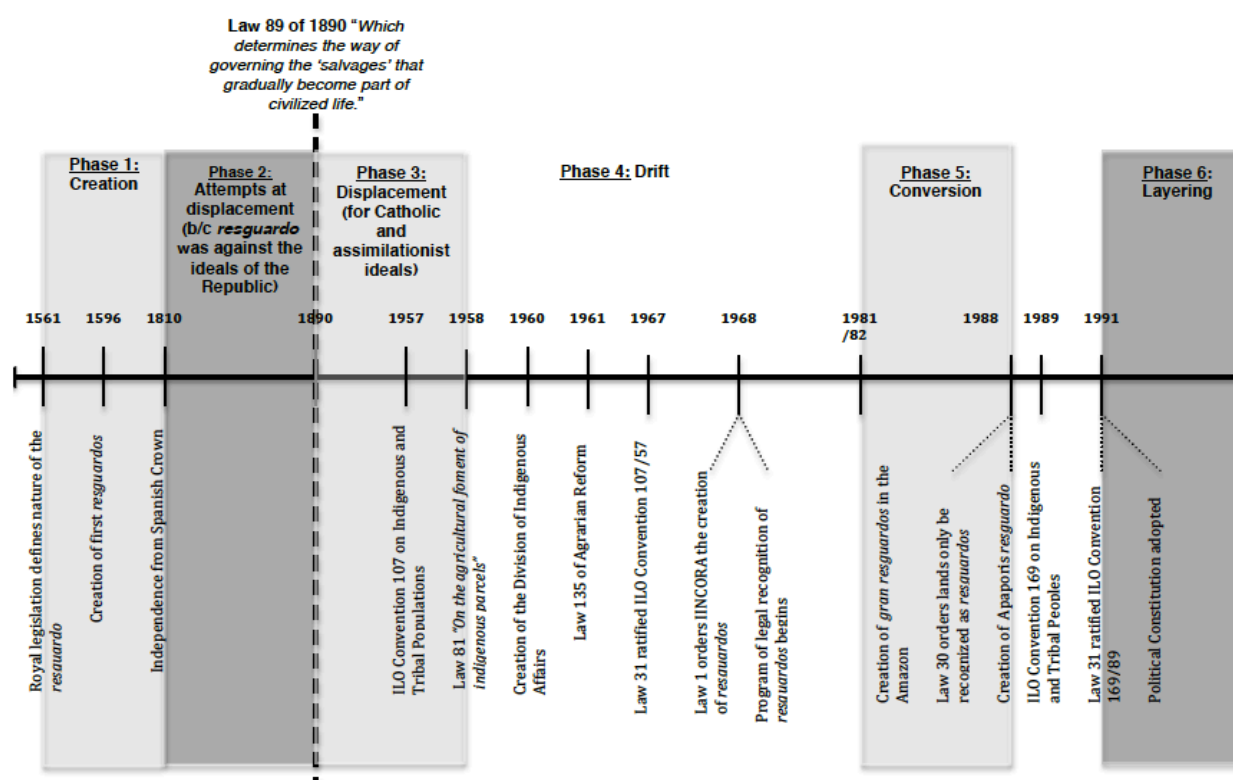
Where does this institution come from? How did a severely marginalized minority section of Colombian society (1% of the population) end up owning 50 percent of the Amazon in such a short period? In this section, I adopt an institutional analysis approach (e.g., Mahoney and Thelen 2010; Hacker, Pierson, and Thelen 2015) to present a brief history of the origins and evolution of indigenous territories in Colombia, beginning in the colonial period and ending in 1991 with the adoption of the Constitution and International Labor Organization Convention 169 of 1989. During this process, the institution went through six phases, which are summarized in the timeline presented in Figure 3.1.

I posit that the creation of the *resguardos* is largely⁹⁵ a story of the creation of an institution “from above” (e.g., by the Spanish Crown or by small groups of government officials at different moments) that resulted in the empowerment of marginalized groups. Empowerment of subordinate groups by elites is an unusual phenomenon because institutions created from

⁹⁵ I say largely because, at the national level, indigenous movements did play a role. Nonetheless, the process continues to be dominantly directed from above.

above normally benefit the latter. In section two, I focus on the Amazon region and show how creation in this region was conspicuously from above and was possible largely because the actors could not foresee the distributional consequences of such an institution.

Figure 3.1. Timeline of Creation and Transformation of Resguardos, 1500s to 1900s



Source: Author

3.1.1. The *Resguardo* in Colombia during Spanish Colonial Times

The *resguardo* in present-day Colombia originated as a result of one of the most tragic events in Latin American history: the indigenous peoples suffered decimation at the time of the Spanish conquest in the early sixteenth century, as a result of confrontations, slave labor, diseases brought by foreigners, and new life conditions. The dramatic population decline, barely

50 years after the Spaniards' arrival, led the Spanish monarchy to issue numerous laws⁹⁶ intended to put an end to genocide and curb the abuses and arbitrary acts of the colonial administrators (*encomenderos*), while at the same time to protect colonial rule by assuring a labor force (Mayorga 2002; Pachón 1980; Roldán 2000:9). Two institutions were particularly important for this cause: the indigenous territory (*resguardo indígena*) and the indigenous council (*cabildo indígena*).

To put this protectionist policy into practice, the monarchy divided the territories into different “republics”: the Republics of Spaniards and the Republics of Indians, which were small towns inhabited exclusively by Indians (Ceballos 2011; Herrera 1998; Herrera 2007).⁹⁷ The lands surrounding the Republics of Indians were then called *resguardos*, from the word *resguardar*, which means “to guard.”⁹⁸ *Resguardos* represented the right of the indigenous communities who had entered into agreements with the Spaniards to have the lands in which they had traditionally lived, or at least a significant part of them, recognized as their communal property (Roldán 2000).⁹⁹ The lands recognized as *resguardos* were of a collective nature and assigned to indigenous chiefs (*caciques*). The royal legislation of 1561 defined the nature of

⁹⁶ Examples of such laws include The Law of Burgos of 1512 (*Leyes de Burgos*) and the New Laws of 1542 (*Leyes Nuevas*), among others. In the Law of April 4th, 1532, King Philip II of Spain ordered lands and resources to be distributed among Indians: “y a los indios se les dexen sus tierras heredadas y pastos, de forma que no les falte lo necesario y tengan todo el alivio y descanso posible para el sustento de sus cazas y familias...”

⁹⁷ The Republics of Indians were established based on population density and economic activities in three main areas of present-day Colombia: the Central Andes (Cundinamarca and Boyacá), the province of Popayán in the south, and the Caribbean region (Herrera 2007).

⁹⁸ The term *resguardo* was used in the Viceroyalty of New Granada, which corresponds to modern day Colombia, Ecuador, Panama, and Venezuela. In other parts of Latin America, it was known as *fundo legal* (in the Viceroyalty of New Spain), *tierra de comunidad*, and *reserva indígena*. In other parts of the world, similar institutions were set up, like the Indian reservations in the United States and the homelands in South Africa.

⁹⁹ The *resguardos* served to prevent the extinction of the indigenous population but also served three purposes for the Spanish Crown: (1) they facilitated indirect rule and evangelization (as indigenous people were all congregated in one place); (2) they facilitated taxation; and (3) they assisted the accumulation of lands by the Spanish as many Indians were removed from their lands and put into new communal lands. In short, the *resguardo* during the colonial period paradoxically served as a means of human protection and also as a means of land dispossession, cultural weakening, and taxation.

resguardos, and the first *resguardos* were created in 1596 (Arango and Sánchez 1997; González 1970).

Gradually the difference between Republics of Indians and *resguardos* faded, and the term *resguardo* came to refer generally to lands owned communally and administered by an indigenous council. The indigenous council gave the communities living in *resguardos* lands the ability to set up their own community governments and maintain at least part of their traditional customs and systems of social control (Ceballos 2011; Pachón 1980).

Following independence from the Spanish Crown in the first decade of the nineteenth century, and throughout the twentieth century, the *resguardo* went through ebbs and flows; it sometimes came close to disappearing as a result of a policy of fragmentation into private parcels, and then it reappeared in the 1960s, as we will see below.¹⁰⁰

3.1.2. The Nineteenth Century: Attempts of Institutional Displacement and Law

89

Following independence in 1810, the recurring aim of the government and the laws was that of rapid assimilation of indigenous peoples into the economic, social, political, religious, and cultural models of the main society (Roldán 2000). Under the liberal ideals of the republic, the *resguardo* represented an infamous institution of the colonial past, and the *cabildo*, a form of government that impeded the construction of a unified state; together, they constituted an obstacle to incorporating indigenous peoples into “civilization.” Accordingly, most laws during this period attempted to displace the existing institution (Mahoney and Thelen 2010) by

¹⁰⁰ Today, according to Colombia’s National Planning Department, close to 50 colonial *resguardos* exist in the states of Cauca and Nariño in southern Colombia, while there is no registry of any in the Amazon.

removing prevailing rules about *resguardos* and introducing new ones that promoted the division of *resguardos* into private parcels, allowed indigenous peoples to own private property, and dismantled the indigenous councils in order to drive indigenous populations out of their “barbaric” and “savage” lifestyle (see Figure 3.1. Phase 2). Intermittently, laws¹⁰¹ attempted to revert the parceling process and maintain the communal nature of the *resguardo*.

Toward the end of the nineteenth century, a conservative movement known as “The Regeneration” triumphed, vindicating the colonial past and its institutions as well as Catholic ideals (see Figure 3.1. Phase 3). In this context, Congress passed Law 89 of 1890, “Which determines the way of governing the ‘savages’ that gradually become part of civilized life.” The law recognized the institution of the *resguardos* and their forms of internal government (in charge mainly of distributing and administering communal lands) as a transitional institution that would be effective while indigenous peoples were being gradually catholicized and assimilated. Furthermore, it stated that, in those lands, national law would not apply. Indigeneity was conceived as a temporary state. Through church missionaries, indigenous people would be conducted or forced into mainstream society — an expectation known at the time as *reductionism* (Roldán 1990:iii). The Law of 1890, however, did not imply that the state abandoned all efforts to divide communal lands and suppress councils. Those efforts continued but were carried out as part of the Catholic missionary policy of the state and with the objective of assimilating indigenous populations into mainstream society. Ironically, despite its conservative origin and the use of the pejorative term “savage,” Law 89 of 1890 allowed the reintroduction and diffusion of the institution of the *resguardo* in the second half of the twentieth

¹⁰¹ For instance, the Decree of May 20 of 1820, which returned lands to the natives; Law 25 of 1824, which stated that indigenous properties should be respected; and Law 90 of 1859, which attempted to revert the parceling process and maintain the communal nature of the *resguardo*.

century and, more than a century later, it remains the legal cornerstone for the creation of contemporary *resguardos* like the Apaporis, as we will see below. This is an example of how actors cannot always foresee the distributional consequences of the institutions they create, in particular when institutions last for long periods (Hacker, Pierson, and Thelen 2015).

3.1.3. The Twentieth Century: Institutional Displacement, Drift, Conversion, and Layering

During the twentieth century, the institution of the *resguardo* underwent multiple transformations (Mahoney and Thelen 2010): beginning with attempts at “displacement,” to a “drift” triggered by changes in the understanding of indigenous peoples and their property, to “conversion” caused by strategic deployment of the institution by elite actors, to a final moment of “layering,” in which the institution became more robust. Again, all these changes were driven from above.

In the first half of the twentieth century, there was a renewed attempt to displace the institution, although, interestingly, not the Law of 1890 (see Figure 3.1, Phase 3). The dissolution of indigenous communal lands and indigenous councils became the dominant practice, supported largely by the Catholic Church.¹⁰² In reaction, the first indigenous social movements in Colombia emerged to claim the protection of their lands and culture. Dissolution would last until

¹⁰² Notably, Law 55 of 1905 announced that indigenous territories were vacant and could be sold in public auctions; Law 104 of 1919 introduced severe punishments to Indians who resisted parceling; and Law 19 of 1927 recommended the dissolution of *resguardos*. Based on the latter, many colonial *resguardos* were dissolved.

the late 1950s, when there was a change in how indigenous groups and their property were conceived.¹⁰³

The late 1950s marked the start of a period of institutional “drift” (Hacker, Pierson, and Thelen 2015) that lasted until the early 1980s, in which the impact of the *resguardo* changed not because the institution changed (it remained defined in Law 89 of 1890), but because the context of those rules changed as a result of shifts in the conception of indigenous peoples and their lands (see Figure 3.1. Phase 4). The context around those rules changed as the state went from conceiving indigenous peoples as “savages” to considering them poor and underdeveloped *campesinos* (Roldán 1990:iv–v). If indigenous people were poor *campesinos*, and if they were poor partly because they lacked land, then indigenous lands were necessary to bring them out of poverty. So while there was no change in the rules themselves because the *resguardo* was still defined in Law 89 of 1890, the outcome of those rules changed as the circumstances around those rules changed, in particular the notions of indigenous peoples and their land.

A series of domestic and international events contributed to the gradual replacement of the idea of indigenous peoples as “savages”¹⁰⁴ with an idea of indigenous people as poor peasants and to a transformation in the purpose of indigenous lands. Twenty years earlier, the first anthropological and sociological studies on indigenous groups were published by Colombian and foreign researchers, debates against the idea of “savages” had ensued as a result of the studies, and the First Inter-American Indigenous Congress was celebrated in 1940 in Pátzcuaro, Mexico¹⁰⁵ (Roldán 1990). Decisively, at the same time, the International Labor Organization (ILO) adopted the Indigenous and Tribal Populations Convention, known as

¹⁰³ That same year, a law was passed for the promotion of agriculture and cattle grazing among indigenous communities (Law 91 of 1958) (Roldán 2000:14).

¹⁰⁴ The term, however, would only be declared unconstitutional until the early 1990s.

¹⁰⁵ At the congress, countries agreed to create the Inter-American Indigenous Institute. Colombia adhered to this convention and accordingly created the National Indigenous Institute as a subsidiary of the international institute (Law 81 of 1958, Art. 11).

Convention 107 of 1957, at the request of the United Nations. The convention constituted the first attempt to codify international obligations of states in respect of indigenous and tribal populations. It covered a broad range of issues, including the explicit recognition of the right to collective or individual ownership to land (Art. 11). Accordingly, it “opened wide areas for reflection and awareness among sectors of the government, the indigenous peoples and researchers in the fields of law and social sciences” (Roldán 2000:22). Nonetheless, it retained the same integrationist approach that reflected the dominant modernization discourse of the time (Rostow 1960) and was founded on the assumption that indigenous peoples were temporary societies that would progressively integrate into the larger society (Convention 107, Preamble). However, instead of resorting to the destruction of indigenous lands and forms of government, the state would integrate indigenous peoples by treating them as the poorest peasants and aiming for their socioeconomic improvement.

In Colombia, the change in the conception of indigenous people and the *resguardos* formally began with Law 81 of 1958. Tellingly entitled “On the agricultural foment of indigenous parcels,” the law referred to the relationship between the state and the indigenous peoples in terms of economic development instead of forced assimilation, and it talked about indigenous peoples and *campesinos* interchangeably. The law aimed to attain development by facilitating indigenous groups’ access to credit, sponsoring the creation of cooperatives, facilitating technical assistance, and organizing the distribution of land. Four other moments buttressed the policy initiated by Law 81 of 1958. In 1960, under the administration of President Lleras Camargo (1959–1962), the government created the Division of Indigenous Affairs within the Ministry of Government, officially founding an institution within the state responsible for carrying out the new agrarian indigenous policy. In 1961, the Agrarian Reform Law (Law 135 of

1961) established that the Colombian Institute of Agrarian Reform (INCORA for its Spanish name) “*may constitute resguardos in favor of indigenous groups or tribes*” (Art. 94.3).¹⁰⁶

Furthermore, Colombia adopted ILO Convention 107 in Law 31 of 1967. Lastly, Law 1 of 1968 modified the law of agrarian reform and made the creation of *resguardos* compulsory.¹⁰⁷ The agrarian reform laws were inspired by a notion of social justice, not by environmental or indigenous thought.¹⁰⁸

Besides the legal transformations, the official recognition of indigenous communities’ lands in forests and plains started in Colombia under the liberal government of Lleras Restrepo (1966–1970) in 1968, a year after the adoption of ILO Convention 107 and the most recent law of agrarian reform (Roldán 2000:26). Initially, the state did not recognize full ownership, but only the right to use or enjoy the land, due to confusion caused by a decree that talked about reserves¹⁰⁹ rather than *resguardos*. Between 1968 and 1980, 69 reserves were created throughout the country (Arango and Sánchez 2004).

In reaction to the creation of reserves, and drawing on the few provisions in the agrarian law, sectors of the indigenous population engaged in menial or servile forms of work on haciendas and estates in the state of Cauca in the southwest region of Colombia and launched a vigorous movement aimed at claiming back the lands they had lost or at widening their vital spaces. They set up the first regional indigenous organization, the Regional Indigenous Council of Cauca (CRIC for its Spanish name), in this region in 1971 to demand the return of lands

¹⁰⁶ This law created the Colombian Institute for Agrarian Reform (INCORA). Following this law, INCORA became the body responsible for the process of legally recognizing indigenous territories. For more on the agrarian reform process, see Berry (2002).

¹⁰⁷ “The INCORA will create *resguardos* for those indigenous groups or tribes that do not have any,” ordered the new law.

¹⁰⁸ See the explanatory memorandum of the bill of agrarian reform, Law 135 of 1961, and also the interview with Roque Roldán, November 2014.

¹⁰⁹ Reserves were understood as a provisional kind of tenure system, which granted the right to use and enjoy the land possessed and allowed land to be subsequently divided into individual plots of land.

appropriated by landowners, respect for the indigenous councils, and the abolition of servile forms of work (Roldán 2000:23).¹¹⁰ While indigenous mobilization played a key role in this area, in other regions such as the Amazon, it was absent, as we will see below.¹¹¹ Simultaneously, a group of indigenous lawyers led by Roque Roldán pressured the state to recuperate the form of the *resguardo* (instead of *reserve*), arguing that Convention 107 expressly emphasized the need to recognize indigenous peoples' property rights.¹¹²

In the 1980s, with Roldán as the head of the Office of Indigenous Affairs within INCORA, and later, with Martin Von Hildebrand in the Ministry of Government, a period of institutional “conversion” (Mahoney and Thelen 2010) took place in which the state created mostly *resguardos*, as in the case of the Amazon (see Figure 3.1. Phase 5). While the institution remained the same, its impact changed because these actors were able to redirect the *resguardo* beyond its original intent (Hacker, Pierson, and Thelen 2015). The “opportunists” (Mahoney and Thelen 2010) Roldán and Von Hildebrand took advantage of this imprecision, which allowed for different interpretations, and pushed for the creation of *resguardos* under the understanding that they granted property. As Hacker, Pierson, and Thelen (2015:189) argue, “policies whose provisions are ambiguous and whose effects depend on interpretation and discretion offer fertile terrain for strategies of conversion.” Instead of using the *resguardo* to facilitate the assimilation of “barbarians” or to help indigenous groups “catch up” with other peasants, the small, elite group redeployed it from above with the goals of recognizing indigenous peoples' historic relationship with the land and protecting the cultural diversity of indigenous peoples by keeping whites out.

¹¹⁰ The National Indigenous Organization of Colombia (ONIC for its Spanish name) was founded in 1982, inspired by this regional organization.

¹¹¹ Because this chapter focuses on the Amazon region, explaining the origins and evolution of indigenous mobilization exceeds the objective of this chapter.

¹¹² Interview with Ramón Laborde, Presidencial Division for Indigenous Affairs, August 2013.

The confusion between reserves and *resguardos* was brought to an end with Law 30 of 1988, inspired by ILO Convention 107, which established that recognition of lands rights for indigenous peoples could only be done in the form of *resguardos*. With this law,

the State provided a solid legal base for the decisions that were already being adopted to create *resguardos*, but under an ambiguous situation in which norms referred, on the one hand to the precarious granting of lands in the form of reserves, susceptible of revocation and parceling, and on the other, to *resguardos*. (Von Hildebrand 1994:492)

As seen up to this point in the second half of the century, ILO Convention 107 served to solidify the importance of granting full ownership of the land and to widen state obligations to indigenous communities (Roldán 2000).¹¹³ Nonetheless, ILO Convention 107 came under scrutiny locally and internationally for its integrationist ideals. The indigenous movements argued that, despite its positive features, it reinforced forced assimilation. The Colombian government representative Martin Von Hildebrand, as Director of Indigenous Affairs of the Ministry of Government under the Barco administration, was influential in the ILO session in which Convention 107 was revised. In a clear example of what Halliday and Carruthers (2011) call *recursivity of the law*, in which local debates inform global standards and vice versa, he brought to the international forum the ideas of cultural difference and respect, right to land, and self-government that informed Barco's policy in the Amazon and Law 30 of 1988, and he also brought those ideas back to the national debates.¹¹⁴ The result of the ILO meetings was the adoption in 1989 of Convention 169. Founded on the belief that indigenous peoples are permanent societies who are not in a state of transition and assimilation into the dominant society, it replaced the integrationist approach with a respect for ethnic and cultural diversity and

¹¹³ For instance, the state introduced the ideas of bilingual and bicultural education and of traditional indigenous health and education (Law Decree 88 of 1978, Decree 1142 of 1978, and Resolution 3454 of 1984, respectively) and adopted a policy to merge traditional and western medicine (Resolution 10013 of 1981).

¹¹⁴ Interview with Martin von Hildebrand, March 27, 2014.

also recognized the right of indigenous peoples to free, prior, and informed consent (FPIC) or prior consultation. At this same moment, the government created many *resguardos* throughout the country and in the Amazon in particular.

The *resguardo* underwent still another transformation in 1991, when Colombia ratified Convention 169 (Law 21 of 1991) and four months later adopted a new constitution (see Figure 3.1. Phase 6). As a result of institutional “layering,” new rights, like prior consultation, and protections were added to the original institution of 1890, making it more robust, powerful, and favorable for indigenous groups. The constitutional regulations gave solidity to the indigenous peoples’ collective ownership of the *resguardos*. Particularly valuable for the consolidation of indigenous ownership was the declaration of the *resguardo* lands as inalienable, nonseizable, and imprescriptible (Art. 63). There was remarkable convergence between ILO Convention 169 and the Constitution. In fact, “the swift adoption of Convention 169 four months before the adoption of the Constitution, does not appear to be far distant from the Executive’s interest to show before the National Constituent Assembly an attitude of goodwill and ‘openness’ toward the demands of the indigenous representatives at the Assembly” (Roldán 2000:34). In addition, the laws and regulations already in place were elevated to constitutional status.¹¹⁵

This section has presented a general overview of the process of creation and gradual transformation of the *resguardos* in Colombia. Against this backdrop, I devote the following section to explaining the creation of the *resguardo* in the Amazon.

3.2. The Origins and Transformation of the *Resguardo* in the Colombian Amazon

¹¹⁵ Interviews with Ramon Laborde, August 2013, and Martin Von Hildebrand, March 27, 2014.

This section explores how the institution of the *resguardo* reached the Amazon region,¹¹⁶ highlights the main characteristics of the process and the conditions that made it possible, and then focuses specifically on the creation of the Apaporis *resguardo*. In doing so, it addresses the underlying question of how such a small population (the indigenous groups of the Amazon, who represent less than 1% of the Colombian population) ended up owning 22 percent of the country (50% of the Amazon region).

3.2.1. Main Characteristics of the Process

The process by which the *resguardo* arrived in the Amazon has two characteristics: (1) it was a process of institutional creation led from above that empowered subordinate groups; and (2) it resulted from a process of institutional “conversion” (Hacker, Pierson, Thelen 2015; Mahoney and Thelen 2010), in which the rules of the *resguardo* remained the same but were reappropriated in a new fashion by a small elite group within government to respond to the situation of slavery and the cultural weakening of the indigenous peoples of the Amazon at the time.

As explained in the previous section, the creation of reserves and then *resguardos* in Colombia began in 1968,¹¹⁷ on the basis of the laws of agrarian reform (Law 135 of 1961 and Law 1 of 1968) and ILO Convention 107 (Law 31 of 1967). Despite its assimilationist viewpoint, Convention 107 made clear references to the importance of recognizing the property

¹¹⁶ The Colombian Amazon (6.2% of the Amazon region) encompasses 42% of the national continental area and is distributed over 10 states (encompassing 58 municipalities). It is home to 62 indigenous peoples (of the 85 that remain in the country). They belong to 9 linguistic families. The Colombian Amazon has a total population of 1.2 million (DANE 2005a, according to Census 2005), including the non-indigenous population; this corresponds to 2.8% of the total national population, making it the fourth largest number of inhabitants in the global jungle context (Arenas 2011).

¹¹⁷ I refer to the new *resguardos*, different from those created during colonial times, some of which survived dissolution.

rights of indigenous peoples. The process in the Amazon region, however, had a slow start.

Martin Von Hildebrand, who was responsible for the creation of half of the *resguardos* in the Amazon toward the end of the 1980s, under the Barco administration (see Table 3.1 below) recalls,

I entered the Amazon in 1972. There was nothing: no law [...] no indigenous law, no *resguardos*, nobody was talking about anything of that sort. ... but shortly after I had the good fortune of meeting Roque Roldán, ... the country's most knowledgeable indigenous lawyer. He guided me. ... We had many conversations [...], and towards 1974–75, I began to talk about *resguardos*. At the same time, Roque began advising the INCORA (Colombian Institute of Agrarian Reform) to recognize the *resguardo* of Vaupés, which has a total of three million hectares, and of Mirití. ... We did some studies, but the INCORA showed no interest in recognizing those territories.¹¹⁸

INCORA, the state entity in charge of implementing the agrarian reform, created the first reserve in the Amazon in 1973, in the southern region of Putumayo, on the Peruvian border.¹¹⁹ The process of constituting reserves continued through the end of the 1970s.¹²⁰ Following the national tendency, reserves only recognized communal use of the land (not property rights) and were not very big in size.¹²¹ The creation of *resguardos* in the Amazon began at the end of 1979.¹²² The first *resguardo* was a little over three thousand hectares.¹²³ Yet, in 1981 and 1982, the first two *gran resguardos*, Mirití-Paraná and Vaupés, were created, turning a total of five million hectares into communal indigenous property. The term *gran resguardos* makes reference to their massive expanses of land, which is a particularity of the *resguardos* of the Amazon.¹²⁴ However, very few people inhabit them. For example, when the Mirití *resguardo* was created,

¹¹⁸ Interview with Martin Von Hildebrand, March 27, 2014.

¹¹⁹ INCORA, Resolution 1981 of 1973. The reserve was called Santa Rosa del Guamez.

¹²⁰ Four other reserves were created in the same area: the indigenous reserves of Monochoa, Puerto Sábalo, Los Monos, and Aduche (Resolutions 233, 234, and 235 of November 1975.) Some of these reserves later became part of the world's largest *resguardo*, known as Predio Putumayo. Other reserves created during that decade were El Quince (1977), Macuare (1978), and La Fuga (1979).

¹²¹ For example, the first reserve was 3,750 ha.

¹²² Between 1979 and 1980, there was still some confusion, and both reserves and *resguardos* were created.

¹²³ INCORA, Resolution 0173 of 1979. The *Resguardo* was called Sibundoy.

¹²⁴ The Mirití-Paraná, for example, has 1.6 million ha, the Vaupes *resguardo* has 3.3 million ha, and the largest, Predio Putumayo, which was created in 1988, has 5.8 million ha.

only 1,200 people, grouped in 200 families and belonging to 9 ethnic groups, were registered.

The reason for these large expanses is that, despite their low population density, the *resguardos* host multiple ethnic groups within the same area, whose ancestral territories are very large and overlap with those of other tribes.¹²⁵

The process of creating *resguardos* in the Amazon was led from above in favor of the marginalized indigenous population. It was neither the result of direct indigenous mobilization in the Amazon nor the result of inevitable structural processes. It was the project of a handful of *indiginist* officials who, from key government positions and with the support of the incumbent presidents, took advantage of the imprecise rules about the *resguardo* and redirected the institution beyond its initial purpose (Hacker, Pierson, and Thelen 2015). As Reinaldo Marchena notes in the interview quoted in the introduction to this chapter, mobilization in the Amazon was futile because there were no significant roads and blocking a river or a path in the jungle would not unsettle anyone in Bogotá. An indigenous leader in the northeastern Amazonian state of Guainía told me the story his father used to tell him about how those indigenous territories were created:

This was in the mid-80s. A priest, a government official from INCORA, and an indigenous person from the Cauca region came down the rivers in a boat. They stopped at our communities on the river, one by one, and told us why obtaining a title over the land was important. That is why you see *resguardos* on the borders of the rivers. “Why a title if that reduces our space?” many asked. But the indigenous leader from Cauca explained that it was very important. However, some of the elders today still might not understand why it was important.¹²⁶

The story repeats itself throughout the region. A member of the council of elders of the *gran resguardo* of Vaupés, created in 1982 in the same state in the southern Amazon where the Apaporis is located, explained to me how “*Resguardos* in the Amazon were created by public

¹²⁵ Interview with Ramon Laborde, December 22, 2015.

¹²⁶ Interview with Reinaldo Marchena, Sikuani Indian from the Amazonian state of Guainia, November 2013.

officials of INCORA ... Mobilization and marches were not necessary. It was more thanks to the government”¹²⁷. The government officials’ version resonates with that of the indigenous leaders:

In the Mirití [*resguardo*], there was some participation, minimal, of the indigenous peoples, simply because they did not understand the need. When I began to talk to the indigenous peoples about property of the land, they told me, “Look at the land, the animals, and the trees [...] they have been ours forever. [...]” But I told them that without a paper that proved property, whites come in and use everything. ... So they told me, “Go ahead and do whatever you can.” ... And that is how we get the first two *resguardos* in 1981 and 1982 because it was when the president was interested in the topic.¹²⁸

A lawyer who worked at an NGO called the Gaia Amazon Foundation recalled a similar story: “When the government officials arrived to create the *resguardos*, they [the indigenous leaders] had no clue of what *resguardos* were. In fact, not understanding the institution of the *resguardo* initially created some internal conflicts because the notion of the *resguardo* is foreign to those communities.”¹²⁹

Three government officials were particularly relevant in the creation of the *resguardos* throughout the 1980s at the national level and especially in the Amazon: Roque Roldán, Martin Von Hildebrand, and President Virgilio Barco (1986–1990). They were “opportunists” (Mahoney and Thelen 2010) who took advantage of the ambiguity in the norms and their position within the system to embark on a strategy to protect the indigenous peoples of the Amazon.

Roque Roldán is a Colombian lawyer who, since the mid-1950s, has studied and worked with indigenous peoples. He was central to the reintroduction of the notion of *resguardos* in the Land Reform Law of 1965 and occupied key posts thereafter, including Director of Indigenous

¹²⁷ Interview with John Moreno, May 2, 2014.

¹²⁸ Interview with Martin Von Hildebrand, March 27, 2014

¹²⁹ Interview with Ramon Laborde, December 22, 2015.

Affairs at INCORA (the institution that was directly in charge of creating the *resguardos*) and later General Director of Indigenous Affairs at the Ministry of the Interior (in charge of the national indigenous policies).

Martin Von Hildebrand is an anthropologist who, after returning from getting his PhD in the 1970s, lived for 10 years in the Amazon region in the area of the Pirá-Paraná River that then became the Mirití *resguardo*. Von Hildebrand arrived at the end of the rubber boom, but the indigenous people he encountered in that area were enslaved by some of the remaining rubber tappers or living under forms of indentured servitude, and the tribes' cultural traditions were dramatically weathered. Not surprisingly, the first *gran resguardo* Von Hildebrand pushed for was the Mirití. As explained in the quote above, in the mid-1970s, he met Roque, who provided him with legal knowledge. They continued to work together during the 1980s, alternately occupying key government posts like the Office of Indigenous Affairs at the Ministry of the Interior.

In 1981, the presidential candidate of the Liberal Party, Alfonso López Michelsen, asked Von Hildebrand, then Secretary of Indigenous Affairs, for a document that would synthesize the party's stand on indigenous peoples. Von Hildebrand agreed and worked jointly with Roldán, and the outcome was a document called "Bases for the Definition of the Liberal Party's Policy on Indigenous Matters." The policy strongly criticized the integrationist policy that was dominant nationally and internationally at the time and recognized the right of indigenous communities to be different and to have their own education and political systems. It was a culturalist critique of an assimilationist mainstream ideology. And very importantly, it recognized "the right to the lands they possess and to regain the lands of which they have been dispossessed..."

The liberal candidate lost the elections, and the conservative contender Belisario Betancourt (1982–1986) was elected president. He appointed Roldán, a conservative with close ties to the church, as Director of Indigenous Affairs in the Ministry of Government. Roldán’s policy was based on the same document. The National Program for the Development of Indigenous Populations (PRODEIN, for its Spanish name) was also put in place (Arango and Sánchez 2004.) Between 1978 and 1986, 25 percent of the lands currently held as communal property were titled as *resguardos* (see Table 3.1).

The qualitative leap took place between 1986 and 1990 under the government of President Barco (see Table 3.2), when Martin Von Hildebrand was appointed Director of Indigenous Affairs, replacing Roldán. Von Hildebrand recalled how the president got involved in indigenous issues:

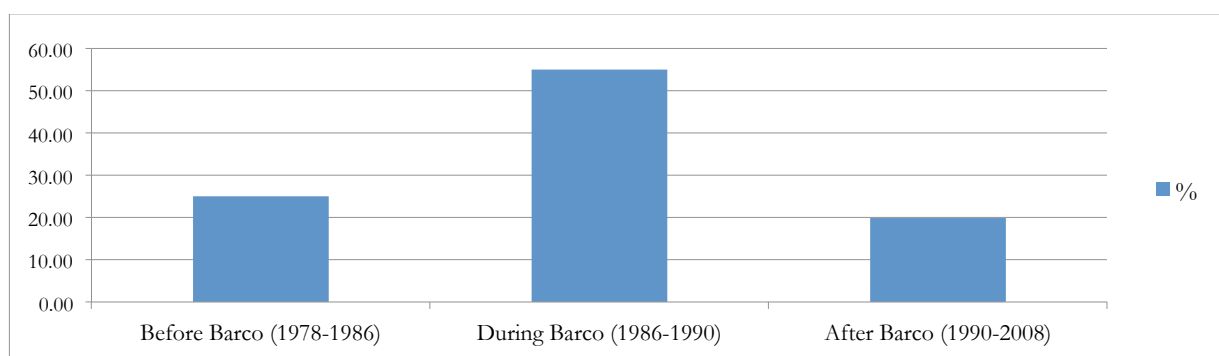
Two months after I was appointed, the president calls me to his office. I arrive with the same document, slightly changed to fit a more liberal government than the previous one. He tells me he had to write a short introduction for a book on the Amazon that the National University was going to publish. [...] And that started what would be an ongoing dialogue. I would go to his office twice a week to talk about indigenous peoples and the Amazon. ... The man got really excited and started to support me. He said, “We are going to give that land to the indigenous populations.” But the guy also understood that the Amazon was key for the conservation of the environment.¹³⁰

Over 50 percent (14.2 million ha) of the total land that today constitutes *resguardos* in the Amazon was titled during the Barco administration alone (see Table 3.2). Particularly important was the creation of Predio Putumayo in April of 1988, not only because the *resguardo* covers 5.8 million hectares, but also because it is situated on the site of the infamous Casa Arana, property of Peruvian rubber tappers known for enslaving the indigenous population. “Predio Putumayo, New Indigenous Resguardo. From Slaves to Owners of the Land,” read the headline of a nationwide newspaper. The creation of this *resguardo* faced some resistance. It was at first

¹³⁰ Interview with Martin Von Hildebrand, March 27, 2014.

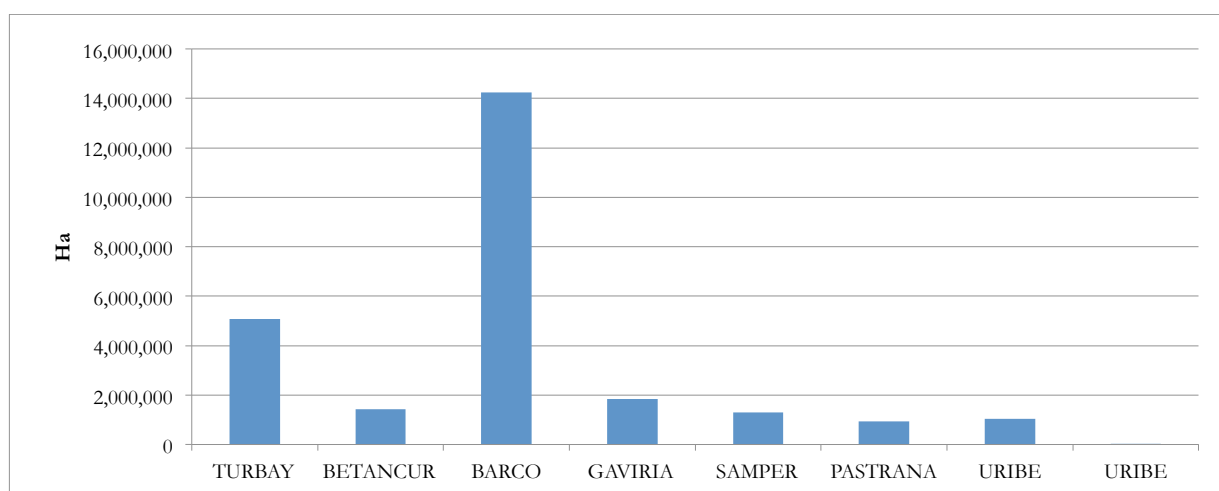
rejected by the executive board of INCORA, but in the second round, it was backed up by the president and passed.¹³¹ The Barco administration also passed Law 30 of 1988, which legally consolidated the indigenous land policy. The law expressly “prohibited the adjudication of vacant lands (*terrenos baldíos*) that are occupied by indigenous communities or that constitute their habitat, with an object other than constituting indigenous *resguardos*.”

Table 3.1. Extent of *Resguardos* Created in the Amazon (%), 1978-2008



Source: Author’s calculations with data from Hernandez (2013).

Table 3.2 Extent of *Resguardos* Created/Expanded in the Amazon by President, 1978-2008



Source: Author’s calculations with data from Hernandez (2013).

¹³¹ Interview with German Montoya, Private Secretary of President Barco, October 2013. The same idea was supported by Martin Von Hildebrand (interview March 27, 2014).

President Barco's speech on the day he granted Predio Putumayo to the indigenous peoples synthesizes the underlying ideology behind the indigenous land policy:

The indigenous peoples continue enduring in a greater or lesser degree situations of marginalization and carelessness by the State. ... They have the right to an exclusive territory that serves as base and in which they can develop their productive activities. They have the right to set up their own forms of organization, and establish their own rules and authorities. ... They deserve the respect and acknowledgement of their territory. Land ownership is based on the creation by the Government of areas occupied in the character of *resguardos*.¹³²

This quote hints at the second important characteristic of the *resguardo* creation process in the Amazon. As briefly explained above, the *resguardo* was not used as a tool of assimilation (as had been envisioned in the nineteenth century and in ILO Convention 107) or modernization for laggard peasants (Law 81 of 1958 and Law 65 of 1961), but was strategically reinterpreted as an instrument of cultural protection and recognition of the right to self-determination by "trying to 'keep whites out.'"¹³³ Gradually, the *resguardo* would also be employed as a tool of environmental conservation as indigenous peoples' knowledge to protect the ecological patrimony of the Amazon was acknowledged.¹³⁴

3.2.2. The Enabling Conditions

Today, the 25.8 million hectares collectively titled as *resguardos* belong to close to 80 thousand indigenous peoples. Most of these *resguardos* were created in just three years. I argue that three conditions facilitated the process of *resguardo* creation in the Amazon, during which massive expanses of land were handed to so few.

¹³² Excerpt of the speech given by President Virgilio Barco when he handed over Predio Putumayo on April 23, 1988, at the settlement of La Chorrera, Amazon.

¹³³ Interview with Martin Von Hildebrand, March 27, 2014.

¹³⁴ Speech given by President Virgilio Barco at the Gaia Foundation in London, at the Royal Botanic Gardens, Kew, London, April 10, 1990.

First, there was a legal framework in place that made it relatively easy to duplicate an existing institution in a new location. As we know from historical institutionalism, institutional forms are more easily extended and reproduced than created from scratch (DiMaggio and Powell 1983; Hacker, Pierson, and Thelen 2015:195). Law 89 of 1890, in addition to the set of laws adopted in the 1960s (see Figure 3.1. above), recognized the institution of the *resguardo* as a form of collective property and explicitly ordered government institutions to create *resguardos*.

¹³⁵ The existing framework enabled the new elite in power — including Von Hildebrand, Roldán, and in particular two presidents — to redeploy the institution to new goals and purposes, such as cultural safeguard, without having to undergo the political struggles of creating the institution anew. As seen above, the institution was ambiguous enough (at some point considered reserves and at another, *resguardos*) that it created an opportunity for actors to interpret it differently and redirect it for their ends (Hacker, Pierson, and Thelen 2015).

Second, it was possible to create them because it was not politically costly for the ruling elite since actors could not entirely foresee the distributional consequences at the time of creation. These would only unfold slowly. On the one hand, the Amazon was considered the “country’s backyard.” There was no real knowledge of what happened in that region. The country had always identified itself as an Andean country that looked north toward the Caribbean ocean (Safford and Palacios 2002). The presence of guerrilla warfare aggravated the situation. For a while, nobody was particularly interested in what took place in the Amazon, and the proof of this was the absence of roads, big towns, and infrastructure (Serje 2011). The Amazon area was not even administratively divided into states like the rest of the country, but into

¹³⁵ Resolution 0101 of 1981, which created the first *gran resguardo* of Mirití-Paraná, demonstrates the robust legal framework that existed at the time: “The indigenous *resguardo*, as a social and legal institution, was fully in force during the Colonial period ... and continued to be in force from the Republican epoch to today, based on a series of norms, among which the following are worth mentioning: ... Decree of July 5 of 1820, ... Law 89 of 1890.” The resolution also mentions Law 135 of 1961, Law 1 of 1968, and Law 31 of 1967, which were explained above.

“commissaries” or territories, which were second-tier administrative units. “Colombia has never had an expansionists view. In fact it is not even present in most of the territory. During the 1960s and 1970s, it [the Amazon] was ‘no man’s land.’”¹³⁶ So, arguably, nobody saw granting these lands to the indigenous populations as potentially harmful. In addition, at the time created, these lands were not seen as economically useful to the government. “Nobody really knew what lay underneath. I would lie to you if I told you I knew what was below. Today, with the knowledge of minerals and potential oil, it would have been impossible to create all these *resguardos*.”¹³⁷ In the same vein, an official of the National Parks Division explained that “at the time those *resguardos* were created, nobody knew what was below, or above. The only research that had been carried out had been done by [Professor Richard E.] Schultes.”¹³⁸

In that sense, the creation of the communally owned lands in the Amazon challenges the traditional economic argument of Alchian and Demsetz (1973) about when shifts in property rights occur. According to Alchian and Demsetz, the creation of private and collective property structures is driven by changes in the value of underlying resources. As the value of a common-pool resource rises, it is more likely that it will be converted to a private or collectively owned good and that private property rights will be enforced. However, the case of Colombia seems to suggest that the shift from open-access regime to collective property occurred in exactly the opposite scenario: when there was no knowledge about the value of the underlying resources. In fact, it is very likely that these institutions were widely adopted precisely *because* there was no knowledge of the value of the underlying resources and thus of the distributional effects of such an institution.

¹³⁶ Interview with José Fernando Isaza, President of the National Oil Company, 1980–1982, October 2013.

¹³⁷ Interview with Martin Von Hildebrand, December 2012.

¹³⁸ Interview with Angela Rincón, National Parks Division, October 2013.

On the other hand, creating *resguardos* was not politically costly because the policy affected a minority, reducing the distributional consequences for elites. Unlike in other Amazonian countries like Peru, where the indigenous population is the majority, the entire indigenous population in Colombia is close to three percent of the population, and in the Amazon, it is less than two percent. In addition, according to national and international law, only indigenous peoples were entitled to *resguardos*. So creating *resguardos* for the Amazon peoples would not necessarily trigger a cascade effect in which other minorities would demand the same policy nor was the population so big that it would imply extending the policy to a big crowd. A policy for a minority seems less threatening and compromising than a policy for the majority. The ensuing question is, Why would the government embark in creating a policy for the minority at all?

The third and last enabling condition was the weakness of the institution at the time of its creation, which also prevented the actors from foreseeing its long-term distributional consequences. As Hacker, Pierson, and Thelen (2015:185) argue, “Not only do institutions have multiple effects, these effects are frequently unanticipated, especially if an institution endures for a long time.” Ninety percent of all *resguardos* in the Amazon (including the Apaporis) were created before 1991, when the institution was not as strong and empowering as it became shortly after, as new attributes were added in the process of institutional layering described above. The 1991 Constitution institutionalized the *resguardos* and declared them inalienable, nonseizable, and imprescriptible, making a few indigenous groups the perpetual owners of those lands. Likewise, ILO Convention 169 of 1989, which was also ratified by Colombia in 1991, granted the right to prior consultation to indigenous people. Convention 169 gave them, in addition to a

stronger property institution, a voice to defend that property, and this would be upheld and enhanced during the next two decades by the Constitutional Court.

Recapitulating, there was fertile ground for building *resguardos* in the Amazon through conversion: an institution with an existing legal framework but an imprecise interpretation, to which only a relatively small population in a remote area of the country was entitled, an elite group of stakeholders directly seeking to alter the institution's original purpose, and an inability of all actors to anticipate the full distributional consequences of the institution at the time of its creation.

3.2.3. The Creation of the Apaporis *Resguardo* and its Initial Relationship to Mining

The Apaporis *resguardo* was created in April of 1988, in the zenith of the *resguardo*-creating period during the government of President Barco (INCORA Resolution 035 of 1988). The story of the Apaporis is embedded in the general process, but with a slight variation. The highest traditional authority of the area, Isaac Macuna, asked the national government to convert the territory to a *resguardo*. Thus, while the creation of the Apaporis was not exclusively from above, it was at the petition of a leader and made possible because the group of elite government officials was attuned to creating *resguardos* at the time.

Macuna learned about the *resguardos* from his neighbors in the Mirití and two other neighboring *resguardos* and realized his territory was the only one that had not been turned into one. "Right next to them, in the Mirití, there were *resguardos*. The Government was open to recognizing their territories. So he [Macuna] travelled to Bogotá with this nephew who spoke

Spanish to visit the INCORA and requested a commission, a visit by the officials, to create a *resguardo*.”¹³⁹ The government was embarked in the process, so shortly after Macuna’s visit, INCORA proceeded. The indigenous peoples of the Apaporis were not required to engage in mobilizations or in negotiations. In fact, as explained above, the indigenous leaders were not familiar with the notion of the *resguardo* because it did not dovetail easily with their idea of their ancestral territories, which were not limited on paper and many overlapped. Ramón Laborde, who worked with Von Hildebrand and Isaac Macuna, synthesized the process in the following terms:

As I see it, the policy comes from the top. I mean, the indigenous people were never doing a clear vindication over that; it came from above. The thing was that Martin [Von Hildebrand] and the rest acted like activists: they privileged some groups over others. By that I don’t mean that they denied the others the right to have a *resguardo*, but they gave *resguardos* first to one then to the other. And Martin began with the Mirití. So what Isaac would always tell us is that when he saw that those [indigenous peoples] in Mirití were getting their *resguardo*, he realized he was in second place and went to Bogotá to talk to Incoder and Incoder effectively sent the officials....¹⁴⁰

Compared to the *gran resguardos* created at the time, the original Apaporis *resguardo* was relatively small (519 thousand ha — half the size of the Mirití — inhabited at the time only by 376 people: 66 families belonging to 7 indigenous peoples). Parts in the north and south of the territory, including important sacred sites, were excluded from the *resguardo*. That would become a problem a few years later.

The original *resguardo* is small for two reasons. First, there was a dispute between Macuna and the INCORA official. Macuna’s description of this territory overlapped with that of other indigenous communities. Although Macuna explained that this was normal for indigenous peoples, the INCORA official did not believe Macuna and opted for titling the minimum

¹³⁹ Interview with Ramon Laborde (January 2016) who met Macuna when he started working in the area as member of Gaia Amazon Foundation three years after the *resguardo* was created. Minutes of the meetings that took place many years later, when the communities were discussing the creation of the national park, also note that the idea of requesting the *resguardo* was Isaac Macuna’s, inspired by what was taking place in the neighboring *resguardos*.

¹⁴⁰ Interview with Ramón Laborde, January 2016.

extension (Rubiano 2014).¹⁴¹ Second, and most relevant for the issues discussed in this chapter, the limits of the *resguardo* reveal the initial relationship of this territory with mining. The limits were adjusted to accommodate the mining interests of the time.

The history of colonization in the Amazon region has historically been influenced and transformed by the extraction of commodities, from rubber at the end of the nineteenth century, to quinine, hides, gold, and oil (Bunker 1985). The Taraira region that straddles the border between eastern Colombia and western Brazil, where the Apaporis *resguardo* was created, is no exception. Gold mining has been a quintessential driver and feature of the Taraira region. After a short gold boom in the northern Amazon state of Guainía, white settlers and indigenous people migrated south in search of the gold belt of the Taraira region, sparking the gold bonanza of Taraira (1985–1986) (Rubiano 2014:24). Mining had been taking place on the Brazilian side of the border for several years, but the Colombian side remained unexplored and inhabited only by indigenous groups. Estimates calculate that 15 thousand people arrived to work in the Taraira mines during the gold bonanza, and in 1986, they established Taraira, a mining town in the heart of the eastern Colombian Amazon.

The creation of the first *resguardo* coincided with the mining bonanza, and the extension of the *resguardo* partly responded to the mining activity (Rubiano 2014). Mining in Taraira has never been large in scale (Rubiano 2014). Initial non-industrial alluvial mining gradually shifted to underground mining with dynamite and heavy machinery in the mountain ranges as the gold in the rivers became scarce. Mining is against indigenous traditions and is especially prohibited in sacred sites. However, some white settlers mined secretly in sacred sites, notably in the gold-rich waterfall of Yuisi.

¹⁴¹ Also mentioned in interview with Ramón Laborde, January 2016.

Despite the miners' interference, during the mining boom, the indigenous people did not enter into conflict with the arriving settlers. As long as mining remained constrained in a defined area and the settlers did not threaten the sacred sites, indigenous peoples were willing to coexist with them. The exclusion of the town of Taraira from the *resguardo* reflects that logic (Rubiano 2014). Consequently, the Apaporis *resguardo* failed to encompass the entire territory the indigenous people conceived as their ancestral territory. As the threat transformed, the *resguardo* proved insufficient.

3.3. The Common Problem of the Commons: From the *Resguardo* to a National Park

With the expansion of certain threats, indigenous groups struggled to protect their territory by expanding the institution of collective property. But with the potential expansion of mining, the common problem of the commons became palpable. The regulation of the common-pool resources on the ancestral territory based on indigenous traditions and under the autonomy granted by the collective property structure, proved deficient. The possibility that the state could grant a concession to an international corporation interested in large-scale, open-pit mining constituted an external threat for the CPRs of the *resguardo*, which could not be controlled by the property structure and governance regime of the land alone. The indigenous communities were forced to create a national park. This section traces this process.

3.3.1. The Expansion of the *Resguardo*

The indigenous people sought to expand the *resguardo* to prevent three threats: mining in their sacred sites, fishing in their sacred sites, and the creation of a national park.

While the mining bonanza ended toward the late 1980s, approximately 1,500 people settled in the region, and Taraira went from being an informal gold town to an officially recognized municipality in 1993.¹⁴² Mining remained a central feature of its identity, politics, and economy. People made a living from mining gold in the rivers and underground mines (Rubiano 2014:34).

Mining quickly produced devastating consequences and turned into a threat for the sacred sites. The mountain ranges of the municipality were destroyed. Likewise, settlers in Taraira and the neighboring town of La Pedrera occasionally attempted to extract gold from the sacred site called Yuisi, a rapid that is central to the life of the indigenous peoples of the area and will be central to all moments of this case.

In response to the threat, the indigenous authorities of the Association of Traditional Captains of Yaigojé-Apaporis (ACIYA),¹⁴³ with the support of the Gaia Amazon Foundation,¹⁴⁴ requested the expansion of the *resguardo* in 1994. The destruction in the neighboring mountain ranges was a forewarning of what could happen to their sacred sites. The indigenous leaders conceived the expansion of the *resguardo* as the tool to block such a threat and requested that the sacred sites be included in the expanded territory. A document handed by Gaia to the Constitutional Court explains,

¹⁴² According to the 2005 census, Taraira had 1,048 people, and 81% were indigenous.

¹⁴³ ACIYA was created in 1995, although it was only officially registered in 2002. It groups 17 communities belonging to seven different tribes of the lower Apaporis region. The traditional authorities of the lower Apaporis began the process of creating ACIYA in 1993 as a “way of organizing that could facilitate interlocution with the Colombian State” with respect to the different processes that deal with the territory (ACIYA 2011). The newly adopted 1991 Constitution recognized the possibility for indigenous territories to eventually be self-governed and have the same prerogatives as municipalities. It also established that while such a law was passed (which it has still not been), indigenous territories could create administrative units to facilitate the interaction between the authorities of the indigenous territories and the state. Decree 1088 of 1993 introduced the idea of the Association of Traditional Indigenous Authorities.

¹⁴⁴ The Gaia Amazon Foundation is an NGO founded in 1989 by Martin Von Hildebrand, the same man who had commanded the creation of the *resguardos* and sagely anticipated that the indigenous communities would need additional support to protect their recently acquired rights.

The Captains wanted to create the Association as a strategy to maintain the *unión del pensamiento* (union of thought). Their main goal was and continues to be the defense of their ancestral story. Their priority and in what they were emphatic with the Gaia Foundation was to attain the expansion of the *resguardo* in such a way that it would encompass all the habitation sites and all the sites ... the so-called sacred sites so they would be completely banned from hunting, fishing and mining. These places must be reserved only to the *Payes* [the shamans] to guarantee the health of the group. If indigenous or white men are allowed to profane sacred sites, the *Payes* are unable to control disease, gossip, misunderstandings and death.¹⁴⁵

In addition to mining, a second threat arose in 1994. The governor of the state of Vaupes¹⁴⁶ launched a project to set up commercial fishing at the Yuisi rapids. For the traditional authorities, these actions clearly violated the spiritual rights of the indigenous peoples (ACIYA 2011, Numeral 7). “The profanation of the sacred sites leads the traditional authorities, already in the process of constituting ACIYA, to look for *mechanisms within the State* that allow them to defend their territory” (ACIYA 2011, Numeral 8), like expanding the *resguardo*.

Despite multiple letters, petitions, and legal actions, the request to expand the *resguardo* was not given timely consideration, and the process dragged on for four years. Before it was created, a third threat emerged. In 1996, the National Parks Division was unilaterally planning to create a national park over the indigenous peoples’ ancestral territory. The indigenous peoples and the Gaia Amazon Foundation learned about the project when it was well underway. For the indigenous groups, the prospect of a national park created over their territory gave the traditional leaders greater impetus to request the expansion of the *resguardo*.

The ecological importance of the site was disclosed in 1976. Javier “*El Mono*” Hernández, a leading biologist who was the key actor behind the first wave of natural parks in Colombia, suggested creating two parks in that area, given its ecological importance. The indigenous communities and the national government rejected the idea, and it was archived for

¹⁴⁵ Constitutional Court, Decision T-384A/2014.

¹⁴⁶ Vaupes is one of the states in which the *resguardo* lies. In the first *resguardo*, the area of Vaupes was left out.

20 years. In 1996, however, the idea resurfaced. Tom Defler, a National University biology professor based in the area, who had been in conversations with the National Parks Division about the possibility of creating a park, explained that one intention of the park was to prevent the creation of a development hub as a result of the activities sponsored by the governor of Vaupés.¹⁴⁷

Initially, the leaders of ACIYA and the members of Gaia agreed to the idea of the park on the condition that it respect their traditional forms of government and recognize them as the main managers of the territory. However, the National Parks Division responded that an “Indigenous park” did not exist legally and rejected the idea. In turn, two members of Gaia visited the National Parks Division and, to their surprise, found that the national park was one signature away from being created (Forero, Tanimuca, and Laborde 1998).¹⁴⁸

In reaction, as one of the advisors of Gaia at the time would write in his memoirs,

The Captains decided to convene an Extraordinary Congress to discuss what they considered an even more severe problem than the one that was taking place in the waterfall of La Libertad. In this occasion the issue was not a profanation, but the pretension of the white man to govern an area where various sacred sites are located, including the waterfall of La Libertad. (Forero 1998:10)

Accordingly, the captain of the *resguardo* wrote a letter to the director of the National Parks Division, Carlos Castaño-Uribe. He identified 22 sites of cultural importance located in the Apaporis that were excluded from the *resguardo* and would fall under the area planned as a park, explained indigenous peoples’ apprehension toward the institution of national parks, and requested that he help accelerate the process of expanding the *resguardo*:

We will not allow whites to manage our territories. Although you send us letters proposing joint management, we have clearly explained that the land cannot have two owners, and we are the owners. When you try to manage resources you destroy

¹⁴⁷ Interview with Ramón Laborde, one of Gaia’s officials, who personally visited the National Parks Division, December 22, 2015.

¹⁴⁸ See also the interview with Ramón Laborde, December 22, 2015.

them, yet you tell us that you will teach us how to conserve and manage our resources. ... You want these lands, but we cannot allow you to have them because it would be handing over our lives. If you as Director of National Parks for Colombia want to protect this land, you should help us get recognition for our rights.¹⁴⁹

The indigenous leaders rejected national parks because they concentrated property in the hands of the state and limited indigenous autonomy on issues like hunting and planting. Yet they were willing to live with other forms of property as long as these respected their autonomy and recognized their collective property. In fact, the letter ends by pointing out that, since 1993, Colombia had accepted “private natural reserves” and that they believed those could coexist in harmony with the indigenous notion of collective property of the *resguardos*. In response to the letter, Castaño-Uribe aborted the idea of creating the park and the studies were filed.

The *resguardo* was finally doubled in size in 1998 — 10 years after the original *resguardo* had been declared (INCORA, Resolution 006/98, May 11, 1998). What changed in 10 years that led the same indigenous peoples and NGO who had rejected the national park to request one?

3.3.2. The Common Problem of the Commons and the Need for a Park

A decade after the traditional authorities of the lower Apaporis region ardently opposed the creation of a national park on their territory, they requested that the National Parks Division create one. Standing before government and NGO representatives, members of 19 indigenous communities, and several other people who were participating in the process of prior consultation about the creation of a national park, Capitan Rendón, a community leader of the

¹⁴⁹ Letter written by the captain of the *resguardo* to the director of the National Parks Division, cited in Forero, Tanimuca, and Laborde (1998:108).

lower Apaporis region, explained why, in 2008, the association that groups the indigenous peoples of the area requested the National Government to declare a national park over their *resguardo*:

We need to join the white peers of the western world of National Parks to defend our territory. ... *If we leave it without a park, they can ask for mining licenses for mining exploitation, and that brings conflicts and deaths. That is why in order to defend this we need to convert it into a park.* That is my idea. I am doing it thinking about the future of our grandchildren. So these diseases do not advance. ... That is why we invite the whites to reinforce the protection of our territory, unite forces. Although there are changes in the institutions and thoughts, among the Traditionals, this thought endures until death. We are going to be the guardians of this territory forever because the Law of Origin does not change.¹⁵⁰

In 10 years, the threat changed and the remedy proved insufficient. First, while mining had been a constant characteristic of the region, the nature of mining changed, becoming an even greater threat to the indigenous communities and their culture. Second, the new threat revealed the common problem of the commons and the limits of property rights to deter an external threat, such as mining, to common-pool resources. I will develop these two points below.

International mining corporations had been absent from the Colombian Amazon, including the region of the Apaporis, until midway through the first decade of the twenty-first century.¹⁵¹ At that time, which coincided with a global commodity super cycle and the search for minerals in remote places, a right-wing government led by President Alvaro Uribe (2002–2010), sympathetic to multinational corporations and lenient with mining corporations, opened the country and the Colombian Amazon to mining concessions. During his administration, almost 9,000 mining concessions were granted; some were even granted within national parks, which is legally prohibited (Ronderos 2011). Within this plethora of concessions, in 2007, the National Mining Agency granted one concession in the municipality of Taraira to Vancouver-based

¹⁵⁰ Captain Rendón cited in Ministry of the Interior (2009).

¹⁵¹ Still today, while 21% of the Amazon has mining activity, 80% of this is in Brazil and 15% in Perú (Little 2013).

Cosigo Frontier Mining Corporation (hereafter Cosigo).¹⁵² The concession, close to 10 thousand hectares large, overlapped with the existing mines of the settlers of Taraira, creating discontent among the traditional miners. Shortly after, Cosigo attempted to obtain a second concession in the sacred rapid of Yuisi to build an open-pit mine. Upon learning from INGEOMINAS that this process was underway, ACIYA representatives asked the Ministry of Mining to suspend any mining initiative because mining in such areas would compromise their spiritual life and thus the material existence of the peoples and because it would require a process of prior consultation (ACIYA 2011, Numeral 30). Their petition was disregarded, and the concession was granted, but due to procedural problems, it was annulled.¹⁵³

However, the fact that the concession was nearly granted raised awareness. An open-pit gold mine on their sacred site exacerbated the threat and transformed the motivations of the leaders. After a long deliberation process and with the help of Gaia, in February of 2008, the traditional authorities concluded that the solution to protect their territory was a national park like the one they had rejected 10 years earlier. But why was the *resguardo* insufficient?

As argued above, the *resguardo* vividly illustrates the common problem of the commons and the limits of defined property rights to overcome the problem. While the *resguardo* grants collective property rights to the indigenous people and allows them to establish their own forms of government to protect their culture and to establish strict use and harvesting rules over CPRs, the persistence of the colonial subsoil property regime, on the contrary, facilitates the access of extractive companies, which often results in negative environmental and cultural consequences for those communities and the destruction of CPRs.

¹⁵² Concession IH3-16001X; September 28, 2007, Extension 9,973 ha.

¹⁵³ Constitutional Court, Decision T-384A/2014, Numeral 31.

Under Colombian law, only national parks prohibit mining and oil extraction, even by the state.¹⁵⁴ Once a park is created, it is impossible to reverse this decision, either in whole or in part. In the case of the Apaporis *resguardo*, when the threat transformed and amplified, the indigenous communities that had historically resisted the creation of national parks on their lands realized their communal ownership of the land was not enough to deter the new external threat. Collective ownership of the land had seemed sufficient to control the internal threat of overexploitation of common-pool resources posed by their own indigenous people and some settlers, but it was not sufficient to control the external threat of those who pursued the resources in the subsoil. In the words of one of the indigenous captains,

the *resguardo* gives us a right over the land — over the water, the trees, the forest — but it does not go all the way to the center of the earth. It does not protect all of our territory. Only parks do. Only with a park can our territory be free of mining.¹⁵⁵

Hence, the change in strategy. If mining concessions are granted by the state, it is necessary to call on the state to defend the territory. “If the disease comes from the white world, the Western world, the medicine must be sought in the Western world.”¹⁵⁶

But if the indigenous people did not have ownership over the subsoil, how did they manage to impose a solution (the park) that gave them control over the subsoil? Said differently, how were the indigenous groups able to tackle the consequences of the common problem of the commons? My argument, which I will develop in the following section, is that they used an institution of political participation.

¹⁵⁴ As stated by the Colombian Academy of Sciences, “the declaration of this Park prevents the encroachment of mining activities, contributes to guaranteeing the ecological flows with ecosystems and supports the comprehensive conservation strategy of the Colombian Amazon” (October 22, 2009, Document No. 310/09, Directed to the Director of the National parks Division, Signed by Jose A. Lozano, Secretary).

¹⁵⁵ Interview with Benjamin Tanimuka, April 16, 2015.

¹⁵⁶ Gerardo Macuna, representative of ACIYA, in Constitutional Court, Decision T-384A/2014, Section 3.2.9.

3.4. Overcoming the Common Problem of the Commons: The Process of Prior Consultation

The protection of indigenous territory through the creation of a national park hinged on the institution of free, prior, and informed consent (FPIC), also known simply as prior consultation. In this section, I first explain the development of the institution, focusing on how it became instrumental for all actors. Second, I explain how the participatory process was carried out between the indigenous groups and the state in such a way that it constituted meaningful participation, characterized by being informed, representative, free, prior, and binding (Fromherz 2013). As explained in the introduction, dissenting indigenous groups, who were influenced and supported by the mining company, challenged the participatory process. Nonetheless, the Constitutional Court upheld the decision to create the park on the basis that the participatory process was adequately carried out. I use both the plaintiffs' and the court's arguments to identify the main components of the participation, which the literature has identified as essential for effective participation.

3.4.1. The Evolution of Prior Consultation

Prior consultation (*consulta previa*) is a collective right of the indigenous peoples established in ILO Convention 169 of 1989, which establishes that indigenous peoples must be consulted in good faith whenever consideration is being given to legislative or administrative measures that could potentially affect them or their territory, such as development projects, exploration or exploitation of natural resources, or the creation of a park (Articles 6.1.a., 6.2, 15,

15.2). Colombia ratified Convention 169 of 1989 in 1991 (Law 21), introducing this new right for indigenous people.

The international instrument recognizes the right to prior consultation of those indigenous communities who have full ownership of the land and of those who only possess it. Thus, with the ratification of the convention, those indigenous communities that had been granted *resguardos* before 1991, like the communities in Apaporis, also gained the right to participate in decisions affecting them and their resources. In practice, most prior consultations in Colombia have been carried out with indigenous communities with *resguardos*. “While in international law ownership of the land is just one of the variables that entitles indigenous communities the right to prior consultation, in Colombia, property rights over the land have been the main variable for acknowledging the need to carry out prior consultations,”¹⁵⁷ explained a legal expert on prior consultation who has participated in many of these processes.¹⁵⁸

Controversy exists throughout Latin America over whether the ILO convention establishes a right to consultation or to consent; the central difference is that consent makes the decision resulting from the consultation process binding.¹⁵⁹ This varies by country.¹⁶⁰

¹⁵⁷ Interview with Carlos Baquero, May 2014.

¹⁵⁸ The connection between the right to property and the right to participation becomes very clear if we look at the prior consultation regulations. When Colombia first attempted to regulate prior consultation, it established a clear link between the process and *resguardos*. While the regulation acknowledged that prior consultation could also take place in areas simply inhabited or possessed by indigenous communities, it clearly indicated that “prior consultation will be carried out when the project or activity is planned to be developed in zones of *resguardos* or indigenous reserves” (Decree 1320 of 1998, Article 2). The most recent regulation (Decree 2613 of 2013) reinforced the relationship between the *resguardo* and the right to participate. It says that to identify the presence of ethnic communities (and thus determine if carrying out a consultation is in order), the Prior Consultation Division shall utilize the *resguardo* database (Article 7).

¹⁵⁹ In fact, as explained in Chapter 1, it is common to find that some people refer to the right to free, prior, and informed consent (FPIC) (e.g., Ward 2011), while others prefer to talk about prior consultation (e.g., Falleti and Riofrancos 2013). The debate rises partly from the fact that the convention uses both terms. Article 6 establishes that consultations “shall be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or *consent* to the proposed measures” (Art. 6.2.). Yet the Convention talks about the right to *consultation* prior to the exploration or exploitation of resources (Art. 6.2), the need for informed *consent* of indigenous peoples prior to any relocation (Art. 16.2), and the requirement to *consult* with indigenous peoples prior to any transfer of land rights outside of their community (Art. 17.2).

¹⁶⁰ Following international standards, the Colombian Constitutional Court, for example, established that consent is required in situations where (1) communities could face displacement as a result of the work or project, (2) toxic waste may be disposed of

Nonetheless, at the international level, the 2007 United Nations Declaration on the Rights of Indigenous Peoples talks in general about consent and explicitly requires prior consent before governments adopt legislative or administrative measures that may affect indigenous people (Art. 19), when communities could face displacement as a result of the work or project (Art. 10), when toxic waste could be disposed of on indigenous lands (Art. 29.2), and before the approval of any project affecting indigenous lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of minerals, water, or other resources (Art. 32). In practice, the right to prior consultation means that indigenous peoples are entitled to participate in a free and informed manner in decisions related to their lands and resources (Rodriguez-Garavito 2010; Ward 2011). A clear example of an administrative measure that affects their lands and resources is the creation of a national park over their *resguardo*.

Despite having been ratified, the right to prior consultation was not widely known when the government attempted to create a park in the area in the mid-1990s. Yet by the time the indigenous people of the Apaporis solicited a park, the institution of prior consultation was widely known by all actors and proved to be an institution with strong distributive benefits for the indigenous communities. The creation of the park would hence have been nearly impossible without a process of prior consultation, and if it were carried out, it would likely be challenged constitutionally. Three factors contributed to enhancing the institution and making it instrumental for all actors.

First, a strong political institution enforced the right at the local level (Mahoney and Thelen 2010). Since the early 1990s, the Colombian Constitutional Court has consistently and vigorously upheld the right, “developing the region’s richest jurisprudence on FPIC” (Rodríguez-

on indigenous lands, or (3) there is a high social, cultural, or environmental impact on the community (Decision T-129 of 2011, section 9.8.2).

Garavito 2011:9). Its role has consisted in developing the content of the right beyond what is established in the convention by defining the contours of the qualities “free,” “prior,” and “informed,”¹⁶¹ determining when the right should be applied, and defining situations in which consent (not simply consultation) is required. The court also ruled against the government’s failure to consult indigenous leaders before initiating economic projects within their territories, even though Colombia’s ratification of ILO Convention 169 imposes this obligation. These rulings were powerful because, on the one hand, they signaled to the state and the private companies that prior consultation was a right and a mandatory process that would be too costly to overlook and, on the other hand, they signaled to the indigenous peoples that they were endowed with a powerful institution to defend their territory. Examples of these decisions include those that struck down the national forestry law, the national mining statute, and the rural development statute (all of which had been passed by Congress with support from the government) for not having properly carried out a process of prior consultation with the affected indigenous communities. Another decisive decision for the case under study is a renowned 1997 decision (SU-039 of 1997) concerning the U’Wa indigenous community and Occidental Petroleum.¹⁶² Shortly after the decision, Occidental Petroleum Company published an open letter in a major Colombian newspaper reiterating that it would not undertake exploration in U’Wa territory without their consent. To this day, the U’Wa have not consented to oil exploration.

Second, in the past decade, which the United Nations declared as the “indigenous peoples’ decade” (1995-2004) (Dove 2006:192), new international instruments and guidelines were adopted, enhancing the rights established in ILO Convention 169. After 12 years of intense

¹⁶¹ See, for example, Decision T-428 of 1992; Decision SU-039 of 1997; and Decision T-652 of 1998.

¹⁶² The court argued that the U’Wa should have been consulted on the issuance of the environmental license to carry out oil exploration on their territory since it threatened their ethnic, cultural, and social integrity and violated their rights, including those to land, self-determination, and participation. The court demanded that an appropriate consultation be conducted within 30 days.

debate — principally regarding the controversial subject of consultation (Rodríguez-Garavito 2011) — the U.N. General Assembly in 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples. Likewise, the Inter-American Commission on Human Rights handed down precautionary measures and decisions protecting the right.¹⁶³ Moreover, in 2004 the World Bank issued Operational Policy 4.10, which obliges governments to consult with indigenous peoples as a prerequisite for receiving loans for projects that affect them.

Third, and directly related to the previous points, overall awareness of the institution increased as a result of activism and legal decisions at the national and international level. The Colombian court's decisions, in addition to those issued at the international level, confirmed to NGOs and communities that had taken the cases before both systems to argue against the lack of prior consultation that prior consultation was effective. In turn, judicial decisions raised awareness among other communities and NGOs, who in turn requested that governments implement prior consultation or they would take more cases to court, engendering a reinforcing cycle. The result was that all stakeholders became aware of the supremacy of the institution, to the point that a high-level government policy document about the development of projects of national and strategic interest (Conpes Document 3762 of 2013) referred to prior consultation as the “bottleneck” that affects the agility and viability of these projects.

Consequently, by the time the indigenous people of the Apaporis *resguardo* asked for a park in 2008, prior consultation was inevitable. A park is an administrative measure that has an impact on the territory of the community, making it the subject of prior consultation. The government, the indigenous communities, and the NGOs that accompanied the process knew that, even if the community solicited the park, the park would not be legitimate without

¹⁶³ See, for instance the latest decision by the Inter-American Court, *Sarayaku v. Ecuador*, in which the court argued that the right to prior consultation is a right in all the states who ratified the American Convention on Human Rights.

participation from the different communities and it could be easily struck down if no such consultation took place.¹⁶⁴ And even while the government does not always carry out prior consultations despite its legal obligation to do so,¹⁶⁵ the indigenous people could request it. It was a tool on their side. Likewise, the mining company was aware of the power of the institution. In fact, it later tried to strike down the park by undermining the process of prior consultation. These facts together prove that the institution of participation was vital.

3.4.2. The Participatory Process that Deterred Mining: A General Overview

In this section, I briefly explain the general process that led to the park and then explain the elements that made the participation process meaningful.

The creation of a park was not automatic. Aware of the company's failed attempt to attain a second mining title in their sacred site Yuisi, the traditional authorities of ACIYA asked Gaia to analyze the problem and devise a legal solution. But even for Gaia, it was not clear from the start that the creation of a national park would be the solution.¹⁶⁶ During the second half of 2007, Gaia's lawyer held several long conversations with the indigenous authorities:

We had multiple conversations to decipher what was going on. ... For the indigenous peoples, the idea of a state that on the one hand grants them *resguardos* and wants to protect the territory and on the other allows mining, is contradictory and difficult to comprehend for them who have a holistic view. So the conversation consisted in explaining the problem — the fact that the subsoil belongs to the state, that the government manages the subsoil — and translating the legal options to Gerardo, [the secretary of ACIYA] so he could think of a model that would be compatible with their language, and by language I mean how they understand things. And the decision was,

¹⁶⁴ Interview with Camilo Guio, February 2016.

¹⁶⁵ Multiple factors affect the government's decision to do consultations, but often the main reasons are because they are timely and require economic resource and thus it sees them as an obstacle to economic development.

¹⁶⁶ Interviews with Preciado and Guio, February 2016. Before considering the park, they explored legal alternatives such as the *tutela* action.

“We already know that it is the state where the disease is coming from, so the cure must from them.”¹⁶⁷

After multiple meetings with Gaia, the traditional authorities and captains convened at their traditional congress in February of 2008 to discuss “the management of their territory and creation of a park to conserve the sacred sites and their biological components” (ACIYA 2011, Numeral 33). After three days of deliberation, the 17 captains of ACIYA agreed: “To give a solution to the protection of these [sacred] places is why we associate with the system of Parks, so it guarantees the conservation of our territory,” reads the handwritten minute signed by all the captains. They selected three delegates to take the proposal to the National Parks Division.¹⁶⁸

The delegates travelled by boat, road, and airplane in March of 2008 to reach the National Park Division in Bogotá to request the creation of a national park that would entirely overlap the *resguardo*. As explained above, it was the first time indigenous peoples had requested a national park. Surprisingly, however, the National Parks Division was not immediately convinced by the proposal, although it had attempted to create such a park twice before. A park one million hectares big would not only exhaust the quota of park hectares planned for the following years but it did not fit into the plan of creating parks in regions with fewer parks than the Amazon.¹⁶⁹ Also, other parks had been created in the neighboring area, so the justification for creating a new park to protect a unique ecosystem was weak. After multiple conversations about the importance of preserving the sacred sites in the area and the menaces the indigenous groups were facing, the National Parks Division agreed. In June 2008, they signed an agreement with ACIYA defining the timeline, socialization process, decision-making method, and representation scheme.

¹⁶⁷ Interview with Juan Carlos Preciado, February 2016.

¹⁶⁸ The delegates were Gerardo Macuna, general secretary of ACIYA, Leonardo Rodriguez, and Julian Tanimuca. It was also agreed that Juan Carlos Preciado of Gaia would accompany them.

¹⁶⁹ Interview with Camilo Guio, member of the National Parks Division, Amazon Division, February 2016.

The participatory process had three phases: (1) the socialization phase, (2) two traditional indigenous meetings, and (3) the prior consultation itself.

ACIYA, Gaia, and the National Parks Division embarked on what they called a “socialization process” in October of 2008. During three weeks, delegates from all three bodies visited the 19 communities of the *resguardo*, explained the park’s objective, and addressed participants’ inquiries. In December of that same year, ACIYA held a three-day extraordinary congress of traditional authorities, convened by the *resguardo*’s highest traditional doctor and facilitated by Gaia, to “consolidate the territory through the creation of a national park on the Yaigojé-Apaporis *resguardo*,” ask questions of the National Parks Division about the park’s implications, reassert the decision-making procedure, and define the issues that had to be addressed during the prior consultation process (ACIYA 2008). Likewise, between April and June of 2009, the Traditionals held their annual ritual called Yuruparí and “evaluated the situation and spiritually agreed, with the owners of each [sacred] site, the protection of the actions they were carrying out with the National Parks Division. As part of the conclusions of their spiritual work, they said they were ready to carry out the prior consultation and proceed to declare a National Park” (ACIYA 2011, Numeral 46). Accordingly, on May 22 of 2009, the National Parks Division and ACIYA agreed on the methodological proposal for the prior consultation, which would follow the legal requirements and the “culture, idiosyncrasy, and timing of the indigenous communities.”¹⁷⁰

The prior consultation process had two stages: the so-called preconsultation (June 2009) and the formalization stage. During the former, representatives of the Ministry of the Interior (legally responsible for carrying out the prior consultation procedure), the National Parks

¹⁷⁰ Minute of the Coordinating Committee of the Cooperation Agreement cited in Resolution 2079 of 2009.

Division, and ACIYA again visited the 19 communities of the *resguardo* that would be affected by the park¹⁷¹ and distributed information about the park's objectives and dimension, its direct and indirect implications, and the main ideas behind the management strategy. At the end of the preconsultation phase, the indigenous authorities held a two-day private congress to make the final decisions about the park. They agreed on eight decisive conditions upon which the creation of the park would depend. These included that the management of the area would be based on traditional knowledge and guidelines received since the beginning of the world by each ethnic group; that the land would continue to be the property of the indigenous peoples under the institution of the *resguardo*; and that the park would not compromise the indigenous peoples' autonomy within the *resguardo*.¹⁷²

The last stage was a two-day formalization meeting with delegates of the prior consultation group of the Ministry of the Interior, representatives of most of the indigenous communities of the *resguardo*, and delegates of the National Park Division to jointly adopt the decision and establish joint management strategies.¹⁷³ Captain Rendón, the leading authority and shaman of the *resguardo*, inaugurated the meeting by reaffirming the need for the park as a solution to deter mining activities and the sicknesses that come with it. "I have analyzed that there are many diseases, and for that reason, we need to reach an agreement." The traditional authorities presented their eight points, which were all adopted as part of the final accord between the government and the traditional authorities.

¹⁷¹ The law requires that the Ministry of the Interior certify the presence of indigenous communities in the area to determine who must be consulted during the prior consultation process. The Ministry of the Interior confirmed the presence of 19 indigenous communities that had to be consulted because they would be affected by the park.

¹⁷² Ministry of the Environment, Resolution 2079 of 2009.

¹⁷³ Other participants included delegates from the Ombudsman Office's, the Comptroller's Office, officials of the Vaupes's Governor's Office, NGOs, and other *resguardos* and associations (Acaipi, Acima, and Aipea).

After the prior consultation process, the only missing step was a favorable opinion of the Academy of Exact, Physical and Natural Sciences, certifying the biological richness of the territory, which was undocumented at the time and is a legal requirement for the creation of any park. It was issued on October 22, 2009.

After a deliberation process of a little over two years, the Yaigojé-Apaporis Park was officially created on October 27, 2009 (Resolution 2079/09). It is the only Colombian territory that has been declared a National Natural Park at the express request of the indigenous communities living there and that completely overlaps and coexists with the existing *resguardo*. At 1,056,230 hectares, it is Colombia's third-largest national park.

With a national park layered over the *resguardo*, extractive activities were permanently banned from their territory.¹⁷⁴ Any mining activity by the company or any other agent would be illegal. However, two days after the park was created and in violation of the law, the Colombian mining agency (INGEOMINAS) granted Cosigo Resources a mining concession within the park (Concession IGH-1500X, October 29, 2009).

A two-pronged legal battle ensued. On the one hand, multiple actors, including other state agencies, embarked on the task of annulling the contract on the basis that parks prohibit mining activity of any sort.¹⁷⁵ On the other, factions of the indigenous groups supported and advised by the company challenged the constitutionality of the participatory process in general and of the prior consultation process in particular as a means to eliminate the park and hence enable mining.

¹⁷⁴ Becoming a park also limits how the community could use the land and entails that the indigenous authorities are not the only governing authority over their territory.

¹⁷⁵ See, for example, the letter from the National Park Division's director to the director of the national mining agency (INGEOMINAS) dated December 31, 2009, asking that the mining concession granted within the park be annulled because it was granted on October 29, 2009 (and officially registered in the mining records on December 3, 2009), after the park was created.

Like the supporters, the opposing actors were aware of the strength of the participatory institution. The park hinged on the participatory process. Without the proper participatory process, the park would not be legitimate and would be prone to lawsuits. Hence, the mining company and the indigenous groups who resisted the park challenged the participatory process before the Constitutional Court. They could have opted for other routes to bring down the park or obtain the mining concession. (For example, they could have argued that there was not sufficient environmental and scientific support to merit the creation of a national park, proved that mining would bring social and economic welfare to the region or that the titles were granted by the state and thus, they presumed, in good faith). Instead, they knew that the decisive factor would be the participatory process. They were aware that, as with any protective institution created over the *resguardo* (national park or any other environmental category or policy), all institutions depended on the prior consultation process. If the company or the indigenous group could effectively prove that participation was flawed, the park would come down.

The company first tried to hamper the consultation process as it was being carried out in July of 2009. It attempted to “balkanize” the polity (Fung and Wright 200:37), insisting that the park would limit hunting and crops, while mining would bring health posts and schools. Building on underlying, preexisting social tensions, the company encouraged the communities on the side of the state of Vaupes to disaffiliate from ACIYA and constitute a new organization that would represent those from Vaupes (ACIYA 2011, Numeral 48). It also organized meetings to interfere with communities’ presence in their villages when the officials of the Ministry of the Interior and the National Parks Division held the socialization process.

However, once the government officially created the park, the company changed strategy: it challenged the constitutionality of the prior consultation process, but it did not do so directly. It did so through the indigenous communities of Vaupes, through the leader of that community, Benigno Perilla. Perilla filed a constitutional action claiming that the process was not properly carried out. While many of the leaders of ACIYA knew that the company had influenced and pressured the communities of Vaupes throughout the process, the proof and acceptance of such support would only come out five years later during the public hearing held by the Constitutional Court.

On January 31, 2014, the Justices of the Constitutional Court held a public hearing at the *maloca* of the community of Centro Providencia in the Colombian Amazon. It was the first time that the Constitutional Court had visited the Amazon region. With their faces painted by the indigenous women in gratitude for their presence in the area, the three justices asked questions and listened first hand to the testimonies of the different tribes. Before the justices and members of the government, Perilla, the leader of the group that had filed the lawsuit, admitted that they had received legal advice from the mining company to file the suit. Likewise, he acknowledged that, if he had known about the real intention of the park, he would have never filed a case. At the hearing, the two indigenous associations that had been distant as a result of the lawsuit indicated their interest in reconciling.

Six years after the lawsuit was filed, the court upheld the park and the participatory process that sustained it. Likewise, the mining title granted within the park was annulled.¹⁷⁶ How did the participatory process lead to the creation of the park? Why was it successful? The process was successful not only because it was held prior to the start of the mining activities that could

¹⁷⁶ Tribunal Administrativo de Cundinamarca (Administrative Court of Cundinamarca), Section 3, Subsection A. Justice: Alfonso Sarmiento. Plaintiff: National Mining Agency. Defendant: Andres Rendle. November 19, 2015.

affect the environment, but also because it fulfilled the other conditions — informed, representative, free, and binding — that scholars of participation have identified as necessary for constituting meaningful participation (Dietz and Stern 2008; Fung 2006; Fromherz 2003). In what follows, I illustrate how these four characteristics played out in this participatory process.¹⁷⁷

3.4.2.1. Informed Participation: What is Being Discussed?

As critics of participation argue, the voluntary nature of participation and the existing power relations led to a situation where only the most informed and those who were already interested involved themselves in the process (see Fung and Wright 2003 for a synthesis of these critiques and also Chapters 1 and 4 of this dissertation). Hence, advocates of participation argue that the effort must come from those who are not already informed (Fromherz 2003:181). Informed participation means that the actors are informed about what is being discussed (in this case the creation of a national park) and also informed about the actual participatory process (timing, method, purpose, etc.) (Dietz and Stern 2008).

Just a decade before the park was created, the communities of the *resguardo* and even Gaia Amazon Foundation had opposed the park, so the leaders of ACIYA and the National Parks Division were aware of the need to explain the changes that merited a park and its implications. As seen above, two main spaces were designed for that goal: the *correrías* (the name given to the socialization process) (October 2008), and the preconsultation phase (June 2009).

The socialization process lasted a month. Travelling by canoe and foot through the dense Amazon forest, representatives of ACIYA and the National Parks Division jointly visited each of

¹⁷⁷ I do not devote a section to explaining why it was prior because that is easily understood from the facts of the case.

the 19 communities within the *resguardo*.¹⁷⁸ At each visit, the committee explained the motives for suggesting the creation of a park and its implications for the *resguardo* in terms of autonomy and management,¹⁷⁹ described the limits and extent of the park, addressed the questions raised by the communities and their authorities, read the conclusions, and jointly approved the minutes.¹⁸⁰ The minutes reveal that many communities raised questions about whether their autonomy would be transferred to the National Parks Division, and some feared that a park would imply giving up their collective rights over the soil.

The preconsultation phase, which took place in July of 2009, was organized by the National Parks Division, ACIYA, and a representative of the Secretary of the Interior (Resolution 2079 of 2009) as part of the prior consultation procedure to distribute information about the park's objectives and size, its direct and indirect implications, and the main ideas behind the management strategy. The questions again revolved around autonomy and the persistence of the *resguardo*. For example, a member at the community Bocas del Taraira asked if the municipality of Taraira would disappear with the creation of the park (ACIYA 2011:54). Likewise, representatives of another community (Vista Hermosa) stated that they “disagree with the park because it would involve returning the land to the State” (ACIYA 2011).

Informed participation is a constituent element of meaningful participation such that the indigenous leader who filed the action before the Constitutional Court tried to strike down the park by arguing that the communities he represented never understood the purpose of prior consultation, the way it would be carried, or the implications of the national park. At the public

¹⁷⁸ On the Amazon side of the *resguardo*: Centro Providencia, Bella Vista, Puerto Cordillera, Bocas del Pira, Paromena, Villarrica, Sabana, La Playa, Unión Juririmo y Puerto Cedro. On the side of Vaupés: Bocas de Taraira, Ñumi, Vista Hermosa, Curupira, Bocas de Uga, Campo Alegre, Santa Clara, Agua Blanca y Jotabeya.

¹⁷⁹ The objective was to devise a comanagement strategy between the indigenous communities and the national parks division. It would be designed through the elaboration of a “special management regime” (*regimen especial de manejo*)

¹⁸⁰ Constitutional Court, Decision T-384A/2014, Notebook 1, page 36.

hearing, Perilla complained that “*acá no llegó claramente lo que es la consulta previa,*” which is slang expression saying that they never really understood what the prior consultation was about. This lack of clarity over the prior consultation process caused in them “a profound fear of losing their autonomy over their ancestral territory.”¹⁸¹ In fact, when asked by Justice Pinilla why he filed the *tutela* action he responded, “we had no knowledge of the prior consultation and its details, to the point that *if we had known* the things that have been explained in this hearing, we would not have filed the *tutela* action, because the haste of the circumstances and the feeling of confusion that spread within some communities was what prompted that move.”

His arguments were refuted at the public hearing and in the Constitutional Court’s decision. The Ministry of the Interior proved that four months before the preconsultation process, Perilla had attended a meeting in Bogotá, where he was informed about the process of prior consultation, its procedure, including the possibility that he and other leaders would have to participate and express their doubts.¹⁸² Likewise, for the court, the fact that the invitation to participate in the prior consultation process was done through community radio stations was appropriate, since radio is the most common form of communication in the jungle. And contrary to the claimant’s arguments, the fact that only one community (Santa Clara) was not present at their village when the ministry officials arrived to hold a consultation process was not a sign of weak and incomplete diffusion but, rather, proof of an effective communication strategy that managed to inform the majority. Regarding the claims about the purpose of the consultation not having been explained to all participants, the court concluded that “practically all communities

¹⁸¹ Benigno Perilla, at the public hearing (January 31, 2014) in Constitutional Court, Decision T-384A/2014, Section 3.2.1.

¹⁸² Fabian Andres Campos Campos, Dirección de Consulta Previa del Min Interior. As proof, he displayed before the judges the call for participation in the process of prior consultation and highlighted that the start of the process had been postponed a few days as per the request of Perilla, to guarantee that he could be present during the meetings. (Video: “Ministerio del interior y parques sí hay objeciones”)

registered by the Ministry of the Interior were visited both prior to the consultation (October of 2008) and during the actual [consultation] process (July of 2009) with the goal of informing them about the project and address their doubts and concerns, to the point that consciously all *objections, doubts or questions* about the creation of the park were registered in the minutes.”

In sum, the plaintiff’s claims regarding the lack of informed participation were discarded. Yet, the fact that he used them and that the court specifically analyzed them highlight how information is a necessary aspect of meaningful participation. Yet informed participation is not sufficient. Participants must also be representative of the risk-bearers.

3.4.2.2. Representative Participation: Who and How?

One of the pitfalls of participatory mechanisms is that the voice can fail to be commensurate with risk and knowledge (Fromherz 2013:158, 162; see also Chapters 1 and 4 of this dissertation). The participatory structure may be unable to guarantee that participants are those who are affected by the potential decision — the risk-bearers — and who have local knowledge of the area or issue in order to give weight to local interests. Thus, in addition to determining *who* has a voice, participation requires rules about *how* decisions are made among different and contradictory voices. There are four ideal types of methods of social choice: deliberation, command, aggregation, and strategic negotiation (Fung and Wright 2003:19). Actual processes might have elements of each, as the case of Apaporis shows.

In the case of the participatory process of Apaporis, the representation issue — determining the *who* and the *how* — followed indigenous rules. ACIYA and the National Parks Division agreed that all the communities present in the *resguardo* were to be given a space to participate. “To ensure participation with everyone we held the *correrías*.... At each community

the lay members, such as the school teacher, would meet in the morning, then we would go to the river in the afternoon to relax, and in the evening we would meet with the Traditionals and Captains,” explained the Gaia lawyer who accompanied the full process.¹⁸³ So what mattered was less the number of participants and more the series of regular procedures that guaranteed that the decisions were made with ample community input.

The ultimate decision-making power, however, rested on the indigenous authorities, possessors of the traditional knowledge and invested with the role of healing and protecting the territory.¹⁸⁴ In the *resguardo*, “decisions are not made through voting, as the State thinks, the Western world. Here what prevails and who make decisions are the doctors; [they] are the ones that regulate our thinking [*el pensamiento*] since the beginning of the world,” explained Gerardo Macuna, indigenous leader and legal representative of ACIYA.¹⁸⁵ Hence, the indigenous leaders considered it important to have participatory spaces for the community to be informed, express their doubts, and to grasp the feeling of the communities, but the doctors (or shamans or Traditionals), as the highest political authorities, were in charge of making decisions in the face of any change or threat to the territory.¹⁸⁶

Accordingly, after the initial meetings with Gaia to explore legal alternatives, it was the traditional authorities, in their three-day congress in February of 2008, who unanimously decided to request a national park. The decision was reaffirmed at the extraordinary congress after the socialization process and during the prior consultation procedure. Likewise, the decision-making

¹⁸³ Interview with Juan Carlos Preciado, February 2016.

¹⁸⁴ In the founding statutes of ACIYA, the member communities agreed that the decision-making organ would be the Traditional Authorities (Resolution 001 Constitution of ACIYA).

¹⁸⁵ Constitutional Court, Decision T-384A/2014, Section 3.2.9 “Gerardo Macuna.”

¹⁸⁶ Constitutional Court, Decision T-384A/2014, Section 3.2.9. “Gerardo Macuna.” Also mentioned in the interviews with Juan Carlos Preciado and Camilo Guio, February 2016.

structure explains why, at the same meeting, the five dissenting communities,¹⁸⁷ despite their objection to the park, indicated that they would abide by the decision of the traditional authorities. For example, the record of the congress's meeting reads that the Captain of Campo Alegre Community, "Reaffirms and endorses the decisions of the Traditionals even if he personally does not agree with the creation of the park. However, affirms he adopts the Traditionals' decision."¹⁸⁸

After the park was created, the plaintiff Perilla argued in his constitutional action that the participatory process had lacked representation because the issue had not been discussed with all communities, some captains had not been present during the last formalization phase, and both the government and the Traditionals of ACIYA had ignored the minority position of those communities that had expressed disapproval of the park. The claim puts a finger on the issue of *who* has a voice and *how* decisions are made.

Fully explaining the legal argumentation of the court exceeds the purpose of this chapter. Yet revisiting some of the court's arguments serves to illustrate how the participatory process of the Apaporis fulfilled the requisites of representative participation:

The process of dissemination and discussion carried out by the Ministry of the Interior and the National Parks Division had the participation of each of the representative authorities and inhabitants of the indigenous communities of the reserved area, and ...the proposal of creating a park was amply discussed and the doubts that the participant peoples had over the dominion of the territory addressed, because it was possible to explain extensively and specifically the consequences that this category of environmental management [i.e, the park] would generate Condemnable would have been if some communities would have been excluded, forced to attend or denied the right to express their opinion during the act, but none of that happened.¹⁸⁹

¹⁸⁷ Bocas del Taraira, Puerto Ñumi, Bocas de Uga, Puerto Curupira and Campo Alegre

¹⁸⁸ Luis Martínez, Captain of Campo Alegre Community in ACIYA (2008:3).

¹⁸⁹ Constitutional Court, Decision T-384A/2014.

Moreover, the court recognized that the decision-making strategy in the minds of the Traditionals was clear from the beginning (even before the specific prior consultation process began) and that it had been ratified multiple times throughout the participatory process.

3.4.2.3. Free Participation

One danger of participatory and discussion-based decision making is that some participants or external actors will use their power — including material resources, rhetorical capacities, or information asymmetries — to impose severe limitations on the process (Gaventa 1980; Fung and Wright 2003:18; 34). It may also occur that the participatory institution falls prey to interested parties (Fung and Wright 2003:33). For participation to be meaningful and transformative, parties must be able to freely deliberate and consent (Fromherz 2003:186). In this case, the mining company attempted to influence the peoples' decision through multiple means and at multiple stages, fettering free participation. Early in the process, in a letter to the Ministry of the Interior and the National Parks Division, the representatives of ACIYA denounced “the presence of the Canadian mining company Cosigo Resources offering money and projects that cause disorder in the Community and falsifying documents in the name of Captains and delegates.”¹⁹⁰ The company also thwarted the prior consultation process. For example, members of two communities announced that the company planned activities for the members of those municipalities at the very same time and day of the preconsultation meeting, so the community and in particular the captains, were in fact unable to attend the socialization (ACIYA 2011, Numeral 54).

¹⁹⁰ Also, in September 2008, per request of Cosigo a meeting took place in the offices of the National Parks Division with the participation of ACIYA, the National Parks Division, and two other associations of indigenous peoples of the Amazon (Acima and Acaipi), in which ACIYA complained because the mining company had entered the territory under its jurisdiction without the required permission, ignoring ACIYA's system of government).

Lastly, but more significantly, the company advised the dissident communities to file a legal action against the participatory process that led to the creating of the park. As explained above, the company could have opted for other strategies to bring down the park. Instead, it exploited the tensions that had been accumulating between the communities on the Amazonian side and on the side of Vaupes over the years to encourage the latter to file the action. Benigno Perilla was the ideal pawn. Twenty years earlier, he had lost the legal case that Rendón, one of the traditional authorities, had filed with the help of Gaia against the governor of Vaupes for attempting to set up a fishing station at the sacred site of Yuisi. The person the governor had sent to set up the fishing unit was Perilla, who, as a result of the court's decision, was unable to pursue his profitable activity. Since that episode, he despised some of the traditional authorities and the Gaia Amazon Foundation.¹⁹¹

At the public hearing organized by the Constitutional Court in the jungle, the company's pressure on the community surfaced clearly. Perilla was the first person to speak. Standing before 100 people gathered at the *maloca*, he voluntarily confessed that, throughout the creation of the park and afterwards, the dissident communities had received "legal advice from the multinational company" to "knock down the park." "They accompanied us in writing all the legal documents." The company even took Canadian indigenous groups to the jungle to convince the locals about the benefits of having Cosigo in their territory and as a sign of "good faith" between the two countries (Correa 2014). However, Perilla highlighted that the interest of the plaintiff communities was to save the territory of the *resguardo* and explained that they had "parted ways" when the company asked them to sign documents secretly. "The company was always next to us, but certain elements of distrust emerged ... that are not part of the clear vision

¹⁹¹ Interview with Ramón Laborde, December 22, 2015.

that we want and for that reason, today, the lawyer who should have been assisting me is not here.”¹⁹² Toward the end of the session, and after listening to several traditional authorities, Justice Mendoza asked Perilla if, after everything he had heard, he still believed the process through which the park had been declared was not legal. Perilla recognized that there had been a misunderstanding and that it had been resolved thanks to the joint work between the communities and the National Parks Division. He again admitted having received resources to work and transportation from the company before filing the legal action. “We had not really understood the objectives of the company” and “we are aware that mining could cause the destruction of our territory.”¹⁹³

In sum, the proofs amassed throughout the process and at the public hearing revealed that the company had attempted to thwart the participatory process and that the legal action had not been undertaken freely. Meanwhile, the participation of the other communities was voluntary, followed traditional rules, was held in their different languages, and employed multiple participatory spaces to give the communities time to discuss and understand the implications of the park. Likewise, it enabled the traditional authorities to agree on certain conditions for the park and to confirm consent for those with the government authorities.

3.4.2.4. Binding Participation

In participatory institutions, the state can be a mere observer or a counterpart (Lemaitre 2016), depending on whether the participatory institution is consultative or binding — that is, on whether the decisions adopted are actually implemented (Baiocchi, Heller and Silva 2011). In the

¹⁹² Constitutional Court, Decision T-384A/2014.

¹⁹³ Audio recordings of the Public Hearing (January 31, 2014); Constitutional Court, Decision T-384A/2014.

case of Apaporis, prior consultation was binding given the international norms and the rich constitutional jurisprudence detailed above. Even if the executive has tried to weaken the force of prior consultation, the Constitutional Court's position has prevailed.

For these reasons, all parties involved in the process were aware that creating a national park over a *resguardo* required a proper prior consultation procedure, even if the petition had come from the indigenous peoples. Since the beginning, the documents of the National Parks Division mentioned the need to carry out a prior consultation process. Even when some government officials later in the process tried to avoid carrying out a prior consultation procedure (for them, the rest of the participatory process was enough, especially because the idea of a park had come from the indigenous groups themselves), the Ministry of the Interior, the National Parks Division, Gaia, and the indigenous groups themselves eventually acknowledged that it was indispensable.¹⁹⁴ Without it, the park would have been easily struck down. Indeed, the company's strategy to bring down the park consisted in arguing that the prior consultation procedure was flawed. Ultimately, the park's legitimacy depended on the participatory institution, but it did so because of the binding nature of the process, granted by international and national law, and the enforceability exerted by the court. A binding participatory institution effectively constitutes a "bargaining chip that a community may use to recalibrate the balance of power" (Fromherz 2003:181).

In sum, when participation manages to overcome its pitfalls, it can lead to transformative outcomes, including environmental protection.

¹⁹⁴ Interview with Camilo Guio, National Parks Division. February 2016.

3.5. Is the Argument Generalizable? Prior Consultation as a Tool for Environmental Protection

The question that remains is that of scope. Are participatory institutions always capable of overcoming the consequences of the common problem of the commons and protecting the environment? Was the case of Apaporis unique? Answering these questions requires ample empirical research. However, this section explores the generalizability of the argument by examining a case other than Apaporis Park. I consider a negative case in Colombia where the absence of prior consultation facilitated environmental destruction: the case of Puerto Brisa (Port Brisa), a coal terminal located on the Colombian Caribbean coast, partly on the ancestral lands of four indigenous groups, where the absence of prior consultation permitted the project to be carried out without consideration of the environmental and cultural richness of the area, producing damage on both fronts.

3.5.1. The Puerto Brisa Coal Terminal

The Puerto Brisa coal terminal is a multipurpose port in the municipality of Dibulla, in La Guajira state on Colombia's Caribbean coast, which began operations in 2014.¹⁹⁵ Swiss-based Glencore owns the majority of shares in the port, which required an initial investment of US\$90.91 million. It is strategically located between the Panama Canal and Colombia's most important coalfields. Colombia is among the top 10 coal producers worldwide. Puerto Brisa is designed to receive bulk cargo, container, oil, coal, and other minerals. It covers 1,200 hectares,

¹⁹⁵ La Guajira is one of the poorest states in the country (GDP per capita is nearly half the national GDP per capita), with some of the lowest socioeconomic indicators (UNDP and ANH 2014). More than half of La Guajira's GDP comes from mining activities, in particular coal mining (UNDP and ANH 2014). Dibulla municipality has approximately 33,000 inhabitants, the majority of whom live in rural areas (DANE 2005a). It has a large indigenous population (25% of the population), and 13% of the population is black (DANE 2005b).

including a 350-hectare duty-free industrial zone (Port Technology 2011). The port has a loading capacity of 5,000 tons of coal per hour and a 66-foot deep harbor (*El Tiempo* 2014).¹⁹⁶

The area in which Puerto Brisa is located has tremendous ecological diversity and importance to the region (Losada 2012). Additionally, it forms part of the ancestral lands of the indigenous peoples of the Sierra Nevada de Santa Marta, including the Kankuamo, Kogui, Wiwa, and Arhuaco peoples. A hill in that area, the *Cerro Jukulwa*, is sacred to the four indigenous peoples in the area and is used for *pagamento* ceremonies¹⁹⁷ (Constitutional Court, Decision T-547 of 2010). However, as in the case of the Amazon, the subsoil wealth belongs to the state, which can grant concessions to extract minerals or build infrastructure necessary for such extraction, affecting conservation and governance of the common-pool resources on the land.

3.5.2. The Environmental Licensing of Puerto Brisa

In November 2001, the corporation Brisa S.A. requested an environmental license to construct and operate the multiuse port in Dibulla municipality. Brisa S.A.'s request for the environmental license included documents from the Ministry of Interior, which certified that there were no indigenous communities in the area of the project and that the project area did not include sacred areas, although it was located close to La Sierra Nevada de Santa Marta, widely known as the home of four of Colombia's indigenous groups. Brisa S.A. considered that these

¹⁹⁶ Future phases of the project include the construction of a railway to connect the port to interior coal mines, increased port processing capacity, and five additional piers (Port Technology 2011).

¹⁹⁷ *Pagamento* ceremonies refer to ceremonies indigenous communities in the Sierra Nevada de Santa Marta hold to repay nature for the benefits they have received.

documents meant that there was no need to conduct prior consultations with local indigenous communities in the area (Constitutional Court, Decision T-547 of 2010).

In 2003, at the request of the Ministry of Environment, the Alexander von Humboldt Biological Resources Research Institute determined that the Brisa port was not environmentally viable. An additional 10 institutes sent similar determinations, urging the ministry not to grant an environmental license to the Brisa port project, due to its potentially serious environmental consequences (Losada 2012).

The Directorate of Ethnicities in the Ministry of Interior ratified the claim that there were no indigenous people within the project area in a document sent to the Ministry of Environment in August 2004 (Constitutional Court, Decision T-547 of 2010). The following year, it reiterated this opinion. However, in 2006, the Ministry of Environment determined that Brisa S.A. should carry out a prior consultation process regarding the construction process because the communities' cultural and spiritual activities would be affected by the project (Constitutional Court, Decision T-547 of 2010). Brisa S.A. challenged this decision. In response, the ministry determined that, since there were neither indigenous peoples living within the area of the project nor any sacred places, the company should hold a "dialogue process" rather than a prior consultation process with the communities in order to ensure they were able to continue their traditional cultural practices in the area (Constitutional Court, Decision T-547 of 2010). Despite the environmental concerns and the concerns of the indigenous people within the zone of influence of the project, on June 30, 2006, the Ministry of Environment granted the environmental license to Brisa S.A. for the Puerto Brisa project upon the condition that the company undertake the aforementioned dialogue process with indigenous peoples (Constitutional Court, Decision T-547 of 2010).

3.5.3. Lack of Prior Consultation

The project carried on without the dialogue process or the proper prior consultation process. The Ministry of Environment undertook an inspection visit of the project site during September 2006 and issued a technical concept paper noting that construction of the project had begun without the dialogue process (Constitutional Court, Decision T-547 of 2010). Thus, the following month, the Ministry of Environment ordered that Brisa S.A. immediately suspend activities related to the construction of Puerto Brisa (Constitutional Court, Decision T-547 of 2010). In March 2007, the Directorate of Ethnicities informed the Ministry of Environment that the indigenous communities refused to participate in the dialogue meetings. Therefore, the directorate declared the dialogue process to be concluded (Constitutional Court, Decision T-547 of 2010).

However, some meetings were held in 2007 and early 2008. In all, the Kankuamo, Kogui, Wiwa, and Arhuacos of the Sierra reiterated that they were opposed to the port project. The indigenous peoples resisted the project not only due to the cultural and spiritual effects it would have on them, but also because of serious environmental consequences that they considered would be disastrous for the region (Constitutional Court, Decision T-547 of 2010). The indigenous leaders also argued that the meetings were confusing and their invitations were late and restrictive. In any event, in March 2008, the Ministry of Interior certified the implementation of the prior consultation (which had not been held either as a dialogue or as a consultation) and

lifted the suspension of the works that the Ministry of Environment had decreed two years earlier (Constitutional Court, Decision T-547 of 2010).¹⁹⁸

In 2010, after construction on the port had been underway for nearly two years, the indigenous communities sued the Ministry of Interior for the lack of prior consultation regarding the Puerto Brisas project (Rico 2009). In July 2010, the Constitutional Court recognized that the indigenous peoples' right to prior consultation had been violated. The court ordered the Ministry of Environment, with the participation of the Ministry of Interior and Brisa S.A., to carry out a prior consultation process with indigenous authorities in order to establish the effects that the project would cause on the cultural, social, and economic integrity of the communities and to determine mitigation measures to address those effects. The court could not order prior consultation regarding the project itself, as it was nearly completed by the time the court ordered its suspension. The court ordered the suspension of activities related to the construction of the port until further notice (Becerra 2012). In early 2011, the court ordered the suspension extended. On March 2011, during a visit to the project site, the court determined that the construction of the port was practically completed and that the construction had destroyed the sacred Jukulwa hill (Becerra 2012).

As a result of the court decision, consultations were held with indigenous communities from April to November 2011 to identify the aforementioned effects and determine mitigation measures to address them (Becerra 2012). In November 2011, the government lifted the suspension, and construction of the port continued. It was completed and inaugurated in 2014 (*El Tiempo* 2014); the order for the prior consultation process had come too late. In addition to the destruction of the sacred site, environmental damage was palpable.

¹⁹⁸ In April 2008, the Ministry of Environment lifted the suspension that had been in place since October 2006.

3.5.4. Environmental Impacts of Puerto Brisa

Puerto Brisa S.A. is located in the watershed of three rivers. A system of wetlands connects these rivers when the tide rises, forming a large basin, which is vital to the migration of animals, the flow of nutrients, and the ability of fish to eat and reproduce (Losada 2012). The ecosystems in this area are unique in the country and in the world: the mangroves and marshes, which are home to endangered species including the American crocodile, are also where migratory birds reproduce. Its marine fauna is equally diverse, as more than eight rivers cross the area (Losada 2012).

Both before and after construction on Puerto Brisa commenced, environmentalists, biologists, marine biologists, botanists, ornithologists, and other scientists warned that the project constituted a direct threat to the survival of the marine and land ecosystems in the area, including their flora and fauna, as well as to the environmental services that these ecosystems provide to the region and country (Gutiérrez et al. 2012:3). Additionally, they noted that the changes caused by the port construction to the marine ecosystems would be irreversible (Jáuregui 2012:3–4).

The area most affected by the port construction was the shallow platform where dredging for the access channel and dock took place, and which covered eight million square meters during the port's first year of operation and will cover 160 thousand square meters annually during the rest of the port's operations (Jáuregui 2012:2). Clearing the marine floor during the dredging process increased the turbidity of the water and caused abnormal sedimentation. The increase in suspended particulates significantly reduces the capacity of corals and marine algae to photosynthesize and the capacity of fish for gaseous exchange through their gills (Jáuregui

2012:3). According to the company's environmental impact assessment, the dredging also releases heavy metals, including mercury, lead, and arsenic, into the marine ecosystem, which accumulate in fish and other marine life (PESCODI et al. 2012).

As early as 2012, the company began to drain the swamps and mangroves by artificially increasing their outlets to the oceans and filling coastal lagoons with sediment from the sacred Jukulwa hill. During the first four months of 2012, when the Brisas project resumed, local fishermen found dead sea life, including 10 dolphins, a marlin, catfish, groupers, and a sea turtle (PESCODI et al. 2012).

Prior to the construction of the port, the ecosystems that remained in the area were seriously threatened, which made ecological changes to the area even more harmful. The disturbance and imbalance of the mangroves impacts each of the individual ecosystems as well as the general functioning of the complex system they form (Jáuregui 2012:5), and the destruction of the mangroves and swamps threatens area birds (Jáuregui 2012:6). The port and duty-free zone affect both the swamp and the mangroves and may make this area inhospitable for these species as well as for mammals, including squirrels, jaguars, and capybaras (Jáuregui 2012:8).

In sum, the case of Puerto Brisa contributes to show that, in those cases where prior consultation is not carried out properly and in a timely fashion, the risks of environmental degradation increase. The existence of ancestral lands and collective ownership of some of the neighboring lands was insufficient for the indigenous peoples of the Sierra to protect their sacred site and ecologically rich area. However, because prior consultation was carried out once the project was already underway, notwithstanding ILO Convention 169, its potential to solve the common problem of the commons could not play out.

3.6. Conclusions

In this chapter, I applied an institutional analysis framework to the study of disputes over indigenous territories and development projects in the Amazon, and in doing so, identified what I have called the *common problem of the commons*, which commons theorists and scholars of property rights have overlooked. This problem emerges from the overlapping property rights regimes in which owners of the land are not the owners of the mineral rights. As a result, CPRs face a constant external threat from the fact that the state can grant exploration concessions that will affect the CPRs on the soil, regardless of the strength of their property rights regime or polycentric systems. Common-pool scholarship has rightly noted that, without institutional arrangements that address excludability and subtractability of CPRs and take into consideration other factors like the characteristics of the resource or the users, common-pool resources are essentially open-access resources available to anyone: very difficult to protect and very easy to deplete (McKean 2000). Yet these scholars have focused on understanding how best to limit direct use and harvesting of the CPRs without paying attention to the threat that comes from the extraction of other resources beneath them. Since almost all environmental resources are CPRs, the common problem of the commons, its consequences, and its potential solutions should be issues at the center of contemporary scholarship.

Bearing this in mind, in this chapter I have drawn on an in-depth case study to illustrate an example of the common problem of the commons and reveal a way in which communities have attempted to overcome or mitigate its consequences. To illustrate the common problem of the commons, I reconstructed the process through which *resguardos* were created and gradually transformed as a result of institutional drift, conversion, and layering. I argue that the creation

process was a process of institutional creation from above that benefitted marginalized populations because the actors at the time were unaware of the full distributional consequences of the institution. Regarding the threat to CPRs, I show that, through the participatory institution of prior consultation, indigenous communities were able to gain decision-making power over the subsoil and align this with their conservation strategies on the topsoil. To be sure, those on the land may be interested in extracting resources and thus facilitate the threat to the commons. But in those cases in which they are not and in which the existing subsoil property regime prevents owners of the land from controlling the use of the minerals, participatory institutions can be a tool to overcome the problems caused by the common problem of the commons.

The story presented here could be thought of as the coming together of two institutions — the collective property institution of the *resguardo* and the participatory institution of prior consultation — to create a new institutional arrangement — the national park — to deal with the common problem of the commons and its consequences. As a result, indigenous peoples on the border between Colombia and Brazil managed to prevent large-scale open-pit mining from taking place within their ancestral lands, contributing to environmental conservation in the Amazon region.

Chapter 4. Beyond Environmental Democracy: The Material, Symbolic, Direct, and Indirect Effects of Participatory Institutions

This dissertation explores the role of institutions of political participation and argues that such institutions are instrumental for environmental protection. But, beyond enhancing environmental democracy –that is, guaranteeing more citizen participation in environmental decisions—what are the effects of activating these participatory institutions? How and why does citizen participation lead to environmental protection? Ultimately, what difference does participation make in protecting the environment? This chapter addresses these questions by analyzing the impacts of the two participatory institutions –popular consultation and prior consultation- that are the focus of this dissertation. I argue that implementing these two institutions has led to six progressive effects, which go beyond the baseline effect of enhancing environmental democracy and directly and indirectly, materially and symbolically, enhance environmental protection.

To respond to these questions, this chapter begins by mapping out the debate regarding the impact of participatory institutions which, as I briefly introduced in the first chapter, is divided and on the whole skeptical regarding the transformative potential of participatory institutions. I argue that this disagreement and hopelessness result from the absence of an analytic framework through which to systematically study the consequences of such institutions. To overcome this analytic weakness, this chapter draws on constructivist literature on courts and social transformation (notably McCann 1994; Rodríguez-Garavito and Rodríguez-Franco 2015) which, driven by the same overarching question at the center of this chapter –namely, how do institutions lead to social change? has developed a useful conceptual and methodological framework to explore the impact of law and judicial decisions. This framework is presented in

section 2 of this chapter. Using this framework to analyze the impact of popular consultations and prior consultation, I find that these institutions have produced six effects (presented in section 3) that contribute to greater environmental conservation, which surpass some of the directly sought and anticipated results. In the fourth section I present shortcomings of both institutions. The final section offers some conclusions that situate these findings within the broader literature of participatory democracy.

As presented in Chapter 1, for the purposes of this dissertation, by institutions of participation I refer to both the formal structure of the institution as well as how it is implemented (Streeck and Thelen 2005). However, to study the effects of these institutions, this chapter focuses on the implementation aspect.

4.1. The Potential and Pitfalls of Participatory Institutions

Sociological and political science literature on participatory democracy is divided regarding its power to generate effective and transformative effects. On the one hand, scholars like Bourdieu (1991), Sanders (1997), and Selznick (1949) consider deliberation an empty promise. The first and most persistent critique these authors level at participatory institutions is that they reproduce existing power relations and their ensuing inequalities. Thus, while these institutions intend to broaden participation, principally by including those who are often excluded and marginalized from decision making spaces, ultimately those with power may continue to dominate within such institutions, either because the institutions do not effectively incorporate ordinary citizens into deliberative spaces or because all participants are not equally prepared among themselves to do so (Abers 2003; Gaventa 1980; Lukes 2005). The latter is a

result in part of what Bourdieu (1991) calls the illusion of “linguistic communism,” or the belief that everyone is equally prepared and has equal access to language and rhetorical resources. As a result, contrary to their purpose, these institutions become yet another tool of the powerful to dominate the powerless. Second, and on a related point, participatory venues may fall prey to rent seeking and capture because of power relations and a lack of transparency and accountability measures (Fung and Wright 2003:36). Third, the same powerful participants may engage in “forum shopping” and only utilize the participatory institution when it suits them (Fung and Wright 2003:53). Therefore, in practice, not everyone has equal access to the same participatory institutions. Fourth, getting these participatory institutions off the ground requires resources (economic, political, and cultural). The costs of activating these institutions, the time commitments they often require, and the absence of counter-vailing forces that can help overcome entrance barriers may constitute obstacles to participatory democracy. A fifth commonly cited critique is that institutions of direct citizen participation are not empowering to the participants when the state initiates them (Abers 2003:200). Lastly, scholars argue that mechanisms of direct democracy circumvent the decision-making power of elected officials and institutions of representative democracy (see Altman 2010 for a summary of the argument).

By contrast, on the other hand, other scholars including Altman (2010), Abers (2003), Baiocchi, Heller and Silva (2011), and Fung and Wright (2003), acknowledge such criticisms of participatory governance models, but are more optimistic regarding the power of these institutions. The most important of these potential effects can be divided into five categories. First, they neutralize power. By establishing new channels for those most affected by certain problems or policies to share their knowledge and opinions on the topic, participatory institutions give the least powerful and traditionally excluded in a society a voice and the possibility to

influence decision-making processes (Cohen and Rogers 2003:242). Second, these participatory institutions serve as “schools of democracy” (Baiocchi 2001). Engaging in participatory processes increases the knowledge and skills related to participation, the deliberative capacities, and the disposition of those involved to participate in decision-making and be active citizens. Thus, as Mills argues, “the quality of citizens” improves (Mills 1958 in Fung and Wright 2003:27). Taking part in participatory processes also increases participants’ capacities in terms of creating networks and alliances with other individuals and organizations involved with similar issues. A third potentiality of participation is the improvement of the quality and legitimacy of the eventual decision. Quality improves as the knowledge, values, interests, and concerns of those interested or most affected by the decision are incorporated into the procedure or decision, and as the process serves to clarify the nature of the problem, identify alternatives, and gather relevant information (Dietz and Stern 2008:2). Interested and affected parties may consider the process to be fairer since they were involved, which in turn increases the legitimacy of the process and decision. A fourth potential of participatory processes is that they improve equity, given the tendency of these processes to respond to problems of disadvantaged groups, regardless of whether citizens or governments activate the participatory institutions (Fung and Wright 2003: 26). Lastly, the participatory processes may make participants more aware of their own preferences and interests as well as those of others (Mansbridge 2003:179).

As this review has shown, literature on the potentials and pitfalls of participatory institutions is split. While inconclusive, in general the literature tends to be pessimistic (Abers 2003:200). As explained in the introductory chapter, the case study literature on public participation in environmental affairs reinforces this negative outlook, even when environmental

scholars defend participatory decision-making at a normative level (see Simmons 2007 for a summary). I argue that the main limitation to identifying positive outcomes is that at the time of evaluating the impact of participatory institutions, scholars lack a systematic analytic model and focus almost exclusively on the procedural design of the process or the participants (that is, for example, on the actual process of participatory budgeting, of saving species, or of environmental impact assessments, and the individuals that take an active part in those processes), and on the desired target (that is, a more balanced and socially-oriented budget, saving an endangered species or improving the environmental impact assessment of a plan). For example, studies on public participation in environmental impact assessments conclude that it “builds capacity of all *involved*” (Dietz and Stern 2008: 2, emphasis added). Yet, as the quote reveals, studies seldom look beyond those that directly participated in the process but who are affected by the decision, or beyond the specific decision involved in the process itself.

Another reason why studies tend to be pessimistic about the potential of participatory democracy is because isolating impact is notoriously difficult. As Fung and Wright (2003) have noted, part of the problem with identifying the positive impacts of participatory democracy is that in empirical studies “it has been difficult to isolate the impact of participation and to determine how and why participation makes a difference.” Specifically in the case of environmental outcomes, Deitz and Stern (2008: 67) argue that “because so many factors influence environmental conditions and other impacts, it is usually very difficult to attribute ultimate impacts to causes in a public participation process.”

Against this division and mostly pessimistic outlook, as well as the difficulty in tracing effects, this chapter attempts to overcome the limitations of more traditional methods of identifying impact by exploring the effects of participatory institutions using a broader lens. To

do so, I consider the literature on participatory democracy outlined above, together with the sociolegal literature on courts and social impact (Feeley and Rubin 1998; McCann 1994; Rodríguez-Garavito and Rodríguez-Franco 2015; Rosenberg 1991).

4.2. Broadening the Lens: Direct, Indirect, Material, and Symbolic Effects of Participatory Institutions

The literature on judicial impact can be classified into two groups, depending on their approach to law and the types of effects they analyze.¹⁹⁹ On the one hand, scholars who adopt a neorealist perspective of the law and consider it to be a set of norms that structures human behaviors, tend to apply an overly strict causality test to measure the impact of judicial decisions. According to this perspective, a decision is effective if and only if it produces a change in the behavior of the people or institutions it targets – that is, if it produces direct and material effects (McCann 1994: 290; Rodríguez-Garavito and Rodríguez-Franco 2015:18). The most famous work of this group is Rosenberg’s (1991) study on the impact of the U.S. Supreme Court’s decision in *Brown vs. Board of Education* that ordered the desegregation of public schools. As the title of his book (*The Hollow Hope*) suggests, Rosenberg concluded that the decision had a minimal effect on ending racial discrimination, and hence concluded that courts are a “hollow hope” in the struggle to produce social change.

On the other hand, scholars from the constructivist legal tradition consider evaluating the impact of judicial decisions solely on their direct and material effects to be too narrow an approach. Judicial decisions and the law more generally can also produce impacts by provoking

¹⁹⁹ The first part of this section is based on Rodríguez-Garavito and Rodríguez-Franco (2015: 17-20).

changes in actors not directly involved in a given case or in the specific policies addressed in a decision. Often these are indirect changes in social relationships or perceptions. According to these scholars, “law and judicial decisions generate social change not only when they induce changes in the conduct of the groups and individuals directly involved in the case, but also when they produce indirect transformations in social relations or when they alter social actors’ perceptions and legitimize the litigants worldview” (Rodríguez-Garavito and Rodríguez-Franco 2015:18). The most famous work in this approach is McCann’s (1994) study on wage equality in the United States. In a direct response to Rosenberg (1991), McCann finds that judicial decisions may have more impacts than the direct effects neorealists recognize.

These two positions have methodological implications. The neorealist tends to use quantitative techniques (e.g., analysis of economic or social indicators) to measure the direct, palpable effects of decisions. For example, neorealists would look at the number of students enrolled in college after a judicial decision mandating free college education. The constructivist approach, by contrast, expands the research methods used to include qualitative techniques (i.e., structured interviews or content analysis) to capture the indirect and symbolic effects of a decision, such as the impact of a decision on the general population’s perception of the problem. For example, a constructivist scholar would consider a transformation in the way the media or the government officials talk about mandatory free college or how these actors view the relationship between free college and social problems like delinquency.

The intersection of these two perspectives produces a two dimensional analytic model, which yields four types of effects to study the impact of judicial decisions (Rodríguez-Garavito and Rodríguez-Franco 2015). Adapting this typology to the general analysis of the potential

impacts of participatory institutions in environmental decisions, this chapter's objective, yields Table 4.1 (below).

On the horizontal axis we view the direct and indirect effects. Direct effects are those that the participants in the institutions specifically sought and derive directly from the question submitted to popular consultation, the policy or measure for which the prior consultation was held, or from any other participatory process, such as participatory environmental impact assessments. Indirect effects encompass all the consequences of the implementation of the participatory institution that the participants did not specifically seek or that the question or issue of the process did not address. Thus, indirect effects may affect not only the parties that participate in the mechanism or the direct recipients of the decision, but other social actors as well. Although they do not employ those terms, indirect effects are consistent with Fung and Wright (2003)'s hypothesis according to which "these experiments [of empowered participatory governance] produce public goods that benefit even those who choose not to participate directly" (Fung and Wright 2003: 36).

Direct and indirect effects can in turn be classified as either material or symbolic, as the vertical axis indicates (García Villegas 2014). Material effects refer to the tangible effects on the conduct of individuals, groups, or the state. Symbolic effects include changes in perceptions and ideas. They may involve cultural or ideological transformations with respect to the issues discussed in or related to the participatory institution (Swidler 1986).

Table 4.1. Types of Effects of Participatory Institutions and Examples

	Direct	Indirect
Material	Adoption of a policy that was the objective of the prior consultation or the ballot in the popular consultation, or any other participatory institution.	An increase in the use of the institution of popular consultations beyond the first case.
Symbolic	Definition and perception of open-pit mining as an environmental threat.	Change in the way a group of actors beyond those directly involved in the popular consultation or prior consultation, like the media or the courts, perceive the issue of local governments and citizen participation in decision-making over mining

Source: Adapted from Rodríguez-Garavito and Rodríguez-Franco (2015)

Table 4.1 illustrates this typology and an example of the four types of effects. A direct material effect of a participatory institution on environmental matters is the adoption of a policy that was the object of the prior consultation process, the ballot in the popular consultation, or any other participatory venue in which environmental decisions are discussed. An indirect material effect is an increase in the use of the specific participatory institution beyond the first case or the formation of activist coalitions to defend the environmental issue at stake. A direct symbolic effect is a change in participants' perception of the issue, for example a change in the perceptions of open pit mining from a necessary endeavor for development to an environmental threat to water sources and traditional livelihoods. Lastly, an indirect symbolic effect is the transformation in the way different actors other than the participants or those directly involved, such as courts, the government, and the media perceive the role of citizen participation, the richness of the Amazon, or the urgency of addressing either of those problems.

Clearly, using a neorealist perspective one would conclude that participatory institutions have little impact, because one would tend to focus exclusively on the direct material effects, overlooking the other possible effects of these institutions. However, if we seriously consider the constructivist approach, the possible array of impacts expands to encompass other important outcomes of these institutions, as we shall see when we apply this typology to the two case studies analyzed in this dissertation.

In addition to enabling us to become more perceptive about the possible array of impacts, adopting this theoretical framework has two conceptual and methodological advantages to analyzing impact. First, it captures the idea that these effects are continuous. An immediate direct effect can in turn produce an indirect effect. Or certain effects may have components of both material and symbolic effects, or both direct and indirect effects. For this reason, many effects may not fit neatly into one quadrant, but rather, move along the typology or straddle the boundaries between quadrants (see Figure 4.1. below). The second advantage is that the framework allows us to incorporate the temporality of the effects and perceive both rapid and gradual change. Not all changes institutions produce are abrupt, wholesale transformations, for instance as a result of “critical junctures” (Capoccia and Kelemen 2007) or exogenous shocks (Sewell 1992; see Clemens and Cook 1999 for a review). Rather, a considerable body of literature suggests that significant changes often occur gradually and subtly over time (Mahoney and Thelen 2010). The same occurs with the effects of participatory institutions.

Figure 4.1. presented below allows us to simultaneously analyze those that are gradual effects and abrupt effects. The speed of change, however, may vary between cases and institutions. While a direct, material effect, for example, may be an almost immediate result in one context, it may be a more gradual process in another. A set speed is thus not constitutive of

the type of effect. Being aware of the temporality of the effects is important, because if one focuses on the rapid, radical consequences alone, one can easily overlook other subtler, gradual effects of an institution that unravel over time.

4.3. The Impact of Popular Consultations and Prior Consultations

What has been the impact of the two cases of participatory institutions analyzed in this dissertation –the popular consultation over open-pit mining and the prior consultation for the creation of a national park that could ban mining? Why does activating these institutions matter for environmental conservation? Using the aforementioned typology, and based on over two years of fieldwork that included interviews with key actors, participant observation in other popular consultations, newspaper analysis, and analysis of primary documents, I argue that these two institutions produced six main effects, organized in Figure 4.1, which directly and indirectly enhance environmental protection. I define these six effects as (1) the deterrent effect, (2) community empowerment, (3) leveling effect, (4) state building, (5) awareness, and (6) the creation effect. All six effects resulted in both cases, although any given effect may be more salient in one case than in the other. For analytical purposes, it is elucidating to present the effects of both cases jointly in order to illustrate how different types of participatory institutions can cause similar transformative effects. Some of the effects I identified corroborate those participatory democracy scholars often mention, as discussed earlier in this chapter.

Figure 4.1. The Effects of Popular and Prior Consultations Across the Direct-Indirect, Material-Symbolic Typology

	Direct	Indirect
Material	Deterrent	Community empowerment
	Leveling	State-building
Symbolic	Awareness	Creation

The following section describes each of the effects identified in the table.

4.3.1. The Deterrent Effect

The deterrent effect refers to the potential of participatory institutions to block the direct environmental threat that motivated the use of the institution. The most palpable and directly traceable effect of the popular consultation in the case of Piedras and of the prior consultation in the case of Apaporis is that they stopped open pit mining from taking place in both territories. In both cases, the purpose of the popular consultation and of the prior consultation was to ban open-pit gold mining or its related activities from their territory. By voting against mining activities in their territory and holding a prior consultation process to create a national park, respectively, both communities managed to frustrate the mining plans. In short, in both cases the communities' specific goal was achieved as an immediate result of the participatory process. Hence, in terms of the proposed typology, this effect may be classified as a direct, material effect of the institutions.

In Doima, a small town in the Piedras municipality in the Colombian Andes, the South African transnational AngloGold Ashanti planned to build a tailings dam for *La Colosa*, one of

the largest open-pit gold mining projects in the world, to be located 90km from Piedras. A tailings dam is a dam built to store the byproducts mining operations generate when separating the gold from the rock. The citizens of Piedras, a non-indigenous rice-growing *campesino* community, put environmentally contaminating projects related to mining to a vote through a popular consultation held in July 2013.²⁰⁰ Of Piedra's 5,105 eligible voters, 3,007 voted, of which 2,971 (99 percent) voted "no" to permitting mining activities on their land, while only 24 individuals voted in favor of such activities.

Colombian law (Law 134 of 1994, art. 8) provides that the results of popular consultations are legally binding, provided that one third of eligible voters participate and the result wins by a simple majority. To preserve the "chain of sovereignty," that is, the degree to which the system of representation effectively translates inputs into outputs (Baiocchi, Heller and Silva 2011), the law requires the municipal council or the mayor to translate the result of the consultation into an official decision through a municipal agreement. The municipal council of Piedras adopted such an agreement a month after the vote.²⁰¹

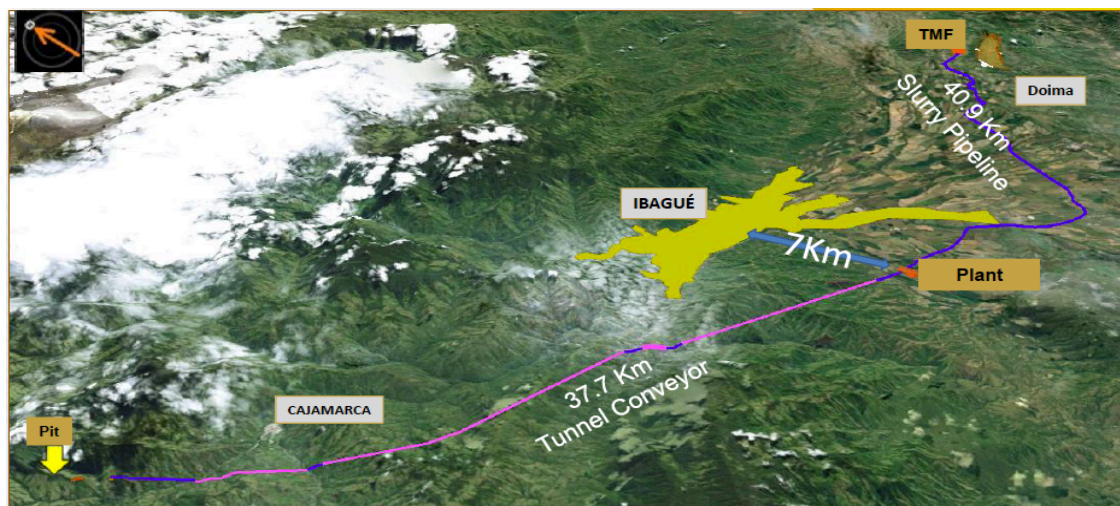
Thus, in the case of Piedras, the popular consultation managed to derail the tailings dam project. In December 2014, AngloGold Ashanti presented a new design for the project before the Municipal Council of the city of Ibagué (the capital city of the state of Tolima where the mine would be located). While in the original design the open-pit would be located in the municipality of Cajamarca and the tailings dam in Doima (Figure 4.2), following the vote, the company concentrated the entire project, including the tailings dam, in Cajamarca. Doima was excluded

²⁰⁰ The question of the popular consultation did not refer specifically to the AngloGold project but was framed in a general manner, with the effect that it bans mining activities related to AngloGold as well as similar future initiatives.

²⁰¹ Municipal Council of Piedras, Agreement 011 of 2013, August 28, 2013. "Through which the measures to make effective the popular consultation carried out in the municipality of Piedras on the 28th of July 2013 are adopted."

from the project. Hence, Doima's rice fields and water-rich lands were free of the AngloGold Ashanti tailings dam and protected from future mining initiatives.

Figure 4.2. Infrastructure Project of La Colosa (planned for the year 2012)



Source: AngloGold Ashanti. 2013. "La Colosa – una oportunidad de oro para el Tolima" (La Colosa – A Golden Opportunity). PowerPoint presentation. July 10, 2013. Slide 14/54. TMF stands for Tailings Management Facility.

Participation also generated deterrent effects in the case of Apaporis. The prior consultation procedure legitimized the creation of the national park layered over the *resguardo* territory. As explained in detail in the previous chapter, without an adequate prior consultation process, the creation of the park could have been nullified. The collective right to prior consultation of indigenous peoples recognizes their right to be consulted about decisions that could potentially affect them, their rights, or their territory, such as the creation of a national park that would alter the management regime of the existing *resguardo*. This right is consecrated in ILO Convention 169 of 1989 (Article 6), which Colombia ratified through Law 21 of 1991, and which numerous Constitutional Court decisions have upheld.²⁰² Therefore, the government was

²⁰² See Chapter 3, Section 3.4.1. for examples of these decisions.

obligated to hold a consultation process prior to the creation of a national park that would affect a *resguardo*. But more importantly, even if it did not hold it (which has been the case in many projects), the indigenous groups could request one.

According to Colombian law and jurisprudence from the Constitutional Court, mining is prohibited in national parks. Moreover, national parks are created into perpetuity, which means they cannot be reduced or transformed to allow mining in the future. Surprisingly, however, the Colombian mining agency (INGEOMINAS) granted a mining concession within the Apaporis National park to the Canadian mining company Cosigo Resources two days after the park was formally created. Although the concession was manifestly illegal, the company resisted handing over the concession. And to protect their mining concession, the company, through a group of indigenous leaders who later confessed having received money, turned to the courts to strike down the park, arguing that the prior consultation had not been carried out properly.

After five years of litigation, the Constitutional Court ruled that the prior consultation process had been properly carried out and that any mining activity within the park would be illegal (Decision T-384A of 2014). Additionally, in November 2015, the Administrative Tribunal of the state of Cundinamarca voided the mining contract for illegality in response to an annulment action the National Mining Agency presented.²⁰³ Again, participation derailed an open-pit mining project in an area that covers one million hectares of the Amazon.

In both cases, the decision of the participatory process –the vote rejecting mining activities and the prior consultation process agreeing on the construction of a national park—yielded the concrete results citizens sought when activating the participatory institutions: no

²⁰³ Administrative Court of Cundinamarca, Section 3, Subsection A. Presiding Judge: Alfonso Sarmiento Castro. Reference: 25000233600020130182200. Plaintiff: National Mining Agency. Defendant: Andres Rendle (legal representative of Cosigo Resources).

tailings dam and no open pit gold mine. The decision of these participatory institutions translated into action, which is often the worry of scholars of participatory institutions (Fung and Wright 2003: 30).

A final, crucial question, however, is whether deterrence could have been achieved through other means. Social movements literature would indicate that the mining projects could have been derailed as a result of social mobilization against them (Bebbington and Humphreys 2008; Carruthers 2008; Hochstetler and Keck 2007) or pressure on the state from national or international NGOs (Keck and Sikkink 1998; Hochstetler 2002). However, in the case of popular consultation, a similar case in the town of Cajamarca (where the actual open pit mine would be located) indicates that social mobilization and NGO pressure were insufficient to prevent unpopular mining projects. As discussed in Chapter 2, in Cajamarca, citizens organized marches before and after the Piedras consultation to protest against the mine, opposition parties in Congress held public hearings in Cajamarca to highlight the risks of the mine, and both national and international NGOs tried to show the risks of an open pit mine in the area. However, neither the company nor the government has renounced the project in Cajamarca, as it did in Piedras. In fact, as explained above, after the Piedras vote, the company concentrated the entire project principally in the town of Cajamarca. The difference between Piedras and Cajamarca is that in the latter, the first attempt to hold a popular consultation failed at the municipal council level. Resistance to the mining project continued, but it was insufficient to deter it. Until now, the only decisive instrument against *La Colosa* mining project has been the popular consultation of Piedras. The power of the instrument is further evidenced by the fact that after the Piedras popular consultation, citizens of Cajamarca collected signatures to present a new popular

consultation by citizen initiative,²⁰⁴ which at the time of writing this chapter, the municipal council was discussing.

Likewise, in the case of Yaigojé, indigenous mobilization (Dove 2006) in the midst of the sparsely populated Amazon forest would not have been very disruptive, as explained in Chapter 3. Second, trusting the government to stop the project did not seem like an effective strategy, as evidenced by the mining agency's decision to grant a mining concession even after the national park was created, and which was revoked only after years of litigation. Lastly, and perhaps most importantly, prior consultation, in addition to a right of indigenous people, is a procedural requirement grounded in international law and national jurisprudence. Therefore, even if the National Parks division had been the entity to propose the creation of the park, its designation would have had to be consulted with indigenous people, lest a court strike its creation down for failing to undertake that step. Such a decision was a distinct possibility, given the precedent of court decisions in other cases involving environmental and administrative decisions.²⁰⁵

4.3.2. Community Empowerment Effect

A second effect of the participatory institutions analyzed here is that they enabled the participation not only of the citizens directly involved with the institutions (that is, the citizens eligible to vote in Piedras or the indigenous communities of the Apaporis), but also transformed the participatory capacity (that is, the knowledge and tools regarding participation) of actors beyond those specific geographical areas and issues, which is why this effect is categorized as

²⁰⁴ The major presented the Piedras consultation.

²⁰⁵ See Chapter 3, Section 3.4.1. for examples of these decisions.

indirect. I have denominated this effect “community empowerment,” which refers to “enabling people to take an active role in decisions affecting their lives” (Razzaque 2013:138).

In the cases under study, community empowerment occurred in two ways. First, Piedras and Apaporis expanded the democratic tool kit of citizens and communities beyond those areas, motivating citizen engagement in other parts of the country. These communities showed other citizens, organizations, municipalities, and indigenous groups that participatory institutions could serve as an additional tool to confront extractive industries or as a way to obtain a voice in decisions related to mining and oil extraction, decisions that the central government makes without citizen participation. As a result, the country witnessed a surge in the use of these institutions. Second, the processes stimulated the formation of new civil society coalitions and the emergence of new actors in the debates, both at the national and international level. These new actors and alliances gave more leverage to new and existing struggles on similar environmental and extractive industry issues. This section will consider these two aspects of community empowerment in detail.

4.3.2.1. Inspiring citizen engagement in other parts of the country

The surge in the use of these institutions was particularly salient with respect to popular consultations. The Piedras consultation was the first popular consultation to be held on mining issues in Colombia. Between 1991 and July 28, 2013, only 32 popular consultations had been held in the country, and none were related to mining.²⁰⁶ In the three years after Piedras, and despite strong political backlash from the national government, at least 12 municipalities have attempted, with varying degrees of success, to hold similar popular consultations against mining

²⁰⁶ See the National Registrar’s Office for a historic record of all popular consultations. Available at: http://www.registraduria.gov.co/-Consultas-Populares_2411-.html [last accessed August 10, 2010]

and oil extraction projects. Civil society organizations have undertaken most of these initiatives, while in some cases mayors have undertaken them directly.

Four months after Piedras, 96 percent of voters in the municipality of Tauramena, located in the oil-producing state of Casanare, said “no” to all oil activities in their territory. Aside from Piedras, Tauramena is the only other community that has managed to hold the popular consultation vote. In other cases, after the mayor has presented the popular consultation, other governmental actors have vetoed it at varying stages of the legal process, either at the municipal council, the Administrative Court, or the Conseil d’Etat. However, regardless of whether the actual popular consultation was held and citizens voted, simply attempting to activate the institution indicates a greater awareness of the existence and potential of this institution.

Motivated by the success of Tauramena, citizens of three other municipalities in the same region of Casanare (Aguazul, Monterrey, and Recetor) mobilized to pressure the mayors of their municipalities to call for popular consultations against oil extraction. Within the region of Tolima, three municipalities that would be affected by the AngloGold Ashanti project (Cajamarca, Espinal, and the capital city of Ibagué) also called for popular consultations. In two other states, Antioquia (municipality of Pueblorrico) and Quindio (municipality of Pijao), popular consultations were initiated regarding mining. Recently, after the central government announced its plan to carry out hydraulic fracturing, or fracking, in the northern area of the country, citizens and municipal council members of these different areas responded by stating they would carry out popular consultations on the issue of fracking. In sum, the Piedras consultation continues to be perceived as a success, serving as an institutional reference for other social movements and local governments that seek to guarantee citizen participation and avoid the environmental damages of mining or oil extraction.

The prior consultation case of Apaporis that led to the creation of a national park over an indigenous *resguardo* as a means to protect the territory from gold mining has also had a contagious effect on other indigenous communities facing similar issues. A clear example of this involves the four indigenous groups of la Sierra Nevada of Santa Marta, the world's highest coastal range: the Kogi, Kamkuano, Wiwa, and Arhuaco peoples, whose territory is threatened by mining. Although mining in the Sierra Nevada goes against the traditions of these indigenous communities, over the past decade, the government has awarded an alarmingly high number of mining titles within the area known to the indigenous people as the "Black Line," the spiritual limit of their territory.

The government has granted over 400 mining concessions in this area with no prior consultation with the indigenous groups. Inspired by the case of Apaporis, the Arhuaco and Kogi peoples approached the National Parks Division with a very similar proposal to the one implemented in the Amazon region: request a prior consultation to expand the *resguardos* and create a national park directly overlapping the *resguardos* as a means to protect an area the same size as the Apaporis (1 million hectares). In short "what we want is that everything that is *resguardo* to be covered with a park, and everything that is park, should also be a *resguardo*," explained Ramón Laborde, legal advisor to the Arhuaco and Kogi peoples.²⁰⁷ A letter directed to the Director of the National Parks Division makes explicit reference to three aspects of the Yaigojé case: first, to the court's decision that upheld the prior consultation process in the case of Yaigojé (Decision T-384A of 2015). Second, the indigenous representatives specifically asked for a "process of free, prior, and informed consent necessary to reach such purpose," like the one that took place in the Amazon. Lastly, the traditional authorities specifically requested, "we

²⁰⁷ Interview with Ramon Laborde, April 15, 2016.

would like to know first hand the bases, procedures, and actual development carried out in the National Park Yaigojé-Apaporis, as a pioneering experience in this type of alliance.²⁰⁸”

4.3.2.2. The emergence of new civil society coalitions and actors

The emergence of new civil society coalitions and actors at the national and international level in the two main debates involved in popular consultations regarding mining, has also led to community empowerment. These two debates include (1) the debate over extractive industries and environmental degradation, and (2) the level of local autonomy in decision-making regarding mining, that is, whether and how local governments and citizens should participate in decisions over extractive activities in their territory. The emergence of these new networks and actors helps transform and strengthen civil society capacities by expanding the venues in which these issues are discussed, the actors’ leverage points, the quality of and access to information, and knowledge of legal and political strategies.

With respect to popular consultations, three examples of the emergence of the new coalitions and actors may be identified. The first is involvement of existing research centers in the aforementioned debates. For example, in mid-2013, months after the referendum in Piedras, members of the social movement reached out to the Center for the Study of Law, Justice and Society (Dejusticia), a human rights think tank based in the capital city of Bogotá for legal support. Since then, Dejusticia has carried out research and advocacy work on public referenda. While public referenda are constitutionally guaranteed mechanisms, corporations and the

²⁰⁸ Letter directed to the Director General of the Colombian National Parks Division, Julia Miranda, signed by Governor of the Arhuaco people, the secretary general, and the territorial coordinator. Reference: Study the Expansion of the National Parks and Resguardos and Indigenous Ancestral Territories in the Black Line of the Sierra Nevada of Santa Marta. City and date: Valledupar, October 20, 2015.

national government have tried to delegitimize them, to the point of claiming they are illegal,²⁰⁹ in order to suppress community and local government participation in decisions related to resource extraction.

Accordingly, since the referendum in Piedras, Dejusticia has provided legal advice to the social movements and local governments of Tolima and other municipalities beyond the Tolima region, including Pijao, to help these organizations and governments respond to the multiple legal challenges AngloGold Ashanti and state officials have leveled. Likewise, Dejusticia has participated in public hearings before the Municipal Councils of towns and cities that have attempted to activate popular consultations (including Cajamarca, Ibagué, Pijao, and Saldaña), and in hearings in the National Congress regarding the legality and constitutionality of public referenda and the importance of permitting public participation in environmental decision-making more generally. Furthermore, Dejusticia has appeared in national and local media outlets, including *El Espectador* newspaper and *Semana* magazine, defending the importance and constitutional and legal basis for popular consultations.

The second example is that new social movement organizations formed as spin-offs of the Piedras and Ibagué environmental movement in other towns in the Tolima region that are also under the shadow of the AngloGold Ashanti project. For example, in the town of Saldaña, citizens organized an “Environmental Committee in Defense of Life” modeled after the same Committee in Piedras and Ibagué. These social movement organizations also pushed for the organization of popular consultations in their areas.

²⁰⁹ For example, Colombian President Juan Manuel Santos stated that popular consultations were “illegal.” See interview with *El Espectador* newspaper at: <http://www.elespectador.com/noticias/politica/se-puede-ganar-primera-vuelta-santos-articulo-465498>. Similarly, the Minister of Mining at the time also stated that they were illegal. See statement at: <http://www.elpais.com.co/elpais/colombia/noticias/consultas-contra-explotacion-minera-son-ilegales-ministro-minas>

A third example of the formation of new coalitions is the alliance formed between the human rights clinic at the University of Los Andes, Dejusticia, professors from the National University, professors from the University of Tolima, and a former public official from the Ministry of the Environment, to develop the phrasing of new referendum questions at the request of Tolima's Environmental Committee in Defense of Life and the Governor of Tolima. Based on the success of Piedras, the Governor of Tolima and social movements sought to hold popular consultations throughout the region. The group formed in November of 2013 and jointly worked to create the new ballot questions and the legal strategies to hold popular consultations in seven municipalities affected by the AngloGold project. The mayors of Saldaña, Cajamarca, Pijao, and Ibagué adopted the question that group crafted.

Several other examples of new coalitions exist at the local level. For example, a coalition of civil society organizations from Cajamarca, Ibagué, and Bogotá formed what they named the “Legal Roundtable of Cajamarca” to organize the popular consultation in Cajamarca and work as a support body to social movements in the area. Also, environmental think tanks organized online petitions defending the popular consultations from government attacks.²¹⁰

The popular consultation of Piedras also spurred international coalitions. For example, in part as a result of the Piedras case, the Gaia Foundation of London launched the “Yes-to-Life No-to-Mining” (YLNM) campaign in November of 2014.²¹¹ The campaign is inspired in letters that anthropologist Mariana Gomez, a rice grower from the Doima area who supported the *campesino* mobilization and was involved in the idea of the popular consultation, wrote to the

²¹⁰ See, for example, the following petition organized by Censat, a think tank that specializes in water: https://docs.google.com/forms/d/1bfempFIUSCeMHbIroYJS0-paUynlkau_TevTYRHibs/viewform

²¹¹ See the link to the international campaign at: <http://www.yestolifenotomining.org/story-solidarity/>

community of Balcome, U.K.²¹² To increase the visibility of the Piedras case and highlight the parallels with other struggles taking place worldwide against extractive industries, Gomez wrote a letter to the community of Balcome that was resisting extractive activities in their community, expressing solidarity with their cause and telling them about her struggle in Piedras. The community of Balcome responded to her letter. The exchange of these “solidarity letters” inspired the creation of the YLNM campaign. The story of the letters also inspired a film entitled “In Solidarity.”²¹³ Similarly, through the YLNM platform, communities from Ghana that have suffered the consequences of AngloGold Ashanti’s mining projects sent pictures to Piedras expressing their support. Additionally, internationally renowned Indian scientist and environmental activist, Vandana Shiva, expressed her solidarity and support with the people of Piedras. “To the community in Piedras, I want first of all express my solidarity to your struggle to defend your land and our life. Both life and freedom are based on self-organization (...)”²¹⁴

The question that lingers is whether such community empowerment could have been attained through other means, without the participatory institutions. The emergence of new civil society coalitions around environmental issues, new social movements, greater deployment of participatory institutions, and international support to the causes in principle could have occurred as environmental issues gained greater attention or through the use of social media, which allows citizens to learn about issues occurring and strategies employed to address them in other areas and facilitates involvement (Eltantawy and Wiest 2011). Community empowerment is certainly the result of a combination of factors. However, among these factors, in the cases under study, the role of popular consultations is conspicuous. Some coalitions, such as the aforementioned

²¹² See the link to the letter entitled at: <http://www.ejolt.org/2013/09/a-letter-from-colombia/> [last access August 1, 2016]

²¹³ The film is available at the YLNM website: <http://www.yestolifenotomining.org/somos-un-movimiento-en-expansion-diciendo-si-la-vida-la-mineria/> [last accessed August 20, 2016]

²¹⁴ Message videotaped by the director of the YLNM campaign in Premnagar, India, May 10, 2014. Available upon request.

ones between universities and research centers, formed specifically around the issue of the popular consultation, for example, to develop the ballot question for other local consultations. Likewise, the surge in interest regarding participatory institutions was not of all such institutions (e.g., plebiscite, referendum, impeachment procedure, etc.) but rather specifically of the popular consultations. In fact, in other countries such as Peru and Argentina, we see the same phenomenon. Since the expulsion of Manhattan Minerals from the region of Tambogrande, the Tambogrande consultation held in 2002 inspired other municipalities in Peru²¹⁵ to express their opposition to mining projects through popular consultations (Bebbington 2008; Boyd 2002; McGee 2009). Likewise, after the first popular consultation organized in Esquel, Argentina in 2003, three small neighboring cities also held public consultations and banned large-scale mining (McGee 2009:618). In 2012, the town of Loncopué held a binding popular consultation against open-pit mining (Aranda 2012). Svampa dubbed it “The Esquel Effect” (Svampa and Antonelli 2009). Thus, while community empowerment might be difficult to attribute to a single cause, the popular consultation was definitive in triggering the community empowerment effect.

4.3.3. The Leveling Effect

In the Global South, the field of extractive industries is very unbalanced, skewed towards corporations and the state, to the detriment of civil society, indigenous communities, and local governments. The central government makes decisions with little or no participation by local governments or potentially affected citizens (Bebbington 2012). Many countries currently lack

²¹⁵ Peru's second popular consultation on mining took place on September 16, 2007 in three neighboring districts (Ayabaca and Pacaipampa in the Ayabaca province and El Carmen de la Frontera in the Huancabamba province) near the Río Blanco project in northern Piura, the same state in which Tambogrande is located. The Río Blanco project was considered to have the potential to become the largest copper mining operation in Peru (Bebbington 2008; Peru Support Group 2007:32).

constitutional guarantees permitting citizens to challenge development projects or protecting the right of participation of community groups, citizens, or local governments affected by these decisions. Where such provisions do exist, they are often not enforced in practice. In addition, “in much of Latin America, formal democracy has endowed citizens with formal rights, but pervasive inequalities within society limit the capacity of citizens to act on their rights effectively, producing ‘social authoritarianism’” (Baiocchi, Heller, and Silva 2011:11).

Furthermore, throughout the region, there is a growing trend of centralization of decision-making power related to natural resource extraction into the hands of the national government, with minimal or no participation of local governments. Likewise, companies and the state have access to resources necessary to generate information on the potential impacts of the process, and forcing them to share this information is often difficult. Lastly, and in part due to the former point, the process of granting mining concessions is incredibly opaque (Boni, Garibay, and McCall 2015; Tetreault 2015).

Colombia is not an exception to this trend. Colombia’s Constitution provides for multiple direct democracy mechanisms to enable citizen participation.²¹⁶ However, these are seldom used due to their relative obscurity with respect to civil society, because they are difficult to activate without the help of experts and lawyers, and because the government and extractive industry companies find ways to thwart them. For example, as explained above, during the more than 20 years between 1991, when the Constitution entered into force, and 2013, the popular consultation mechanism was never used regarding mining issues, and once it was, the government pushed back strongly against its use. Additionally, the national government has excluded local

²¹⁶ See, for example, article 103, which lists the mechanisms of participation available to citizens, which include voting, the plebiscite, the referendum, the popular consultation, the *cabildo abierto*, the legislative initiative, and impeachment.

governments and citizens from participating in decisions regarding resource extraction,²¹⁷ which further distorts an already conspicuously unbalanced field. The lack of participation and access to information has contributed to making Colombia the country with the second largest number of socio-environmental conflicts in the world according to the EJOLT (Environmental Justice Organizations, Liabilities and Trade) project, which maps social-environmental conflicts around the world.

Participatory institutions contribute to leveling unbalanced playing fields through disrupting the power structure or challenging government practices by countering disadvantages affected communities regularly face, such as the lack of an effective voice or technical information. As Cohen and Rogers (2003: 242) state, “deliberation helps to neutralize power fundamentally.” The popular and prior consultations analyzed in this dissertation contributed to leveling the field through three mechanisms: (1) giving a voice to traditionally excluded actors, (2) reshuffling traditional alliances, and (3) providing technical information to the new actors. These mechanisms emerged directly from the process leading up to the popular consultation vote and the deliberative process of the prior consultation, but also indirectly from activating the participatory institutions. For that reason, the leveling effect is a material effect that straddles the border between direct and indirect. In other words, the actors that activated the participatory institutions intended to level the field, but the unintended consequences of those institutions have further helped level the field indirectly.

First, the participatory institutions disrupted the power structure by giving voice to traditionally excluded actors: *campesinos*, indigenous peoples, and local governments. These

²¹⁷ See for example Ministry of Mining Decree 2691 of 2014, which excludes local government agencies and the Ministries of the Environment and Health from the requesting and granting health and environmental protective measures to mitigate the impacts of mining. Such decisions are to be taken exclusively by the Ministry of Mining.

actors are excluded in part because they are marginalized actors more generally (not only with respect to mining decisionmaking), and because issues specific to mining involve high participation barriers, which compound their traditional exclusion. Although *campesinos* or indigenous peoples may own the land, they do not own the subsoil. Likewise, the recentralization trend has excluded local governments from participating in decisions regarding mining. Furthermore, mining involves technical information, which is hard to access and understand. Giving voice to these groups challenges existing power structures because it expands the types of voices and forms of knowledge granted entrance into the political area, enables these actors to overcome the limits the soil and subsoil property regime imposes, and helps puts the problems of the disadvantaged, which are normally invisible, on the agenda (Fung and Wright 2003; Gaventa 1980; Lukes 2005).

The popular consultation allowed the citizens of Piedras, the majority of whom are *campesinos* working in rice fields, rice-growers, and cattle-ranchers, to voice their opinion in multiple informal venues prior to the actual vote as well as on the day of the voting. “I had never participated in anything, ...you know... political, before the marches, the meetings, and the election,” expressed one of the *campesinas* of Doima interviewed for this study.²¹⁸ In the months leading up to the election, multiple informal participatory venues were organized by a wide range of actors. Some meetings were organized at the local school of Doima in which members of The Environmental Committee of Ibagué were invited to explain the environmental impacts of mining. “All kinds of people would attend [the meetings]– *campesinos* of the area, parents, landowners, students, the local businessmen, the former mayor.²¹⁹” Additionally, a group of

²¹⁸ Interview with “Pepe,” resident of Doima, May 4, 2015, Doima.

²¹⁹ Interview with Julián Viña, rice grower of the area and promoter of the popular consultation, who was present at the meetings held in the town and at the rice growers cooperative. May 3, 2015.

students from the University of Tolima in Ibagué volunteered to camp in Doima and Piedras during the month prior to the consultation in order to explain the mechanism of the popular consultation, which many citizens either were unaware of or did not understand well.²²⁰ The rice growers also organized private meetings at the rice cooperative, Serviarroz, in which they invited experts, including a renowned hydrologist from the University of Tolima, to explain the risks of a tailings dam.²²¹ They also invited the leaders of Ecotierra, the first social movement organization of Cajamarca to organize against *La Colosa* mine, who, with the support and organization of the Dutch NGO Pax, had visited other mines in Peru and Brazil to explain to the rice growers the environmental impacts they had seen at those mines.²²² Ecotierra members also gave talks about the popular consultations that had taken place in other parts of Latin America at the public square of Piedras, so the entire community could ask questions.²²³ These meetings and discussions served to exchange information, increase transparency, and give local actors the possibility to have a voice in issues over mining, water, and the popular consultation. As Enrique Rodríguez, two time mayor of Piedras, commented: “Doima and Piedras usually did not mobilize politically or associate.... That the entire community mobilized in unison around one issue, that had not happened.”²²⁴

Similarly, the prior consultation process that led to the creation of the national park in the Amazon also became a space in which indigenous communities expressed their apprehension and doubts regarding the park and discussed the implications of creating a new property regime

²²⁰ Interview with Juan Camilo Gómez, student from the University of Tolima who camped in Doima as part of the program, Ibagué. May 3, 2015.

²²¹ Interview with Jose Alejandro Gómez, rice grower of Doima. May 1, 2015.

²²² Joint interview with Luis Carlos Hernández and Evelio Campos, founding members of Ecotierra. Cajamarca, February 11, 2015.

²²³ Joint interview with Luis Carlos Hernández and Evelio Campos, founding members of Ecotierra. Cajamarca, February 11, 2015.

²²⁴ Interview May 5, 2015.

atop the indigenous *resguardo* with officials of the National Park Division and other government officials. Furthermore, it allowed the indigenous leaders to devise a series of conditions²²⁵ without which they would not accept the park, which they requested from the Ministry of the Interior and the National Parks Division. Thus, contrary to many situations in which indigenous people are forced to accept the conditions of the government or corporations, in this case, the indigenous leaders submitted a set of eight conditions without which they would not agree to the national park. By doing so, the participatory institutions helped transform government practices. It disrupted “business as usual.” The day of the final meeting of the prior consultation process, Mateo Estrada, an official of the Office of Community Development of the Office of the Governor of Vaupes, stated “I want to congratulate the National Parks Division because it is the first time that they have held a consultation in (...) the middle of the jungle. It’s also the first time the Ministry [of the Interior] has done such a long visit, almost a month long, to arrive to a consultation like this one. This means that institutions also change, they adapt.”²²⁶

Second, the participatory institutions helped level the field by restructuring traditional alliances.²²⁷ In the case of the prior consultation of Piedras, a key sector of the economic elite, Doima rice-growers, who have traditionally been allied with incumbent right-wing governments, were instrumental for the success of the popular consultation. Their goal was to prevent mining from destroying their economic activity and in doing so they provided economic and political support to the peasants and local government officials. A small group of three rice-growers championed the initiative, from developing the idea of using the popular consultation for mining

²²⁵ The conditions included, for example, that the management of the area would be based on traditional knowledge and that the land would continue to be the property of the indigenous peoples under the institution of the *resguardo* (Ministry of the Environment, Resolution 2079 of 2009).

²²⁶ Video: “Ministerio del interior y parques sí hay objeciones”

²²⁷ As mentioned in the introduction, some effects or mechanisms are more evident in one case or the other. In this case, the formation of new, unanticipated alliances was particularly salient in the case of the popular consultation.

issues, convincing the mayor to present it, and phrasing the ballot question. Furthermore, the rice growers provided support to the peasants who blocked the only bridge entering Doima in order to prevent AngloGold Ashanti's cars from entering town, in what became known as "The Blockade." "The rice growers of the region would send meat, rice, coffee, to those of us on the bridge. That is what allowed us to block the bridge for months. We did not have to worry about food. There would always be a group of people blocking the entrance to town," explained one of the organizers of the blockade.²²⁸ "Some rice-growers paid for the pendants that were hung throughout town that read '*Water is more valuable than Gold*' and that we used for the marches. Others helped pay for the buses to transport people the day of the election."²²⁹ In later attempts to hold other popular consultations in the region of Tolima, the rice-growers of Doima have continued to provide economic and political support. For example, in the most recent attempt to hold the popular consultation in the capital city of Ibagué during the first semester of 2016, several rice growers offered to provide economic support to social movement organizations in order for them to hold workshops to explain the importance of voting against mining.²³⁰ Moreover, the rice-growers also responded publicly and vehemently to the President's declaration about the illegality of the popular consultations of Piedras: "In Piedras we abided by the law and the legislation completely...we even consulted constitutional judges before carrying it out." They also questioned the reasons and interests behind defending the economic model known as the "mining engine."²³¹

Politically, institutions that transfer power to "ordinary people" so they may exert influence imply taking power from those who have it and who by definition have the power to

²²⁸ Interview with Felix Bonilla, rice grower of Doima, April 2015.

²²⁹ Interview with Mariana Gomez, rice grower of Doima, November 2013.

²³⁰ Interview with Catalina Restrepo, rice grower of Doima, March 10, 2016.

²³¹ <http://www.elnuevodia.com.co/nuevodia/tolima/regional/213336-responden-a-santos-sobre-la-ilegalidad-de-la-consulta-popular>

thwart such changes (Abers 2003:202). Part of the reason that Piedras was able to prevent the government and the company from obstructing the popular consultation was because a key sector of the economic elite supported the cause, as explained in Chapter 2. In sum, the struggle to keep the region free of mining created new and uncommon social alliances against a common enemy, large scale gold mining, which helped balance the field by providing leverage to the weaker actors in the struggle.

The third and final way in which the participatory institutions helped level the field was by providing technical information to the less privileged participants during the process that led to the popular and prior consultations and in the process afterwards when both institutions faced challenges. As mentioned in the “community empowerment effect,” both the popular consultation and the prior consultation motivated the formation of new alliances or the allegiance of new actors. These new allies, in turn, provided technical information, which is generally very difficult for peasants or indigenous groups to acquire due to the costs and technical nature of the information and because corporations do not disclose it.

In response to this void and the request of Tolima social movements, the research center Dejusticia put together an interdisciplinary Panel of Experts, composed of ten Colombian-based researchers.²³² The Panel undertook a baseline assessment of AngloGold Ashanti’s open pit gold mine with the objective of presenting a report on potential environmental impacts of the mining project. To do so, the Panel located and collected relevant information that was scattered throughout different agencies and ministries, and had not been integrally and systematically analyzed. The study concluded with a report that assessed the potential environmental impacts of the mining project in a technically and scientifically sound manner, but written in non-technical

²³² The group included two geologists, one environmental engineer, one geotechnician, one civil engineer expert on hydraulic resources, one environmental engineer, two public health experts, and two biologists.

language accessible to social movements, high court justices, and other non-scientific experts who are still involved in the fate of the project of La Colosa.²³³ Another international NGO that has been a strong ally of the popular consultation cause in Tolima is the Dutch NGO Pax. During the process that led to the popular consultation, Pax helped organized forums with world-renowned experts in mining and its detrimental effects, including Dr. Robert Moran, which increased the knowledge of common people regarding the impact of mining activities in their territory.

While public referenda are a constitutionally guaranteed mechanism, the national government and corporations have tried to delegitimize them and argue that they are illegal, in order to suppress community participation in decisions related to resource extraction. Corporate and government backlash has been so strong that social movements, citizens, and local governments have been left in a further unbalanced field. Thus, NGOs, professors, and the aforementioned coalitions have sought to restore the balance by advocating for these mechanisms, and legally defending their use.

Similarly, as mentioned above, in the case of Apaporis, the Gaia Amazon Foundation provided legal expertise to the indigenous groups both during the prior consultation process and after the creation of the park when dissenting groups, supported and advised by the company, filed a legal suit against the prior consultation process that led to the creation of the park. This type of actors on the side of the least privileged and traditionally excluded, offering information that is often difficult to access or legal expertise, helped balance the skewed field.

In short, other actors, academics, think tanks, and NGOs joined the struggle against mining to ensure that those most affected by mining could participate in the decision or in which

²³³ Full report available at: <https://comiteambiental.com/estudio-tecnico-cientifico-evidencia-no-viabilidad-ambiental-social-del-proyecto-la-colosa/> [last accesses August 10, 2016]

mining would not be permitted in environmentally delicate places. These actors produced quality information and offered legal expertise that helped level the field in favor of the least privileged during the actual processes of Piedras and Apaporis, as well as in similar cases that followed.

The question remains if we can be certain that the participatory institutions were instrumental for this leveling effect, or if this effect could have resulted in the absence of participatory institutions. An alternative explanation could be that leveling was the result of international pressure on the state (Keck and Sikkink 1998) to promote participation of risk-bearers in environmental decisions. Two examples illustrate that this is not the case, as the government continued to tilt the field in its favor; thus, it was necessary to deploy participatory institutions in order to trigger the first mechanism that produced leveling by giving voice to excluded actors. First, the Organization for Economic Cooperation and Development's (OECD) Environmental Performance review of Colombia, published as part of the ongoing talks on the country's possible accession to the OECD, stressed that "existing public participation mechanisms do not always work," (OECD/ECLAC 2014:69) and therefore, "public participation in environmental decision making could be improved" (OECD/ECLAC 2014:70). Despite Colombia's desire to join the organization and the country's poor evaluation results, the government continued to restrict public participation by concentrating decision-making procedures regarding mining in the head of the national government²³⁴ and attacking both popular and prior consultations.²³⁵

²³⁴ See for example Decree 2691 of 2014 that eliminated the possibility of municipalities and local environmental agencies to adopt measures to protect the environment and water resources in the cases of mining exploration and exploitation, leaving the decision exclusively in the hands of the Ministry of Mining.

²³⁵ See President Juan Manuel Santos' statement questioning the legality of popular consultations like the one in Piedras (fully transcribed in section 3.2.). See also a high policy document where prior consultation is deemed a "bottle neck for development" (see Section 3.6. below for the full quote).

A second example is the suspension of mining and development laws because of inadequate participation. In 2011, the Constitutional Court found the mining law the executive and legislative branches adopted unconstitutional on the grounds that the adoption of the law had violated the right to prior consultation of indigenous and Afro-Colombian communities.²³⁶ In 2016, the court declared articles of the National Development Plan unconstitutional for failing to guarantee the participation of communities and municipal authorities in the process of granting mining concessions.²³⁷ In sum, while the trend continues to be to close spaces for citizen participation and concentrate decisionmaking in the national government, the deployment of prior consultation and popular consultations appear as necessary tools to grant a voice to traditionally excluded actors.

4.3.4. Creation Effect

A fourth potential effect of participatory institutions is that they can ignite public debates on issues related to, but beyond, the specific participatory institution itself, which help disrupt power by revealing and submitting to public debate government tactics and citizen demands. In the case of the participatory institutions studied here, in particular of popular consultations, these institutions helped expose government tactics related to decision-making regarding mining and put on the table two debates underlying those government tactics central to the governance of natural resources, but broader than the debate about the institution per se.

²³⁶ Law 1382 of 2010, which amended the 2001 mining code

²³⁷ See Constitutional Court, Decision C-035 of 2016.

The first is the debate regarding the best manner of guaranteeing citizen and local government participation in environmental affairs. The second, and intimately related, debate is that regarding local government autonomy in decisions about mining. Particularly, who has the right to decide about where and how extractive activities are undertaken? And more specifically, can municipalities have a say regarding whether mining takes place on their territory or not? The activation of popular consultations helped create a discussion that underpins the institution of popular consultations, but which was not a matter of public debate before the activation. Bringing these debates to the surface is an indirect effect of these institutions that involves a transformation in the way actors beyond those directly involved in the participatory institution perceive the issue of local autonomy in mining and environment affairs or about participation in environmental matters in general. For these reasons I refer to this effect as the “creation” effect and situate it in the bottom right quadrant of the typology.

The popular consultation of Piedras took the state by surprise. As mentioned earlier, the 2013 popular consultation of Piedras was the first popular consultation regarding mining ever to be held in the country. Before Piedras, civil society would resist mining or other extractive project through marches and protests. Piedras changed the “channel of engagement” (Fung and Wright 2003) of municipalities and citizens with the state on environmental and extractive issues. This was the first time a non-indigenous community vetoed a mining project through the state’s own institutional channels. Until that point, the supposition that informed government tactics was that, as in the rest of Latin America, the Constitution of Colombia provides that subsoil resources belong to the state and not to the surface landowners. Thus, only the national government has the faculty to decide where mining can take place. Municipalities and their citizens, despite being directly affected by potential mining projects, did not have a say on

whether and how mining could take place in their territory. The popular consultation of Piedras (and the one in Tauramena that followed), in which a small municipality derailed the plans of what could be one of the world's ten largest gold projects, sparked a debate over who has the right to make decisions regarding the extraction of the subsoil. Many actors beyond those involved directly in the case of Piedras or in the other popular consultations that followed, including academia, the Ministry of Mining, Inspector General's Office (*Procuraduría General de la Nación*), NGOs, the media, the highest courts, and the national Congress, among others, took up the debate.

On one side of the debate stand those that believe municipalities have no role in mining or hydrocarbon decision-making because the subsoil belongs to the state. Accordingly, popular consultations, despite their legal basis, are illegal because through them citizens and municipalities veto or restrict mining in a given territory, which is the exclusive authority of the national government. Colombian President Juan Manuel Santos's statements reflect this position. In December 2013, six months after the Piedra's consultation and a week after Tauramena's, President Santos said in an interview with the national newspaper *El Espectador* that consultations like the ones in Piedras and Tauramena are "illegal and have no legal effect. The subsoil belongs to all Colombians. There is no room for discussion."

While Colombian law (Law 136 of 1994, article 33) specifically states that in the case of a mining project municipalities must hold popular consultations and provides that the results of popular consultations are obligatory for national authorities. (Law 134 of 1994, article 8), many other actors also share the President's position. For example, the Inspector General has been a staunch opponent of popular consultations. He has threatened to dismiss mayors and council members from office if they attempt to hold popular consultations. For example, in March 2014,

when eight municipalities in the Casanare region were organizing popular consultations, he issued a warning to those mayors:²³⁸ “Carrying out a popular consultation to decide whether to prohibit the extraction of non-renewable natural resources [is] an activity that only the President is responsible for.” Pressure against popular consultations has spanned over three years. With respect to the popular consultation that is underway in the capital city of Ibagué at the time of writing this chapter, the Deputy Inspector General reminded the mayor of Ibagué that the state is the owner of the subsoil and that he could be removed from office for infringing the law.

Similarly, the Ministry of Mining has also tried to hinder the participation of local authorities in decision-making processes related to mining. Thus, in December 2014, the Ministry handed down Decree 2691 of 2014, which limited the ability of municipalities to participate in the process through which environmental and health measures to prevent mining hazards are requested, recentralizing the decision in the Ministry of Mining. Also on this side of the debate stand the mining companies and the National Association of Entrepreneurs.

In response to this strong opposition, other actors have taken up the debate and acted as countervailing forces. The Colombian Constitutional Court has issued two decisions (C-123 of 2014 and C-035 of 2016) which, although they did not specifically involve popular consultations, upheld the autonomy of municipal authorities to actively participate, jointly with the national government, in decisions over whether mining should be authorized in a given municipality. In the first ruling, the court argued that decisions regarding whether mining should take place in a given territory or not “must guarantee the active and effective participation” of those local governments. In its most recent decision, the court went a step further, requiring the

²³⁸ See official declaration of the Inspector General’s Office here: <http://www.procuraduria.gov.co/portal/index.jsp?option=net.comtor.cms.frontend.component.pagefactory.NewsComponentPageFactory&action=view&key=4562>

local government to agree on whether certain areas are to be mining areas or not. While there is still not a decision that specifically addresses popular consultations, the court has defended the issue at the core of popular consultations. However, opponents have tried to interpret the decisions in favor of limited municipal autonomy. The Minister of Mining at the time celebrated the first decision by stating “The Court made it clear that the subsoil belongs to the State (...) the popular consultations that have been summoned are left with no legal ground because they do not proceed.”²³⁹ In reaction, the former President of the Colombian Constitutional Court held a press conference to clarify that “it is not true that the Court has decided or even considered eliminating the popular consultations that are being carried out in relation to the use of the soil by municipalities...” (Vargas 2014).

In a similar vein, the Conseil d’Etat has also acted as a countervailing force in the debate. It suspended two decrees: the one mentioned above (Decree 2691 of 2014), which excluded the participation of the local government and the local environmental authorities from mining-related decisions, as well as Decree 934 of 2014, which prevented municipalities from banning mining from all or parts of their territory. The Conseil considered that these decrees unduly limited local government autonomy and disregarded the fact that those most affected by such decisions should have a say in them.

Academia has also entered the fray. Op-eds and interviews discussing who has the right to decide over the subsoil, the specific role of municipalities, and the legality of popular consultations regarding mining issues have visibly increased since the vote at Piedras. An example that captures the core of the debate and the position shared by the actors standing on

²³⁹ <http://www.elespectador.com/noticias/medio-ambiente/sinsabor-fallo-de-corte-constitucional-sobre-mineria-articulo-479370>

this side of the debate is illustrated in the following commentary professor Rodríguez offered

El Espectador:

The legal discussion at the bottom of this is whether municipalities have the ability to endorse and carry out this type of consultations.... These consultations are binding because municipalities have competence over the soil and obviously what happens with the water and with the use of the land is going to affect its economic vocation. The separation between soil and subsoil is not that neat.²⁴⁰

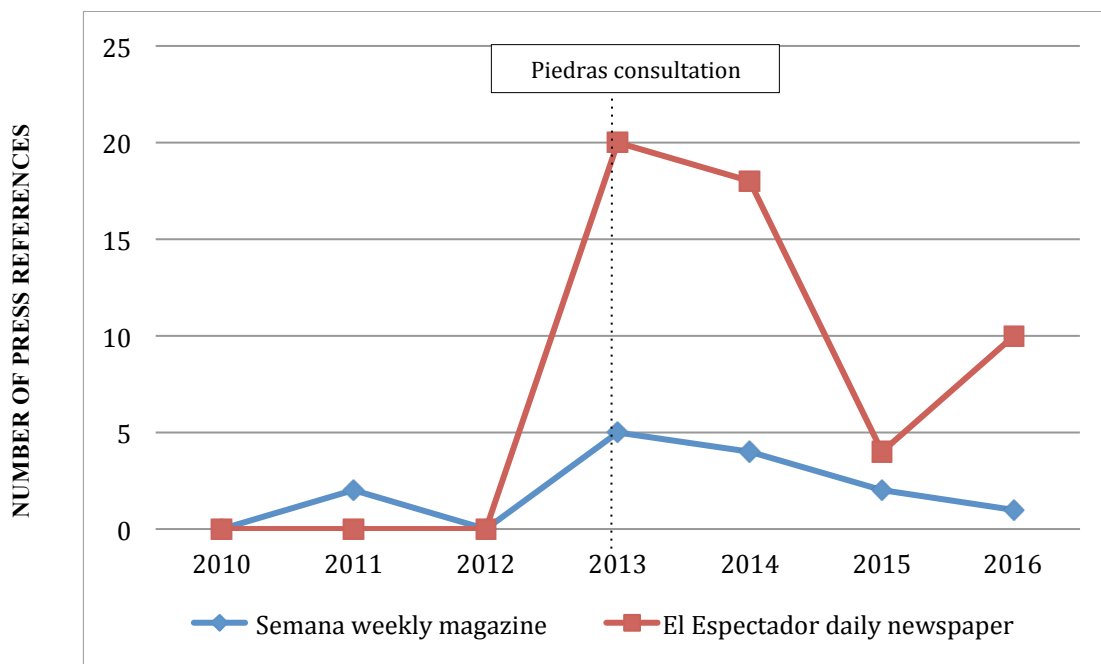
The media also joined the debate, drawing attention to the closed and centralized manner in which decisions over mining were made and the government's backlash to the use of participatory institutions. A week after the aforementioned President's interview, the editorial of the same newspaper was entitled "Pure Democracy" and laid out the tensions between the opposite poles of the debate, including a summary of arguments on both sides, and concluding that "it is impossible for this confrontation to not result in something positive. Something that, at last, puts the mining locomotive on its rails as it should be."²⁴¹ The media also contributed to forming the debate by making visible the phenomenon of popular consultations, as shown in Figure 4.3, which describes the evolution of press coverage of popular consultations before and after the Piedras consultation.²⁴² An analysis of media coverage offers a useful indicator to measure the visibility and framing of a public issue.

²⁴⁰ <http://www.elespectador.com/noticias/medio-ambiente/frenan-plan-de-anglogold-tambar-consulta-popular-articulo-471508>

²⁴¹ <http://www.elespectador.com/opinion/editorial/pura-democracia-articulo-465642>

²⁴² To measure the visibility of popular consultations, news media's treatment of the issue was analyzed. The analysis sought to measure the issue's appearance in selected media sources - the virtual press archives of *El Espectador* newspaper and *Semana* magazine - by looking at the number of articles that mentioned "*consultas populares*." The search was limited to references to *consultas populares* related to mining and petroleum. Both media sources have full virtual archives, guaranteeing systematic coverage of the specified period - from 2010 through April 2016. The inquiry only considered media coverage during this timeframe so that the data would illustrate the three-year period before and after the popular consultation of Piedras.

Figure 4.3. Evolution of Press Coverages of Popular Consultations, 2010-2016



Source: Author's calculations

The rise of popular consultations and the debate surrounding them, which uncovered government tactics to exclude local authorities from participating in decisions over mining and the lack of citizen participation in environmental decisions that affect them, motivated Congress to present bills addressing those procedural flaws. The bills evidence the indirect impact of the consultation of Piedras. Two examples drive this point home. In April of 2015, the Green Party presented before the House of Representatives a bill to create “Environmental Municipal Councils” with the objective of “balancing the power of citizens and local authorities in their engagement with the private sector and public authorities at the regional and national level regarding the use of their territory, of its renewable and non-renewable sources, and of the environmental protection in the development of projects that require permits or environmental licensing.” In the first paragraph of the bill’s explanatory memorandum, it mentioned the cases

of Piedras and others. “Cases like the ones of Piedras, El Quimbo, Monterrey, Urrá, Tauramena, Jardín, and Jericó, among others, are only a few examples of a growing need in municipal councils: to guarantee the right to active and effective participation for communities and local governments in environmental issues.”²⁴³ A second example is a bill presented by Congressman Castilla of the left-wing party *Polo Democrático* in April 2016. The bill seeks to protect *campesino* land rights and as part of that protection, “make the participatory mechanism of popular consultations mandatory whenever *campesino* lands are affected.”²⁴⁴

Again, the question that remains is whether the participatory institutions were instrumental for igniting a public debate over citizen participation and local government autonomy. As in the case of the community empowerment effect analyzed above, these consequences can result from multiple factors. However, the fact that the discussions taken up by academia, Congress, the Constitutional Court and the media address these specific institutions, which are in turn references in the broader debates that ensued, is evidence of the instrumental role these institutions played.

4.3.5. The Awareness Effect

Another effect of participatory institutions is that they can transform the way the problem discussed is perceived. As Cohen (1996) argues, deliberative democracy is ultimately a process through which participants reconsider and reconstruct their preferences. Through the participatory process, participants become aware of their own preferences and interests, as well

²⁴³ Bill No. 059 of 2015, House of Representatives, Fifth Commission.

²⁴⁴ Proyecto de Acto Legislativo No. _____ of 2016. “Which recognizes the *campesinado* as entitled to rights, recognizes the right to land and territoriality and adopts dispositions about the popular consultation” [No numbers are officially assigned until it is discussed as a Bill].

as those of others (Mansbridge 2003:179). Participants can come to understand an issue differently from how they understood it before. But even for individuals who do not directly participate in the actual process, the events and debates that take place and emerge from the participatory process can influence their perception. As a result, the perception of actors both within and outside the participatory process can be transformed.

The consultations analyzed in this chapter helped transform the way mining was understood and raised the level of consciousness (or awareness) about the negative environmental impacts of mining, both among direct participants and among actors outside the process. For that reason, I refer to this outcome as the “awareness effect” and situate it closer to the symbolic axis, along the border of direct and indirect effects.

Since the beginning of the commodities boom in the early 2000s under former President Alvaro Uribe and again after 2010 when President Juan Manuel Santos rose to power and declared mining as one of the five “engines of development,” mining has been perceived as the driver of economic development in Colombia. In his inaugural speech, Santos stated: “Together, the government and the private sector, entrepreneurs and employees, will promote five engines that will ignite our economy, leading to a known destination: that of peace and prosperity; that of peace and the creation of jobs. With agriculture, infrastructure, housing, mining, and innovation we will start the train of progress and prosperity, for it to pull the wagons of industry, trade and services, the major employment generators” (Santos 2010). In the specific case of La Colosa, when President Uribe announced the discovery of the mine, newspapers read “La Colosa Gold Mine Presented as the Economic Driver of the Economy.”²⁴⁵ The South African company, AngloGold Ashanti announced La Colosa as one of the world’s ten largest mines and the third

²⁴⁵ <http://www.elespectador.com/articulo158666-presentan-mina-de-oro-colosa-dinamizadora-de-economia>

largest in Latin America (after Yanacocha in Perú and La Escondida in Chile). Mining meant new jobs and opportunities. “*As is obvious*, gold production will bring royalties to [the state of] Tolima, which is undergoing financial hardship. It will also generate some 1,200 jobs according to preliminary information,”²⁴⁶ read a national newspaper at the time, emphasizing only the positive (and unquestionable) consequences of mining. The government supported so staunchly the mining model, that in 2012, during the Rio+20 global environmental summit, President Santos announced the creation of strategic mining areas covering a large portion (over 17 million hectares) of Amazon and Pacific Forests to exploit gold, uranium, and other minerals.²⁴⁷ In brief, mining was synonymous with jobs, revenue, royalties, and prosperity.

Colombia has always been a mining country. Since colonial times, the legend of El Dorado has alluded to its mining wealth. But large-scale mining like that proposed in *La Colosa* or the project proposed in the Amazon is a new form of mining in the country, which means that in the beginning, knowledge was scarce and people were not aware of the negative environmental impacts of this type of mining. The debates over *La Colosa* and Piedras in the Andes region and the discussions regarding mining in the Amazon helped transform this perspective, increasing awareness about the possible negative environmental impacts of mining. Certainly, these two cases are not the only ones that influenced this perception. Nor did resistance to open pit gold mining begin with these two cases. Other cases that came before and after, in addition to the pressure of the environmental movement, social media, academia, international and national NGOs, among other factors, have also contributed to raising awareness about large scale mining’s detrimental environmental effects. As explained in the introduction, it is difficult to isolate the effect of one institution on the transformation of preference and

²⁴⁶ <http://www.eltiempo.com/archivo/documento/CMS-3871744>, December 21, 2007.

²⁴⁷ Colombian National Mining Agency, Resolution 0045 of 2012.

perception. Thus, the objective of this section is not to claim that the greater awareness of the negative environmental impacts of mining in recent years is exclusive result of the cases of Piedras and Yaigojé, but rather to illustrate with three examples how these two participatory processes helped influence the perception of actors participating in the process and of those beyond.

The first example comes from the participants themselves. In the case of the prior consultation of Apaporis, Camilo Guio, the biologist who worked at the Gaia Amazon Foundation and later in the national parks division throughout the process of constituting the park, said in an interview,

To be honest, we, or at least I, was not so aware of the profound negative impacts that large-scale mining could have in the Amazon. I had heard and understood that mining was against indigenous traditions. But the environmental impacts became clear only as the process advanced and we read about other cases, learned from other countries, and discussed with other experts. Then the need for a park was unquestionable, but it was not that way from the start. For a while, I was convinced by the economic story behind mining.²⁴⁸

It was during the deliberative process leading up to the creation of the park that Guio's understanding of the impact of mining and his preferences changed. He came to realize the environmental implications of open-pit mining and the limitations of the existing property regime.

Similarly, in the case of Piedras, the reflections of a schoolteacher who was one of the first people to learn about AngloGold's plans to build a tailings dam in the area, shows how the level of awareness rose and actor preferences changed as a result of the deliberative spaces. In the case of the popular consultation, while the actual vote is not an example of a deliberative

²⁴⁸ Interview with Camilo Guio, February 2016.

moment, the process leading up to it and the informal deliberative settings that influenced the process of preference formation were. As Doima's schoolteacher explained,

In Doima, we had no idea what large-scale open pit mining was... During the break we have in October, Riaño and Johan [from The Environmental Committee in Defense of Life] went to the school to give us training, only to the schoolteachers, of what was going to happen in Doima and showed us examples of other mines around the world. The first talks were for the schoolteachers only. After receiving those talks and discussing among ourselves what we were finding, we decided that we could not allow this project to take place; that is when we decided to organize ourselves. The school was the epicenter of the organization. We started to give talks to all sectors: families, schools, the rice-growers guild, cattle ranchers, both in Doima and in Piedras. The rice growers and landowners of neighboring Venadillo and Alvarado [two municipalities close to Piedras] also started to attend. They could not believe what was going to take place there. They were in shock.²⁴⁹

In sum, at the basic level, the preferences of the people participating in the process were transformed.

After the processes, awareness among people that did not participate directly in the popular consultation also increased. An example of this is the increase in the number of participants in the Grand Carnival March in Defense of Water and Life in the city of Ibagué organized by The Environmental Committee in Defense of Life from the Tolima region. The Committee convened the first march in 2010, three years before Piedras. Initially, two marches were held each year. Starting in 2012, The Environmental Committee decided to hold an annual march on Earth Day (June 5th). The march began as a form of resistance against La Colosa mine and in defense of water and life, and it was held only in Ibagué. In the first march, between 10,000 and 12,000 people, including students, indigenous people, *campesinos*, university professors, NGOs, and even government officials from Ibagué and some neighboring

²⁴⁹ Interview with Elida Barcenás, July 2015.

municipalities. The second march convened between 15,000 and 20,000 people.²⁵⁰ Pendants read “No to the Mine”, “Water is Life, No to Large-Scale Mining” “Water is more valuable than gold.” After Piedras, participation in the marches has grown in terms of people, social movements, and the number of regions that join. The people of Piedras, for example, had not participated in the march until 2013. In the seventh march, held in June 2015, approximately 50,000 people attended, from different regions of Tolima, according to a local newspaper. Renzo Garcia, a founding member of the Environmental Committee, told the same local newspaper that each year the number of people that “join to defend water and resist the mining project of La Colosa in Cajamarca, has grown. This year we were more than 50,000 people from the Tolima region that said no to the mine.”²⁵¹ On June 3, 2016, close to 120,000 people participated.²⁵² That day, for the first time, other municipalities and states organized their own marches. The coffee-growing state of Quindio and some municipalities (e.g., El Libano in the Tolima region) marched against La Colosa mining project specifically, while others (e.g., the state of Cauca and the municipalities of La Honda and El Espinal in the region of Huila) organized marches against oil concessions, the potential environmental threats of the new plan to improve navigation conditions on Colombia’s Magdalena River, and the construction of hydroelectric dams, respectively.²⁵³ In addition, activists from other regions of the country also manifested their interest in supporting the mobilization against La Colosa.²⁵⁴

²⁵⁰ The exact number of people participating in the marches is hard to estimate. For that reason, I refer to the lowest and highest number found in the local newspapers of Ibagué. For the first and second marches, the estimates are from the following sources: <http://elsalmonurbano.blogspot.com.co/2011/06/mas-de-12000-mil-personas-juntaron.html>; <https://www.youtube.com/watch?v=kxmCOEMcxI0>;

²⁵¹ <http://www.elolfato.com/asi-fue-la-marcha-contr-la-colosa-en-ibague/>

²⁵² According to estimates of the local environmental movement. See: <https://comiteambiental.com/120-000-voces-extractivismo/>

²⁵³ <http://www.las2orillas.co/marcha-contr-la-megamineria-cielo-abierto/>

²⁵⁴ In an email communication, Mariana Gomez, a member of The Environmental Committee, explained to me that: “Santiago Botia contacted me from Armenia, interested in joining the regional movement against La Colosa. He and a group of activists are ready to act and have good ideas that we can articulate with what we have done on this side of the mountain range.” Email

A third and final example of the increase in awareness is the debates on the specific topic of *La Colosa* and on mining in general held in different venues. One venue that took up the debate regarding *La Colosa* was Congress. Despite the fact that the majority of Congress belongs to the Government coalition (and *La Colosa* is a project that the incumbent administration has strongly supported), the Senate held a debate three months after the popular consultation of Piedras to discuss the benefits of the project. During the debate, members of the Senate overwhelmingly rejected the project for its social and environmental impacts. “Senate Plenary Rejects Mining Project of La Colosa,” read the Senate’s press release.²⁵⁵ Against the mainstream economic argument, they questioned the environmental and social impacts of the project. A Congressman from the Liberal party stated,

The project is located close to Cajamarca and Piedras (Tolima), which are municipalities with great agricultural richness, to the point of being considered the ‘breadbasket’ of Tolima and Colombia. With AngloGold Ashanti’s project, millions of Colombians will actually be left in extreme poverty due to the destruction of the environment.

Another example is the seminars that were organized to question the positive economic effects of large-scale mining projects. For example, in December 2013, the seminar entitled “Technical, Legal and Socio-economic Foundations for the Analysis of Extractive Activities in Colombia” was held in the capital city of Tolima. In the seminar, researchers from the General Comptroller’s Office, presented figures challenging the benefits of the so- called “mining engine.”²⁵⁶

communication. October 22, 2014. Email’s subject: United against La Colosa from Armenia.” Armenia is a state located close to the Tolima region.

²⁵⁵ Colombian Senate Press Release, November 5, 2013. Available at: <http://www.senado.gov.co/historia/item/18657-plenaria-del-senado-rechaza-proyecto-minero-de-la-colosa>

²⁵⁶ Author’s fieldnotes. December 6, 2013. Original name of the seminar: “Fundamentos Técnicos, Jurídicos y Socio-económicos para el Análisis del Extractivismo en Colombia. 6 y 7 de dic de 2013. Auditorio de los Ocobos, en la Universidad del Tolima, Ibagué.”

In sum, this section aimed to show that another effect of the participatory institutions was that they helped increase the environmental consciousness both of the participants of the consultations and of other people and groups beyond the participatory processes. The consultations transformed the perception of mining from an economic marvel to an activity with serious environmental impacts. Tracing the causal effect of these participatory institutions on this increase in awareness is difficult because it is impossible to control for all variables. However, participant testimonies acknowledging that as a result of the deliberative processes they became more aware of the negative impacts of mining and decided to organize and resist such threats; the greater involvement of social movements, peasants, academics, and other actors in public manifestations against a specific mining project; and the increase in debates and publications on the negative social and environmental impacts of mining are evidence of the institution's impact.

4.3.6. The State-building Effect

Developing countries are characterized by having dissimilar levels of state presence and infrastructural capacities. To capture this phenomenon, O'Donnell (1993:1359) classified the territory of Latin American states in three colors –blue, green, and brown- depending on the degree of state presence in territorial and functional scope.²⁵⁷ Colombia is a textbook example of a heterogeneous state (García Villegas et al. 2011; González, Bolívar, and Vásquez 2001). The color variation occurs not only across the state as O'Donnell illustrated, but also within the same state institution, which can have varying degrees of efficiency depending, for instance, on

²⁵⁷ The blue color indicates a state where there is a high degree of state presence (in terms of effective bureaucracies and effectiveness of properly sanctioned legality), both functionally and territorially; the green color represents a high degree of territorial penetration but a lower presence in functional terms, and the brown areas indicate a very low or nonexistent level in both dimensions (O'Donnell 1993: 1359).

whether it is located in the periphery or the center of the country (García Villegas et al. 2011; Rodríguez-Garavito and Portes 2012).

Participatory institutions can help attenuate the unequal level of state presence by providing state institutions a stimulus to reach areas where it is not present or where it is not efficient. In that sense, and drawing on Bräutigam, Fjeldstad and Moore (2008: 2), who define state building as “the process of increasing the administrative, fiscal and institutional capacity of governments to interact constructively with their societies and to pursue public goals more effectively,” participatory institutions can have a state-building effect. A higher degree of state presence is important for environmental protection because it boosts the state’s monitoring capacity; enables the state to develop a more widely shared understanding of the issues by coming closer to citizens and local governments who have a particular type of local information and knowledge (which in turn improves the quality of governmental decisions); facilitates dialogue with citizens, and enables institutionalized means of conflict resolution.

The participatory institutions in the cases of Piedras and Apaporis had a state-building effect because they “brought the state” to areas where it was absent. This is an indirect effect because it was not the intention of the participants of the prior or popular consultation. Instead, it resulted indirectly in reaction to the activation of the popular and prior consultations. I will illustrate the state-building effect with two examples.

In the case of the Apaporis, shortly after the national park was officially created over the *resguardo* as a result of a prior consultation procedure, a dissident group of indigenous peoples, instigated, advised, and financed by the mining company, challenged the constitutionality of the prior consultation. The dissent leader, Beningo Perilla, argued that the consultation was poorly undertaken and the indigenous people did not fully comprehend the implications of the national

park. After three years, the judges of the Colombian Constitutional Court decided to hold a public hearing in the Amazon to listen to the indigenous traditional authorities and the plaintiffs.

On January 31, 2014, in the heart of the Amazon on the border between Colombia and Brazil, three judges of the court, with their faces painted by the indigenous women, gathered in the *maloka* (traditional indigenous house and gathering place) to listen to the local people. In addition to the judges, representatives of other state agencies attended as well as roughly 160 indigenous peoples from the region. The public hearing lasted the entire day. The traditional authorities explained that they had asked for the park to ban mining from their sacred waterfall, the site from where humanity emerged. Mining the site would end their shamanistic powers and extracting the gold would bring diseases to the environment and to all of humanity. Gold is meant to stay underground to provide light to the spirits of the underworld. The judges also extensively questioned how the prior consultation process was undertaken and the reasons why the dissenting leaders argued that it had been done improperly.

This was the first time the country's highest judges visited Colombia's Amazon region. It was the debate over the prior consultation process that "brought them" to the jungle. Listening first hand to the arguments of both sides made it clear to the court why the park was necessary and that the prior consultation process had been properly carried out. A year and a half later, the three judges handed down a decision upholding the park and the prior consultation process. It was the debate over the popular consultation that drove a state institution to a region with a precarious judicial system (García Villegas et al. 2011) and where the Constitutional Court had never been. It allowed the state (represented by the court) to interact constructively with traditionally marginalized citizens.

Corporations and the government frequently refer to prior consultation as a “bottle-neck” for development projects (Conpes Document 3762 of 2013).²⁵⁸ To them, these participatory processes delay, condition, or veto the construction of infrastructure projects. But if we look at a different aspect of state building, such as access to justice, prior consultation can act as a state-builder.

The case of the popular consultation also provided a stimulus to state institutions to reach areas where it was not present. As explained in the community-empowerment effect above, after the success of the popular consultation of Piedras, other municipalities followed. One of them was Cajamarca in the Tolima region, the municipality where the open pit of *La Colosa* mine would be located. The discussion over the consultation became so heated and the government’s backlash was so intense, that Congress held a public hearing session in the town of Cajamarca in October 2014 to discuss the importance of this mechanism of direct democracy. The Senate’s official invitation read,

The Colombian Congress – Senate invites *campesino* communities of Cajamarca and the municipalities of the Coello River basin to the Public Hearing approved through Resolution 102 of 2014 of the Plenary of the Senate, that will take place in the municipality of Cajamarca, Tolima...from 8am to 3pm, to discuss the situation of human rights, popular consultation, environmental land planning in Cajamarca and the municipalities of the Coello River basin where one of the largest gold mine projects in Colombia, called La Colosa, is planned to take place.²⁵⁹

In addition to members of Congress, other public officials in attendance included the Ombudsman, the mayors of other municipalities, the Inspector General’s Office, and over 200 citizens of Cajamarca and neighboring towns. As in the case of Apaporis, never before had Congress held an official public hearing in this small municipality and had local citizens enjoyed

²⁵⁸ Conpes documents are high-level policy documents coordinated by the National Planning Department and adopted by multiple state agencies, including the Ministries of Mining, Transportation, Justice, and the Environment, the National Mining Agencies, among others.

²⁵⁹ See full invitation at: <http://ecosdelcombeima.com/regionales/nota-48227-senado-realizara-audiencia-publica-sobre-mineria-cajamarca>

the opportunity to express directly to members of Congress their reasons for objecting to the mining project.

In both cases, the debate over the participatory institutions of the popular consultation and the prior consultation “brought the state” to areas where it was absent. Arguably, in the natural, evolving process of state expansion, different state institutions could have eventually reached these areas without the popular consultations or prior consultations. However, the debate over these institutions and their implementation certainly triggered and accelerated the state building process.

4.4. Criticism of Participatory Institutions

The previous section described the direct, indirect, material, and symbolic effects of participatory institutions that enhanced environmental protection. But beyond these protective environmental effects, these participatory institutions also suffered from limitations. The idea of this section is thus to present three of the limitations of the two institutions studied. Some are not necessarily related to the environment, but are worth analyzing because they relate to transformative outcomes in general.

4.4.1. Displacement effect

Perhaps the clearest and most palpable of these institutions’ limitations with respect to environmental protection is what I denominate the *displacement effect*, by which I mean the success of eliminating the environmental threat in one area serves to shift the threat to another

area, without eliminating it altogether. In the case of the Piedras consultation, after the community's overwhelming rejection, the company announced it would build the entire project (the pit, the plant, and the tailings dam) in the town of Cajamarca and not part of it in Doima as initially planned (see Figures 4.2 and 4.3 above). Thus, while the participatory institution was successful in removing the threat from the water-rich areas of Piedras and Doima, it transferred the threat to the region of Cajamarca, which is also part of the region known as the "bread basket" of Colombia.

To tackle this new threat, civil society organizations of Cajamarca started pushing for a popular consultation in December 2015. But the bureaucratic process of obtaining approval from the municipal council and the Administrative court is still underway. The situation of Piedras and Cajamarca is different in at least two key ways. First, while Piedras was going to receive only the residue from the mine, Cajamarca's citizens might be swayed by the promise of more and better jobs, since the mine itself and company's headquarters would be located there. Second, as mentioned in the "community empowerment effect" above, the rice growers of Doima proved to be a powerful ally in the activation and success of the popular consultation. In Cajamarca so far, the popular consultation remains a grassroots social movement.

In the case of the Apaporis, the national park prohibits mining into perpetuity. So while the sacred waterfall and the *resguardo* area are protected from mining, the risk is that the company will develop the project in the proximity of the park. Indeed, Cosigo Resources holds a mining concession in the neighboring town of Taraira. Whether the project is profitable without the other mining title within the park is uncertain and the company has not provided information on this topic. Regardless, the risk remains.

The evidence from these two cases shows that while participatory institutions can be effective in deterring a mining threat from a given area, they might not be successful in fully eliminating it. This implies that it is left to other groups or municipalities to activate similar institutions to deter the threat, turning it into a case-by-case solution. However, it might happen that just one rejection from a community is so powerful that the company decides to abandon to the project altogether, modify the proposed activities so they are less damaging, or that it transfers the project to a less environmentally sensitive area.

4.4.2. Maintenance of the *status quo*

As mentioned in the introduction to this chapter, the most common criticism of deliberative democracy is that it reproduces societal inequalities. The cases analyzed here enhanced the participatory capacities of the people involved (and of other actors beyond the direct cases) helping overcome the inequality that stems from a lack of voice in the political arena. Yet, a risk of participatory institutions is that while they might be transformative in one aspect, they can maintain the *status quo* in other facets which, while not related to environmental protection per se, are important from a broader social change perspective. In the case of the popular consultation, for instance, while the citizens of Piedras managed to obtain a voice and overcome participatory barriers, the result of the popular consultation did not transform the existing land distribution structure, which is highly concentrated in hands of rice growers. A counterargument to this pitfall, however, is that while indeed the participatory institutions may not be transformative in every respect, they do not necessarily aggravate the situation.

4.4.3. Subject to capture

Scholars acknowledge that one of the criticisms of participatory democracy is that participatory venues may be vulnerable to domination by powerful actors (e.g., Fung and Wright 2003: 33). The case of the prior consultation in the Amazon embodies both the potential and pitfalls. As explained in the previous section, the prior consultation was necessary for the creation of the park that ultimately thwarted the possibility of open-pit gold mining in an environmentally and culturally vital area of the Amazon rainforest.

However, the mining company also manipulated the prior consultation in its favor. The mining company was aware that if it managed to strike down the prior consultation process, the national park would be invalidated, as ILO Convention 169 requires the government to be consult indigenous people in good faith whenever it considers legislative or administrative measures that could potentially affect them, their rights, or their territory, such as a national park. Without the park, mining would not be perpetually banned. Accordingly, as the plaintiff confessed during the public hearing held by the Constitutional Court in the Amazon, the company influenced, advised, and financed a group of indigenous leaders to argue that the prior consultation had been improperly carried out. In this particular case, the Constitutional Court acted as a countervailing force in favor of the indigenous community, upholding the popular consultation and the creation of the park. However, the case illustrates how the participatory institution can lead to environmentally progressive outcomes, but at the same time is subject to domination by the traditionally powerful.

4.5. Conclusions

This chapter focuses on exploring the effects that participatory institutions have on the environment. I argue that the literature is split over their transformative potential and largely pessimistic because it lacks an analytical framework with which to systematically analyze the impact of participatory institutions. When evaluating the impact of participatory institutions, scholars tend to focus on the direct, material impact of the decision that results from the participatory process, without paying attention to the indirect and symbolic effects, which are as consequential for the general goal of environmental protection as those directly stemming from the decision adopted in the participatory process. Analyzing the case studies of the popular consultation and the prior consultation through this broader lens, which additionally allows paying attention to the varying speed of the possible effects, showed that the two participatory institutions enhanced environment protection through six ways. These effects ranged from thwarting open pit mining from water-rich areas and helping increase the coalitions and technical knowledge available to actors resisting environmental threats, to inspiring other citizens and local governments to activate the participatory institutions in other areas. They also included putting on the public agenda the debate regarding whether and how citizens and local governments should participate in decision-making over mining, contributing to transform perceptions regarding open-pit mining, and encouraging the state to reach areas where it was absent.

These six effects refute some of the common criticisms made to institutions of deliberative democracy. For instance, I have already shown how they brought into the political arena ordinary people like indigenous peoples and peasants, and also how despite the costs and

expertise required to get the institutions off the ground, activation was possible. But in addition, the effects of these institutions challenge two other critiques.

As stated above, a common criticism of participatory institutions is that they are not empowering when the state activates them. However, the state initiated the two consultations analyzed here and nonetheless, produced the six progressive results discussed. In the case of the popular consultation, in accordance with Colombian law, the participatory procedure was initiated when the mayor of Piedras presented the question and justification of the popular consultation to the municipal council. Thus, regardless of the high degree of social mobilization that was present in Piedras or the pressure from the unusual coalition of actors (including the rice-growers) to initiate the consultation, the process would not have begun without the mayor's consent. Likewise, the state initiated the prior consultation for the creation of the park, specifically the Ministry of the Interior, following legal requirements.

A second criticism is that mechanisms of direct democracy circumvent the decision-making power of institutions of representative democracy. However, I argue that the popular and prior consultations did not bypass existing institutions but rather, *complemented* them. In the case of the popular consultation, this is clear. The consultation at Piedras revealed shortcomings in the way decisions over mining and the subsoil were made under a representative regime because the procedures excluded the most affected from the decision. There were also contradictions in such procedure because while constitutionally the municipal councils are responsible for determining the use of the soil, they were not permitted to restrict mining from their territory based on the argument that the subsoil belongs to the state. The popular consultation compensated for the lack of voice of these actors.

Likewise, the popular consultation shook up the quintessential institution of representative democracy –Congress--, making it aware of these procedural flaws to the point of encouraging them to present bills to address the issue of how citizens and local governments should participate in decisions over the environment. Furthermore, the Constitutional Court intervened to clarify, in its most recent decision on the issue (C-035 of 2016), that municipalities should have a say over mining decisions since it is impossible to reach the subsoil without affecting the surface soil. What Baiocchi, Heller and Silva (2011:9) concluded for the participatory budgeting experiment in Brazil holds for the institutions studied in this chapter: “The current structures of representative democracy were not enabling these people to have a voice, in a highly inegalitarian society, so such institutions add more direct and participatory forms of democracy to the existing regime.”

A question that remains is the degree to which these institutions are transformative. In most of the cases upon which the literature on participatory governance is based, the experiments colonize state power and transform formal governance institutions (Fung and Wright 2003). Experiments such as participatory budgeting in Brazil (Baiocchi, Heller and Silva 2011) or school councils in Chicago (Fung 2003), use and generate new state institutions to carry out problem-solving efforts. In doing so, these participatory institutions transformed state tactics.

The two cases analyzed here do not colonize state power permanently or remake the institution entirely as do some of the other participatory experiments. Bureaucracy is not immediately, permanently, and fully transformed. This does not mean, however, that power is left unfettered. Instead, bureaucracy is penetrated gradually. Popular consultations and prior consultations help neutralize power case-by-case. Prior consultation is leaning more toward a permanent change inasmuch as the government is gradually regularizing the practice, while

popular consultations are still debated, scattered, and resisted by national bureaucracy. But in the meantime, they lead to a form of *punctuated democratic deepening* with a range of enhancing environmental impacts.

5. Conclusion

“Most democratic innovations of the past two decades have taken place in the context of ‘less developed democracies,’” write political sociologists Baiocchi, Heller, and Silva (2011:xiii). This dissertation agrees with this claim and contributes to it by studying two other innovations — popular consultations and prior consultations — in relation to an object of study that, despite its indisputable relevance, continues to receive marginal attention in sociology: the environment (York and Dunlap 2012). Citizens throughout Latin America have activated popular and prior consultations to stop mining projects and other extractive activities and to protect the environment or alternative forms of economic activity. Popular consultations (or local referendums) are institutions of direct democracy that give an electorate the opportunity to vote on a particular “yes or no” question relevant for their jurisdiction. Prior consultation is the right of indigenous and tribal peoples to have the state consult with them when it wishes to take legislative or administrative measures that could potentially affect them or their territory — for example, to explore or extract natural resources located within their territories. In that sense, this dissertation is not the story of the destruction of the extractive industries (Bunker 1985), the rise in socioenvironmental conflicts (Bebbington 2012; Svampa and Antonelli 2009), or the absence of rebellion in situations of profound inequalities (Gaventa 1982). Instead, it is the story of citizens successfully blocking extractive projects by going beyond the traditional repertoires of mobilization and actuating institutions of political participation.

How were citizens able to actuate these institutions of political participation? Why is it so important to have citizen participation in environmental issues? What is the relationship between institutions of political participation and environmental protection? What are the effects of these

institutions? This dissertation has sought to answer these questions. In the process of doing so, it has presented findings that speak to issues of identity politics, institutional analysis, property rights, the governance of common-pool resources (CPRs), and to issues of power, democracy, and inequality. This concluding chapter reviews this discussion and then reflects more broadly about lessons and possible avenues of further research that follow from these findings.

5.1. Summary of Findings

This section presents the five main broad areas and themes in sociology, and the associated disciplines of political science and economics, to which this dissertation contributes.

5.1.1. Transformations in Identity Politics in Latin America

Analyzing the use of institutions of political participation for environmental protection in Latin America sheds new light on the study of identity politics. The rise of popular consultations and the increase in the use of prior consultations in the last two decades reveals a change in the subjects (*who*) and the tools (*how*) of resistance.

Recent scholarship on identity politics in Latin America has focused on explaining the significant and unprecedented rise of indigenous movements throughout Latin America during the course of the last third of the twentieth century (Dove 2006; Jung 2003; Yashar 2005). These scholars argued that the rise of indigenous movements “was happening just as more traditional labor and peasant-based organizations had declined in organizational strength” (Yashar 2005:5).

In other words, indigenous mobilization was growing as peasant and labor mobilization weakened. I argue, however, that this landscape has changed once again, and this change has not been captured by the new studies. Peasants are back in the political arena, accompanied by middle- and upper-class citizens. As Latin America shifted to an extractive economic model, in what Maristella Svampa (2013) describes as a swing from the “Washington Consensus” to the “Commodities Consensus,” so has politics. Political conflicts are now situated at the points where extractive projects clash with other forms of development, such as small- and large-scale agriculture, or with areas with high environmental importance. *Campesinos* are central agents in the political arena, along with middle- and sometimes upper-class citizens who, for different reasons, are contesting the dominant model of development. Popular consultations in many parts of Latin America have been activated by middle- and upper-class citizens, like the landed elite in the case of the popular consultation of Piedras, Colombia, presented in depth in Chapter 2, or the school and university professors in the case of Esquel, Argentina, referenced in Chapter 1. Those who have voted have been mostly nonindigenous peasants and middle-class citizens of towns.

Not only is there a change in the political subjects; there has also been a transformation in the tools of resistance. Institutions of political participation have become “the weapons of the weak” (Scott 1985). The existing work on indigenous uprisings has emphasized explanations of the use and variation in the traditional repertoire of contention, which has consisted of blocking roads, occupying churches, or even running for political office (Yashar 2005:4). However, the use of participatory institutions, like the prior consultation presented in Chapter 3, shows that indigenous actors have innovated in their tools and resorted to institutional forms of protest as part of a process of juridification of ethnic claims, which has been dubbed “ethnicity.gov” (Rodríguez-Garavito 2011). Taking advantage of developments in international law

(International Labor Organization Convention 169 of 1989, the 2007 United Nations Declaration on the Rights of Indigenous Peoples, and the recommendations and precautionary measures ordered by the Inter-American Commission on Human Rights), private regulations (the World Bank's Operation Policy 4.10), and national jurisprudence in some countries (notably Colombia's Constitutional Court), indigenous resistance resorted to prior consultation — which requires states to consult with indigenous peoples prior to undertaking economic projects or adopting administrative measures that affect them — to resist the dominant extractive model and protect the environment and cultural practices.

Likewise, the work on peasants and workers had focused on explaining strikes, protest, rebellion, and these actors' limited voice and limited means to press for change (Collier and Collier 1991; Eckstein [1989] 2001). However, the surge of popular consultations shows a change in the democratic tools of these actors as well. In short, both cases shed light on who is exerting citizenship in Latin America and the terms and tools by which they do so.

5.1.2. Beyond Mobilization: Institutional Activation

Studying the rise of popular consultations throughout the continent yielded another central finding for institutional analysis. It allowed me to uncover an institutional phenomenon — institutional activation — that is different from the more widely studied phenomena like institutional emergence, change, and diffusion but that, like the others, also has profound distributional consequences. Nonetheless, we know very little about the actors, strategies, and conditions that enable institutional activation. Institutional activation is the political, contested process through which institutions turn from dormant to active. From the scant work on the issue

(Levitsky and Murillo 2013), we know that institutional activation can be of three types: judicial, bureaucratic, and international, depending on whether the actor resuscitating the latent institution is the judiciary, the bureaucracy, or international actors, respectively. I depart from this definition offered by Levitsky and Murillo (2013), who equate activation with enforcement. That parallel is appropriate when the activators are the judiciary and the bureaucracy — the traditional enforcers (Mahoney and Thelen 2010). However, there are situations in which actors other than enforcers, like citizens, activate institutions. I thus argue that there is a fourth type of activation — citizen institutional activation — in which it is citizens (individuals or social groups) who struggle to trigger the institution.

This dissertation presented a theoretical model of this hardly analyzed phenomenon, designed to apply to all institutions in general, and assessed it through an empirical case: the popular consultation of Piedras, which was the first popular consultation regarding mining issues to be held in Colombia. The analytical framework posits that citizen institutional activation is the result of a cross-cleavage coalition of activator agents with activation strategies, which manages to distort power by formally or informally bringing together citizens or social groups that are traditionally divided along social, class, ethnic, or economic cleavages but align in favor of an institution or cause.

The activator agents are the subversive activators, the knowledge bearers, and the protesters. The subversive activators are those who specifically seek to activate the institutions and have the resources to work within the system. Their predominant strategy is silence, which allows them to surprise the opponent (normally the state) with the activation, without giving the opponent time to react and obstruct the activation. While activation implies that the institution is latent, it does not preclude knowledge; in fact, it requires that at least one actor is minimally

aware of the institution. The knowledge bearer and the subversive can be the same actor (or group of actors). The knowledge bearer shares with the subversive the strategy of silence or disguise because this actor's knowledge of the institution is often the result of the knowledge bearer's position of power, proximity to a position of power, or membership in a network of agents that will be affected by the distributive effects of the active institution.

The last group of actors is the protesters, who are the more visible face of the activation process. While I hypothesize that protesters are not as necessary for activation as the other two groups, they are usually part of it. They can play multiple roles: engaging in popular protests, informing the subversives about the threat, and guaranteeing that the institution that is activated is put in motion or sustained through time. In Piedras, the cross-cleavage coalition that enabled activation was composed of three groups: (1) a trio of rice growers, who were part of the region's landed elite; (2) a group of knowledge bearers, in particular a former high-ranked government official who clearly pinpointed the institutions of the popular consultation and (3) the protesters, largely *campesinos* who work for the landowners (including some of the subversive rice growers).

In this case, the *campesinos* were key to alerting the subversives about the threat of a tailings dam on their territory and to guaranteeing the success of the participatory institution, which by Colombia law requires a minimum number of votes. The cross-cleavage coalition enabled the activation, for the first time in Colombian history, of a popular consultation through which citizens of a remote, rural community in the Andes highlands managed to deter the plans of the world's third-largest mining company and alter plans for what could potentially be one of the world's largest gold mining projects.

The cross-cleavage coalition conceptualized here differs from similar existing concepts like alliances or networks in at least three ways. First, this coalition differs from the environmental justice networks spread all over Latin America (e.g., the Brazilian Network of Environmental Justice, the National Assembly of Environmentally Affected People in Mexico, and the network of so-called Fumigated Peoples in Argentina), which are formal networks with official names, national secretaries, and centralized methods of making decisions (Berger 2014). The coalition I point to is less official, less permanent, and less visible.

Second, they also differ from the “transcommunity networks” that Yashar (2005) argues were fundamental in the rise of indigenous movements in Latin America. Yashar sees indigenous movements as drawing on existing networks to build the movements, which supposes these networks predate mobilization and provide the organizational capacity. Cross-cleavage coalitions, instead, can form as a result of, or at the same time as, mobilization, as in the case of Piedras.

Third, related concepts such as “ambiguous agreements” (Palier 2005) refer to the acceptance of new measures by a wide range of groups (Palier 2005:131). With the term *coalition*, I want to signal something broader than agreement on a specific measure. I hypothesize that the coalition may form around a specific measure and the different groups may explicitly agree on this, but it might also consist in groups supporting a cause indirectly without ever formally convening with the other groups. In short, the coalition leaves room for informal and tacit forms of collaboration.

At the same time, however, the coalition shares with the existing mechanisms a diverse composition, and it also captures messiness, conflicts, strategic collaborations, and pragmatism (Baiocchi, Heller, and Silva 2011:xii).

5.1.3. The Common Problem of the Commons and Institutions of Political Participation as a Solution

A focus on contemporary conflicts over development and the environment in Latin America, in which citizens deploy participatory institutions as means of resistance, also enabled me to uncover a problem related to the protection of the environment, which I called the *common problem of the commons*, and to propose a possible solution to this.

The common problem emerges from the fact that, in most of the world, with the main exception of the United States, owners of the land are not the owners of the subsoil resources because these belong to the state. Thus, owners of the land do not have decision-making power over the exploitation of subsoil minerals. As a result, the common-pool resources on the land — which largely means the environment, since most environmental resources are CPRs — can be threatened not only by direct threats to CPRs, like overharvesting of the resource (Ostrom 2008), but also by the threat of exploitation of different resources in the subsoil. This threat exists regardless of the strength, complexity, and monitoring capacity of the property-rights structures related to the resources on the land. In other words, I posit that property rights are limited in their ability to protect the environment but for a reason that has not been explored by commons and property scholars, which emerges from the discrepancy between property-rights structures on the land and the subsoil and the problems that arise from this discrepancy. Based on ethnographic research, I also found that institutions of political participation like prior consultation can offer a way to overcome the common problem of the commons.

The common problem of the commons and its solution is illustrated in Chapter 3, which presents an in-depth case study of the creation of Apaporis national park in the Colombian Amazon, on the border with Brazil; this first involved the creation of a collective-property territory and then, through the process of prior consultation, the layering of a national park on this territory.

The ancestral territory over which a national park lies today was originally declared a *resguardo* by the national government in 1988, as part of the process of *resguardo* creation in the Amazon region. A *resguardo* is a legally recognized territory that is collectively owned by indigenous communities. As explained in Chapter 3, drawing on the theory of gradual institutional change (Hacker, Pierson, and Thelen 2015; Mahoney and Thelen 2010), the institution of the *resguardo* emerged in Spanish colonial times and, despite attempts at displacement and processes of drift, conversion, and layering, it endures until today. I found that the *resguardos* in the Colombian Amazon, despite being created from above, nevertheless benefited subordinate groups, rather than elite actors, because these actors were not fully aware of the distributional effects of the institution, nor they could anticipate them. For many commons scholars and economists (e.g., Bromley 1992; Hardin 1968; Libecap 2009), the *resguardo*, inasmuch as a clearly defined and enforced collective-ownership structure should have, sufficed to solve environmental problems associated with exploitation.

The *resguardo*, however, is a classic example of the common problem of the commons. The *resguardo* allowed the indigenous communities to set up their own laws and forms of government and control the use and sustainable exploitation of the CPRs on their ancestral territory. However, as corporations became interested in mining activities in the region, the *resguardo* became insufficient to deter them because it did not grant indigenous communities

any decision-making power that could influence or restrict the state's power to grant mining concessions. Consequently, even if it meant a restriction of their local autonomy, for the first time in Colombian history, the indigenous groups requested that a national park be layered over the *resguardo* to prevent the destruction of the forest and their sacred waterfalls as a result of the exploitation of the gold lying underneath. Under Colombian law, only national parks completely ban extractive activities.

However, the national park would not have been possible without a process of prior consultation. Even if requested by the indigenous communities themselves, the park is a measure that clearly affects the rights of indigenous groups and thus the state is required to consult these groups regarding the decision. So, against the threat posed by the mining company, the indigenous communities resorted to prior consultation to overcome the common problem of the commons. The participatory institution of prior consultation gave the communities decision-making power over the extraction of the subsoil wealth, even though they were not the owners of the subsoil. The object of the consultation was the national park, but the enabling mechanism was an institution of political participation that allowed the indigenous community to be involved in the decisions over the mineral wealth underneath their ancestral land, despite the subsoil property regime.

5.1.4. Power and Participation: The Effects of Participatory Institutions in Environmental Protection

A recurring theme in political sociology and participatory democracy has been the relationship between power and participation (Baiocchi 2003; Fung and Wright 2003; Gaventa

1980; Lukes 2005). A prevailing object of inquiry in these fields has been whether and how participation of the traditionally dispossessed serves to challenge power and counter social inequalities. By paying attention to the effects of participatory institutions with regard to environmental protection, this dissertation methodologically and conceptually advances this traditional debate.

As argued in Chapters 1 and 4, while the literature tends to agree that participation is normatively desired, it is split and on the whole pessimistic about how and why participation makes a difference in general (Abers 2003; Fung and Wright 2003) and with regard to the environment in particular (see Simmons 2007 for a summary). Not only do these studies lack a systematic framework to evaluate the impacts of participation, they focus almost exclusively on the procedural design of the process, the actual participants, or the clearly desired target. Thus, as rightly identified by Baiocchi, Heller, and Silva (2011:1), “in almost all of the cases [of participatory democracy], the empirical findings suffer from two limitations. First, it has been difficult to isolate the impact of participation and to determine why participation makes a difference.” This dissertation contributes to overcoming this limitation by introducing a framework developed in comparative constitutional studies (Rodríguez-Garavito and Rodríguez-Franco 2015), which offers methodological and conceptual tools to study the impact of judicial decisions, but which can be adapted to study the impact of institutions broadly and institutions of participation in particular.

The main advantage of this analytical model is that it widens the theoretical and methodological lens to enable attending to the participatory institution’s symbolic and indirect effects alongside the direct and material effects (see Figure 4.1 in Chapter 4.). As the name suggests, direct effects are those that follow directly from the implementation of the participatory

institution, while indirect effects are those that, while not sought with the implementation of the participatory institution, nonetheless derive from it. Material effects comprise tangible changes in the conduct of individuals, groups, or the government, among others, while symbolic effects entail changes in conceptions, ideas, or social constructs related to the participatory institution itself, the issue being addressed, or related matters. As in all typologies, these four categories are ideal types that serve a heuristic purpose, but the boundaries between the analytic categories are often less neat than they appear.

The two-by-two typology has three additional methodological and analytical benefits. First, it allows us to have a more nuanced view of success and failure, as recommended by scholars of participatory democracy (Baiocchi, Heller, and Silva 2011:10). Second, it enables us to be simultaneously attentive to rapid wholesale changes and also to gradual piecemeal transformations (Mahoney and Thelen 2010). Third, it captures the idea that effects are often fluid and continuous (for example, an effect can be somewhat in the middle — between direct and indirect or between material and symbolic).

Applying the framework to the two types of participatory institutions studied in this dissertation — popular and prior consultations — yielded six effects that enhance environmental protection: the deterrent effect, the community empowerment effect, the leveling effect, the creation effect, the awareness effect, and the state-building effect. While these effects were extrapolated by applying the framework to the outcomes and development of the two participatory institutions, I posit that they are potential effects that other types of participatory institutions (e.g., the participatory budgeting mechanism) can have on environmental protection and also on other progressive outcomes of interest to the social sciences in general.

Because I explained the effects in depth in Chapters 1 and 4, in this section, I will briefly define them and show how they contribute to enhancing environmental protection. I will focus on analyzing how each of the effects disrupts power and existing inequalities, bearing in mind the one-, two- and three-dimensional views of power (Gaventa 1980; Lukes 2005).

The *deterrent effect* refers to the potential of participatory institutions to block the environmental threat that motivated the use of the participatory institution in the first place. In the cases of both the popular consultation of Piedras and the prior consultation in Apaporis, the mining activities were blocked. In the case of Piedras, citizens overwhelmingly voted “no” to having any mining activity on their land and, because Colombian law says that the results are binding, the company changed its plans to build the tailings dam on the territory. Likewise, in the case of the Apaporis, the indigenous communities managed to get a national park created over their *resguardo* after following a proper process of prior consultation. The direct, material effect of both consultations was that the external threat to the water sources, the rice fields, the rivers, and the forest was deterred.

The *community empowerment effect* refers to the potential of participatory institutions to improve and expand the participatory skills and knowledge not only of the participants in the institutions but also of other citizens and social groups beyond the immediate case. It implies an increased political consciousness in underrepresented and marginalized citizens who, despite having citizenship rights on paper, seldom process their demands through those institutionalized means. The rise in the number of municipalities that attempted to carry out popular consultations after the Piedras vote is a clear example of this indirect, material effect.

The *leveling effect* denotes the potential of institutions of political participation to balance the playing field, which is profoundly lopsided. In an extreme oversimplification, the

government and the companies stand on one end of the field, hold the power to grant concessions, and possess the information about the project. On the other side stand the communities where these projects are built; these are the people who endure the negative environmental and social effects of mining (Bridge 2004) and seldom have complete information about the project or a chance to participate in the decision-making process about the mining project. A clear example of this effect is the fact that *campesinos* of Piedras and the indigenous groups of the Amazon were able to enhance their knowledge and deliberate about the effects of mining as well as to influence the decision-making processes that affected the outcomes of those mining projects through a formal government–citizen interface.

The *creation effect* refers to the potential of participatory institutions to help raise issues to the political agenda and initiate public debate. It is indirect because the participants of the institutions were not necessarily aiming to influence the issue-raising process, and it is symbolic because it implies a transformation in the way diverse actors perceive and deal with the issue. One example is the fact that, after the Piedras consultation, both Congress and the Constitutional Court took up the debate about whether and how municipal authorities and citizens should intervene in the decision-making process over mining and hydrocarbon extraction.

The *awareness effect* denotes the potential of participatory institutions to transform the way a problem is perceived both by the participants in the institution and those beyond (this is the reason this effect straddles the direct/indirect boundary). An example of this effect is the greater consciousness of *campesinos*, landed elites, and indigenous groups about the negative impact of mining projects, which resulted in more demonstrations and protests around the country and also in efforts to deploy participatory institutions.

Lastly, the *state-building effect* indicates the potential of participatory institutions to contribute to state building by triggering the state to be present in areas where it has traditionally been absent or by buttressing its infrastructural power in those areas where it is already present, but weak. One clear example of this effect resulted from the prior consultation in the Amazon: the Colombian Constitutional Court, for the first time in its history, held a public hearing in the midst of the forest to discuss whether the prior-consultation process that led to the creation of the Apaporis park was properly carried out.

The participatory processes also had their drawbacks and limitations. For instance, while popular consultation enabled citizens to participate in the decision-making process, it did not reshuffle the property structure of the area, which was characterized by large concentrations of land in the hands of the landed elite, some of whom were part of the cross-cleavage coalition. Political participation cannot disrupt all power structures or mend all social inequalities concurrently or across the board. Indeed, not all of the six effects that resulted from the two institutions of participation were radical or permanent; some are more gradual and transitory. Both individually and jointly, the six effects contributed to enhancing environmental protection and provoking social change by disrupting power and weakening inequalities.

If we adopt the one-, two- and three-dimensional views of power (Lukes 2005), we can understand how these participatory institutions helped challenge power and bring about progressive effects like enhancing environmental protection. As Polsby (1963) explains, under the first or pluralist view of power, power is understood in terms of who participates, who profits and loses, and who prevails in making decisions over key issues (quoted in Gaventa 1980:5). In the two cases under study, the deterrent, community empowering, and leveling effects clearly helped challenge power along this dimension because traditionally marginalized people managed

to participate in the decision-making process and their interests prevailed over those of the powerful as they managed to halt the corporations' (and government) projects. The state-building effect also helped challenge power by bringing the state to other places on behalf of the less privileged.

In a two-dimensional approach, power works by preventing certain political issues and actors from gaining access to the decision-making process altogether, making some issues “non-issues” (Gaventa 1980:vii). From a three-dimensional view of power, power operates by shaping the conceptions and ideas of the powerless and by preventing demands from becoming political issues (Lukes 2005). Power prevents conflicts from arising in the first place. The awareness and the creation effects challenged power along the second and third dimensions by bringing both substantive issues (e.g., ideas about local development, poverty, and the environment) and procedural issues (e.g., ideas and conflicts of interests over how decisions over development projects are made, especially those related to extractive projects) to the public debate. These participatory institutions allowed those issues to arise and allowed the grievances of *campesinos*, indigenous communities, and rice growers to be heard and their “real interests” (Lukes 2005:28) to be recognized. Likewise, the debates that ensued in Congress, academia, local governments, the media, and the Constitutional Court around these participatory institutions, mining, and environmental issues revealed there was an instilled conception of how decisions related to mining and hydrocarbon extraction were being made: it had become normal and apparently nonconflictive for only the national government to be entitled to make decisions over exploration and exploitation — without the participation of other levels of governments or citizens.

In sum, based on the three views of power, these institutions of political participation helped challenge power and, by doing so, improved environmental protection by bringing people

into the decision-making arena, opening issues to public debate and decision making, and challenging conceptions of how things were done and how decisions were made.

5.2. Looking Forward

If the findings presented here are accepted and endorsed, what do they imply for existing knowledge and future avenues of research and policy?

5.2.1. Implications for Representative Democracy

This dissertation makes the case that participatory institutions, whether they are institutions of direct democracy or of deliberative participation, are instrumental for environmental protection. This leads to a critical question: Can participatory democracy coexist with representative democracy in general, and for the purpose of environmental protection in particular, and how? Rather than calling for the substitution of representative democracy with participatory democracy, this dissertation is a call to see the use of institutions of direct democracy and deliberative participation as symptomatic of the limitations of representative democracy and, at the same time, as a solution to such limitations. The popular and prior consultations studied here were able to break through the reinforcing balance of representative democracy in a highly inegalitarian society like Colombia, where the participation of citizens in environmental affairs, particularly in relation to extractive activities, has in practice been gradually reduced to a minimum, despite the fact that many citizens enjoy formal rights of citizenship.

However, the success of these two institutions of political participation does not mean that a participatory blueprint should be imposed either — especially not if this is transplanted from the North, inattentive to the known pitfalls of “institutional monocropping” (Evans 2004), or inattentive to the specific conditions of a country that could influence its success (for example, citizenship rights, culture, strength of civil society, or models of economic development). Rather, it is a call to look within the global South, where democratic innovations are taking place, and to ask questions: How should those participatory institutions be constituted? How can we guarantee they are biased towards inclusivity in order to counterbalance the constraints that arise from underlying power structures and the limits of representative democracy? How can we guarantee a degree of effectiveness in which participation is not merely consultative but translates into actual outcomes? Ultimately, how do we construct effective democratic politics around environmental issues in particular and social issues in general?

5.2.2. Implications for Issues beyond Environmentalism and Latin America

If participatory institutions proved important for environmental protection in Latin America, then we must consider in what other substantive and geographical areas this relationship might be important. There are at least three avenues worth exploring. First, this invites us to think beyond environmental protection, both in relation to new substantive areas different to the environment, and also regarding the use of these same institutions for anti-environmental purposes. Other studies on participatory democracy have explored its importance for municipal budgeting (Baiocchi 2003; Goldfrank 2011), public schooling and neighborhood policing (Fung 2004), and decentralization planning (Isaac and Heller 2003). It also raises two

other questions: In what other substantive areas have spaces closed for citizens and civil society? How may participatory institutions be necessary in those areas? Possible areas could be health care, public housing, and infrastructure, where power structures often limit demands of the underprivileged from being voiced and where those the traditionally excluded voices could bring valuable knowledge to the debate.

Second, this dissertation focused on two institutions of political participation that are increasingly common in Latin America. This raises a natural question of what other formal and informal institutions are being deployed in the region, both for environmental protection and for other issues. Promising research would entail mapping the different types of participatory institutions and comparing, qualitatively and quantitatively, the successes and failures of these institutions in attaining the desired results. It would also be valuable to evaluate their effects using the two-dimensional analytical model offered to continue expanding our understanding of the possible direct, indirect, material, and symbolic effects of participatory institutions.

Third, this dissertation identified the common problem of the commons, which it argued is more common than the lack of research on the issue would suggest. It also demonstrated that, in Latin America, indigenous and nonindigenous communities are deploying institutions of participation as a way to solve the consequences of this problem. This finding shows that participatory-democracy theory has much to offer to scholars of the commons and property rights, and it suggests that, given the externally driven tragedy of the commons, models that consider participation are not only possible but also promising. Hence, future research could further explore the relationships between CPRs, property-rights arrangements, and participation. One possible avenue could explore what other tools and solutions communities are devising as the problem becomes more common (for instance, as countries such as South Africa shift to a

differentiated soil/subsoil regime or as extractive activities continue to expand). How does the fact that the tragedy is external make participation key to overcoming such tragedy? How large a group should have property rights in a place? What other institutional forms could work as possible solutions? A second avenue of inquiry could engage with the broad question of whether this problem merits a rethinking of property-rights arrangements of the soil and subsoil.

Lastly, identifying the common problem of the commons reveals that commons scholars had not dealt with minerals (Ostrom 2012). As explained in Chapter 1, this is partly due to the fact that they have dealt with renewable resources. However, this common problem merits conducting research: first, on how to conceptualize the minerals of the subsoil based on the work on the commons and second, on the applicability and generalizability of the principles and the polycentric systems developed by the commons scholars to such minerals.

5.2.3. Implications for Institutional Analysis

This dissertation shed light on the institutional phenomenon of citizen institutional activation. It offered a model and assessed it empirically in the case of the first popular consultation to take place in Colombia regarding mining issues. This raises the question of whether the theory presented here applies to other participatory institutions in particular and to other formal and informal institutions in general. It also raises the question of whether the issue discussed — here, the environment and mining — plays a determinant role in the activation process. One hypothesis is that, with the formation of a cross-cleavage coalition composed of actors who are not traditional allies and with at least one actor who can identify the institution

and secretly navigate the system, we can expect institutional activation to occur in general.

But the model and case presented here merit assessment with other real-world examples.

5.2.4. Implications for the Study of Agency and Indigenous Peoples

Highlighting ways in which citizens protect the environment and resist extractive activities through participatory institutions like popular and prior consultations puts a clear emphasis on agency. The cases of both the popular consultation (Chapter 2) and the prior consultation (Chapter 3) presented in this dissertation underscore the role of agency in the face of development and environmental obstacles. By doing so, this research helps fill a gap in environmental sociology. One of the central objects of inquiry of this field has been potential solutions to environmental problems. The dominant responses — the interruption of uncontrollable economic and population growth or the actions of private companies or environmental agencies — emphasize structural and organizational variables. More recently, there has been a gradual increase in research on anticonsumerism and voluntary simplicity movements, which explores people's efforts to move away from environmentally destructive lifestyles and has paid greater attention to the individual and less to macro structural factors (Rudel, Roberts, and Carmin 2011). In general, of the approaches described, “none is able to adequately account for the manner in which environmental problems are defined, articulated and *acted upon by social actors*” [emphasis added] (Hannigan 1995). By studying the use of participatory institutions, this dissertation explored how social actors act upon environmental problems and investigated what political tools they use to successfully find environmental

justice; it paid less attention to the structural causes and highlighted the roles of agency and strategy.

In the case of indigenous groups, the role of agency has a further implication. As Cao (2014) has rightly argued, the dominant narratives of the pristine forest of the Amazon have so far made the role of the indigenous people in conserving the forests invisible. These narratives erase any past agency and deny any future agency when it comes to shaping the Amazon. They are also based on an essentializing and uniform conception of indigenous people as inherently conservationist, which erases any possibility of variation among and within indigenous groups and any possibility of changes in preferences over time and under differing circumstances. However, the case study of the Amazon region presented in Chapter 3, in which indigenous peoples took advantage of the process of prior consultation to request a natural park over their ancestral territory and thwarted the plans of a gold mining company, shows the overt effort of indigenous groups and their institutional strategies to protect their land. It shows that indigenous groups are neither passive nor pristine; like destruction and deforestation, conservation in a contemporary world is not naturally occurring but is often mediated by human action. Thus, a fruitful area of study would investigate other ways and areas in which indigenous groups have contributed, or not, to environmental conservation.

5.2.5. Implications for Popular and Prior Consultations

By analyzing environmental politics in Latin America from an institutional analysis approach, this dissertation identified a surge in the use of popular consultations, which, despite the interest from the local media and the NGOs that had been involved in the processes, had not

received academic attention. Likewise, the dissertation contributed to the growing scholarly interest in understanding and explaining the use of prior consultations (e.g., Falletti and Riofrancos 2013; Rodríguez-Garavito 2011). Thus, these consultations constitute fertile ground for further comparative academic research along three paths. First, one could compare cases of popular consultations to try to understand the causes of success and failure. Second, one could compare cases of popular and prior consultations (or other forms of participation) with situations in towns and communities that did not hold them to further explore how participatory institutions make a difference. Third, popular consultations are prime material for improving and assessing theories of institutional diffusion and reproduction, in particular the mainstream idea that institutions tend to develop in the North and to then be imported to the South; this dissertation suggests that democratic innovations also emerge and diffuse within the South.

5.2.6. Implications for Studies on Globalization, the State, and Local Government

A common argument within globalization studies is that the state has faded away. The findings of this dissertation show that this is not necessarily true, since citizens are deploying state-sanctioned, formal institutions as their tools to resist the impacts of economic globalization on their environments, forms of development, and basic human rights. In other words, the fact that institutions of participatory democracy that involve the state are emerging as the weapons of the weak reveals that the state is doing anything but disappearing. Rather, these new tools suggest that relations between the state and society are transforming from contention to institutionalization; this implies that mobilization has not disappeared but rather has been

complemented. In prior consultations, the state reaches down to the traditionally excluded indigenous and tribal peoples. In popular consultation, the nonindigenous populations seek a way to reach up and interact with the state through its formal channels since they do not have a right similar to prior consultation. But in both cases, the state is the main interlocutor.

In addition, these forms of protest, in particular popular consultations, invite us to take a more disaggregated view of the state, in which local governments gain particular salience amidst forces of globalization. Popular consultations regarding mining are being held at the municipal level because this is where the extractive activities take place. Thus, the local state has emerged as a key site of contention as a result of being situated in the confluence of globalization dynamics (notably, the expansion of transnational mining and hydrocarbon corporations) and increased political action. While the debate about democracy and development has, for most of the post-World War II era, focused on national and global units of analysis (Baiocchi, Heller, and Silva 2011), the shift in politics to the places where extractive activities arrive forces us to focus on the role of the local state under globalization and on both local and national development. In short, instead of weakening, the state seems to be expanding as a central interlocutor for traditionally marginalized groups as these groups make efforts to gain a space in the decision-making arena, and local governments seem to be rising as countervailing forces and sites of contention.

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- Colombian Senate Plenary, Resolution 102 of 2014

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Decree 934 of 2014
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Law 1382 of 2010
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Legislative Act No. 1 of 1986
1991 Constitution
Law 1757 of 2015
INCORA, Resolution 1981 of 1973.
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International Law:

ILO Convention 169 of 1989

Colombian Constitutional Court decisions:

C-035 of 2016
C-123 of 2014
SU-039 of 1997
T-129 of 2011
T-384A of 2014
T-384A of 2014
T-428 of 1992
T-652 of 1998
T-769 of 2009

Interviews cited:

Anonymous interview, legal expert and former public official of the Ministry of the Environment, September 7, 2015, Bogotá.

Angela Méndez, president of the Community Action Board of the township of Campoalegre, May 4, 2015, Doima.

Angela Rincón, Advisor to the National Parks Divisions and member of the team in charge of expanding the Apaporis *resguardo*, October 2013, Bogotá

- Benjamin Tanimuka, Traditional Authority of the Bella Vista Community of the Apaporis Resguardo, April 16, 2015, Bogotá.
- Camilo Guio, legal advisor of Gaia Amazon Foundation and the National Parks Division – Amazon unit, February 2016, Bogotá.
- Carlos Baquero, legal expert on prior consultation, May 2014, Bogotá.
- Catalina Restrepo, rice grower from the Doima area, March 10, 2016, Bogotá.
- Cesar Riaño, environmental activist, one of the founding members of the environmental committee of Ibagué, February 24, 2015.
- Elida Barcenas, schoolteacher at Doima’s school, July 2015, Ibagué.
- Enrique Rodríguez, two-times mayor of Piedras and member of the rice-growers association, May 5, 2015, Ibagué.
- Evelio Campos, founding member of Ecotierra, February 24, 2015, Cajamarca.
- Felix Bonilla, rice grower of Doima, February 24, 2015 (Bogotá) and April 2015 (Bogotá).
- Germán Montoya, Private Secretary of President Virgilio Barco (1986-1990), October 2013, Bogotá.
- Javier Rodríguez (alias “La Gallina”), President of the Community Action Board, May 2, 2015, Piedras.
- John Moreno, member of the council of elders of the *gran resguardo* of Vaupés, May 2, 2014, Bogotá.
- Jose Alejandro Gómez, ricegrower of Doima, May 1, 2015, Piedras.
- José Fernando Isaza, President of the National Oil Company, Ecopetrol 1980-1982, October 2013, Bogotá,
- Juan Camilo Gómez, student the University of Tolima and member of the environmental committee of Ibagué, May 3, 2015, Ibagué.
- Juan Carlos Preciado, legal advisor to the Organization of Indigenous Peoples of the Colombian Amazon (OPIAC for its Spanish name) and to Gaia Amazon Foundation, February 2016, Bogotá.
- Julián Viña, rice grower of Doima and promoter of the popular consultation, February 23, 2015 (Bogotá); May 3, 2015 (Ibagué); July 2016 (Bogotá).
- Julio Roberto Vargas, Environmental Committee of Cajamarca, November 1, 2013, Cajamarca.
- Luis Carlos Hernández and Evelio Campos, founding members of Ecotierra. Cajamarca, February 11, 2015, Cajamarca. (joint interview).
- Luis Carlos Hernández, founding member of NGO Ecotierra, February 24, 2014 (Bogotá); May 4, 2015 (Ibagué).
- Mariana Gómez, rice grower of the area and director of the Yes to Life No to Mining Campaign in Latin America, November 2013.

Marina Guevara, a retired farmer and one of the leading organizers of the protests at Doima, November 10, 2013 (Doima); May 2, 2015 (Doima).

Martin von Hildebrand, Director of Gaia Amazon Foundation, December 2012 (Bogotá), March 27, 2014 (Bogotá).

“Pepe,” *campesino* and resident of Piedras, May 4, 2015, Piedras. [asked for his nickname to be used].

Ramón Laborde, Presidencial Division for Indigenous Affairs (2012-2014), lawyer and legal advisor to the indigenous peoples of La Sierra Nevada, former researcher at Gaia Amazon Foundation, August 2013, December 22, 2015, January 2016, April 15, 2016 (Bogotá).

Reinaldo Marchena, Sikuni indian, November 2013, Puerto Inirida, Guainía, Colombia.

Renzo García, Founding member of the Environmental Committee in Defense of Life of Ibagué, July 26, 2015, Ibagué.

Roque Roldán, legal expert on indigenous affairs, former Director of the Division of Indigenous Affairs within the Ministry of Government, November 2014, Guarne, Antioquia.

Videos:

Vargas, Luis Ernesto. 2014. President of the Colombian Constitutional Court. Press conference on decision C-123/14. March 7, 2014. Available at:
<https://www.youtube.com/watch?v=KhaNUM4iSiA>

Video entitled “Ministerio del interior y parques sí hay objeciones” Available at Gaia Amazon Foundation.

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EDUCATION

- 2017 Ph.D., Department of Sociology, Northwestern University
Dissertation: “Participatory Institutions and Environmental Protection: Popular and Prior Consultations in Latin America”
Committee: James Mahoney (Chair), Bruce Carruthers, Carol Heimer, and Monica Prasad.
- 2011 Master of Arts (M.A) Sociology Northwestern University
Master’s Thesis: “Internal Wars, State Building, and Taxation”
- 2007 Bachelor in Law (J.D.), University of Los Andes, Law School (Bogotá, Colombia)
- 2005 Université Panthéon-Assas, Paris II (Paris, France). One year exchange program
- 2004 Bachelor of Arts (B.A.) in Economics, University of Los Andes (Bogotá, Colombia)

RESEARCH INTERESTS

Sociology of Development, Comparative Environmental Politics, Environmental Sociology, Comparative and Historical Sociology, Sociology of Law, Fiscal Sociology, Political Sociology, Human Rights, Latin America, and Ethnographic methods

AWARDS, GRANTS, AND HONORS

- 2016 “Outstanding Published Article Award” from the American Sociological Association Section on Peace, War and Social Conflict
- 2015 Robert F. Winch Award for Graduate Student Best Presented or Published Paper. Department of Sociology, Northwestern University. For the paper “Internal Wars, State Building, and Taxation” forthcoming in the *American Sociological Review*.
- 2015 Buffett Institute Dissertation Research Travel Award (\$4900)
- 2015 Sociology Fieldwork Research Fellowship for Fall 2015. Awarded by the Department of Sociology, Northwestern University.
- 2014 “Sociology of Development Student Paper Award” from the American Sociological Association, Sociology of Development Section. For the paper “Internal Wars, State Building, and Taxation”
- 2014 Karpf Peace Prize, awarded by the Department of Sociology, Northwestern University
- 2013 Equality, Development, and Globalization Studies Grant, Buffett Center, Northwestern University for the project “Greening Latin America: The Causes and Consequences of Green Governance in the Andean Amazon” (\$2000)
- 2013 Buffett Center Summer Research Travel Award for the project, “Greening Latin America: The Causes and Consequences of Green Governance in the Western Amazon.” (\$2500)

- 2012 Reinhard Bendix Prize for Best Graduate Student Paper from the American Sociological Association Section on Comparative-Historical Sociology for the paper “Internal Wars, State Building, and Taxation”
- 2011 Institute of International Education and The Ford Foundation Grant to attend Moynihan Institute of Global Affairs in the Maxwell School at Syracuse University’s inaugural Transnational NGO Leadership Institute. September 14-20. (\$4,419.35)
- 2010 MacArthur Summer Research Grant, Dept. of Sociology, Northwestern University (\$1100) “Foreign Aid and Growth” (with Prof. Monica Prasad). June 15 – Sept. 15
- 2009-2014 Northwestern University Fellowship

PUBLICATIONS

2016. “Internal Wars, Taxation, and State-Building” *American Sociological Review*. February issue.
- 2016 “Dependency Theory” in Carol Lancaster and Nicolas van de Walle, eds. *Oxford Handbook on the Politics of Development* (with James Mahoney).
- 2015 *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South*. Cambridge University Press. (with Cesar Rodriguez-Garavito).
- 2015 *Juicio a la Exclusión: El impacto de los tribunals sobre los derechos sociales en el Sur Global*. Argentina: Siglo Veintiuno editores. (with Cesar Rodriguez-Garavito).
- 2012 “Taxes, Clientelism, and Technocracy: An Institutional Ethnography of the Colombian Tax Collection Agency” in Alejandro Portes, ed. *Institutions and Development in Latin America: a Comparative Study*. Uniandes. (with C. Rodriguez-Garavito). [Spanish]
- 2012 “Globalizing Intellectual Property Rights: The Politics of Law and Public Health” in Yves Dezalay and Bryant Garth, eds. *Lawyers and the Construction of Transnational Justice*. Routledge.
- 2010 *Courts and Social Change: How the Colombian Constitutional Court Transformed Internal Displacement in Colombia* (with C. Rodriguez-Garavito). Anthropos. [Spanish]
- 2010 *Union Rights Reform and Development* (with Miguel Urrutia et al.). Publicaciones Universidad de Los Andes. [Spanish]
- 2008 “Is the Investment Chapter in the Colombian-US Free Trade Agreement Constitutional? The Case of Regulatory Takings and Dispute Resolution Mechanisms” in *Free Trade Agreement: Is it Constitutional?* Bogotá: Latin American Institute for Alternative Legal Services – ILSA. Pp.111-132. [Spanish]
- 2007 “Is the Free Trade Agreement Constitutional?” *Revista Foro* No. 61, May 2007, (with C. Rodriguez Garavito). [Spanish]

- 2007 “Is the Free Trade Agreement Constitutional?” in *Rights and Economics – Social Rights and Public Policies Review*. No. 1, Jan. – Mar. 2007, Bogota: Dejusticia (with C. Rodriguez Garavito). [Sp.]

PROFESSIONAL AND RESEARCH EXPERIENCE

- Present Research coordinator, Environmental Justice Division, Center for the Study of Law, Justice and Society (Dejusticia), Bogotá, Colombia
- 2012 Research Assistant to Professor Carol Heimer, Northwestern University
- 2011 Research Assistant to Professor Hector Carrillo, Northwestern University
- 2010-2013 Affiliate Researcher, Center for the Study of Law, Justice and Society
- 2009 Senior Researcher, Center for the Study of Law, Justice and Society (Dejusticia), Bogotá, Colombia.
- 2006-2008 Assistant Researcher, Center for the Study of Law, Justice and Society (Dejusticia), Bogotá, Colombia.
- 2004 Research Assistant to Professor James A. Robinson (Harvard University), Economic Development Research Center (CEDE), Department of Economics, University of Los Andes. Summer 2004
- 2003 Research Assistant to Professor Fabio Sanchez, Economic Development Research Center (CEDE), Department of Economics, University of Los Andes. May – July.

TEACHING EXPERIENCE

- 2015 Visiting professor at Universidad de Lanus, Buenos Aires. Certificate program on Migration and Asylum.
- 2010-2011 Teaching Assistant, Northwestern University, Sociology Department. Course taught (Graduate level): Introduction to Quantitative Data Analysis, Statistical Analysis of Social Data: Regression Analysis I.
- 2008-2009 University of Los Andes, Law School. Course: Sociology of Law.
- 2008-2009 Visiting Professor, EAFIT University (Medellin, Colombia). Graduate Program “Law and Economics”. Course: The Economic Analysis of Judicial Rulings and Public Policies.
- 2007-2008 Teaching Assistant, University of Los Andes, Law School. Course: Sociology of Law

SELECTED PRESENTATIONS

- 2016 “Voting Against Extraction: The Activation and Effects of Popular Consultations in Latin America” in *Latin American Studies Association 2016 Annual Conference*. New York. May 27.
- 2015 “Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South.” Watson Institute, Brown University, October 7.
- 2015 “Voting Against Extraction: The Activation and Effects of Popular Consultations in Latin America” in *Revisiting Remaking Modernity – New Voices in Comparative-Historical Sociology*. Northwestern University, Evanston, August 21.
- 2015 “Voting Against Extraction: The Activation and Effects of Popular Consultations in Latin America” in *Latin American Studies Association 2014 Annual Conference*. Puerto Rico, May 30.
- 2015 “The Rise and Mobilization of Popular Consultations in Latin America” Sociology of Development Conference, Brown University, March 14.
- 2014 “Guerras internas, impuestos y construcción de Estado” Seminario DePolítica, Political Science Department, University de Los Andes. November 13.
- 2014 “Green Governance in the Amazon: The Conservationist Role of Indigenous Territories through Layered Property” in *1st REPAL Conference*. Santiago de Chile, June 9-10.
- 2014 “Regulating through Indigenous Territories and Layered Property” in *Law and Society 2014 Annual Conference*. Minneapolis, May 30.
- 2014 “Green Governance in the Amazon: The Conservationist Role of Indigenous Territories through Layered Property” in *Latin American Studies Association 2014 Conference*. Chicago, May 23.
- 2013 “Internal Wars, Taxation, and State-Building” in *Latin American Studies Association 2013 Annual Conference*. Panel “State Formation in Latin America.” Washington D.C., May 30.
- 2013 “Green Governance in the Western Amazon: The Politics of Resource Extraction and Conservation in Colombia and Peru ” in *Comparative and Historical Social Science Workshop*, Northwestern University. May 10.
- 2012 “Internal Wars, State Building, and Taxation” in *American Sociological Association 2012 Annual Meeting*. Sociology of Development Session. Denver, Colorado, August 17-20.
- 2011 “Internal Wars, Tax Collection, and State Building” in *Social Science History Association 2011 Conference*, Boston, Massachusetts, November 17.
- 2011 “Internal Wars, Tax Collection, and State Building: A Case Study of Colombia” in *Max Planck Summer Conference on Economy and Society*, Tegernsee, Germany, July 13-16.
- 2010 “The Protection of IDPs’ Rights in Colombia: The Case of Ruling T-025 of 2004 and the Unconstitutional State of Affairs” in [4th International Conference on the Globalization of Collective Litigation](#). Florida International University. December 10.

- 2010 “Constructing and Contesting the Global IP Field” in *Annual Law and Society Association Meeting*, Chicago, May 27-30.
- 2009 “Taxes, Clientelism and Technocracy: An Institutional Ethnography of the Colombian Tax Administration” in *Social Science History Association 2009 Conference*, Long Beach, California, November 12-15.
- 2008 “Local Justice, Social Violence, and Egalitarian Public Policies: Toward a Comprehensive Conflict Resolution System in Bogota” in *Seminario Internacional - Seguridad y Ciudad*. National University of Colombia. Organized by Dejusticia, the Konrad Adenauer Foundation and the National University. Bogotá, Colombia, May 22-23.
- 2008 “The Globalization of Intellectual Property Rights: The Politics of Law and the Transformation of National and Transnational Legal Fields – The Struggles behind the IP Chapter of the Colombian – U.S. Free Trade Agreement”. American Bar Foundation’s conference on *Lawyers and the Construction of the Rule of Law: National and Transnational Processes*. ABF, Chicago, March 21- 22.
- 2007 “Is the FTA Constitutional? Regulatory Takings and Dispute Resolution Mechanisms” in *Foro TLC ¿Es Constitucional?* El Rosario University, Bogota. December 4.
- 2007 “The Globalization of Intellectual Property Rights: The Politics of Law and the Transformation of National and Transnational Legal Fields – The Case of Brazil” in the *Annual Law and Society Association Meeting*, Berlin, July 25 – 28.
- 2007 “Intellectual Property Rights and Access to Medicines in the Free Trade Agreement between Colombia and the United States” in *Inovação e Desenvolvimento Econômico*, Academia da Inovação e da Propriedade Intelectual, Instituto Nacional da Propriedad Industrial (INPI), Rio de Janeiro, Brazil. April 10.
- 2006 “Is the Tax Reform Bill Constitutional? An Approximation from the Jurisprudence of the Colombian Constitutional Court” in *Reforma Tributaria: ¿Es Estructural?*, University of Los Andes, Bogotá, Colombia, October 13.

PROFESSIONAL SERVICE

Manuscript referee for *American Journal of Sociology*, *Contemporary Sociology*, *Law and Social Inquiry*, *Journal of Development Studies*, and *Desarrollo y Sociedad*

UNIVERSITY SERVICE

- 2011-2012 Co-President of the Graduate Students Association, Sociology Department.
- 2011-2012 Student Coordinator of the Comparative Historical Social Science Workshop, Northwestern University
- 2011-2012 Student Coordinator of the Latin American Graduate Student Group, Northwestern University
- 2010-2011 Sociology Graduate Affairs Committee

PROFESSIONAL ASSOCIATIONS

American Sociological Association

Law and Society Association

Latin American Studies Association (LASA)

Affiliate of the Buffett Center for International and Comparative Studies (Northwestern University)

LANGUAGES

Spanish: native; English: fluent; French: fluent