Latin America is struggling with enormous ecological challenges, but people’s ability to make democratic choices on these difficult matters is questionable given the fragile state of democratic institutions in the region. This paper explores the links between environmental stewardship, democratic governance, and “foreign regulatory intervention” – actions by foreigners to shape the regulation of investment to advance their interests. Canadian extractive capital has undermined Argentinian efforts to establish and implement a “Glacier Act” to protect glacial waters from large scale mining activity. Protecting these glaciers is important in the context of global warming and other severe threats to water security in mountainous regions. The convoluted history of this Act involves having environmental goals sidetracked by corruption, powerful economic interests, and foreign investors supported by their rich-country governments. This case study centres on efforts to protect precious mountain water resources in central west Argentina – the Cuyo region, along the boundary with Chile. It focuses on a Canadian corporation’s influential role in the regulatory response to this ecological threat.

Canadians don’t have a very big political lever, we’re nice guys.
- Paul Henderson (2012)

Countries in the Latin American and Caribbean region are struggling with enormous ecological challenges, but people’s ability to make democratic choices on these difficult matters is questionable given the fragile state of democratic institutions and practices in the region. In this paper I explore the links between environmental stewardship, democratic governance, and foreign regulatory interference from a public policy perspective. In particular, I focus on how extractive capital, in collusion with the Canadian state, contribute to environmental degradation, as they stand in the way of efforts to protect precious mountain water resources in central west Argentina.
Argentina – the Cuyo region, along the boundary with Chile.

Canadian foreign policy is in constant flux, but recent transformations have been radical. Economic interests have always been central to Canada’s relations in the hemisphere. Since Stephen Harper’s Conservatives took power in 2006, corporate interests, and in particular extractive capital, have not simply influenced economic and foreign policy, but have taken over. The role of private interests in the management of Canada’s foreign policy has grown since the late 1980s and reached dominance under this government. Transnational corporations are not only setting Canadian policy – they are also directly intervening in political processes to shape the regulatory context in their host countries abroad. This gives new meaning to the privatization of foreign policy (Cohen and Küpçü 2005), changing not only its objectives but also who carries it forward. Canadians are sold the image of an enlightened country that promotes democratic governance, human rights, shared prosperity and environmental stewardship. Such corporate actions, ‘foreign regulatory interventions,’ are contrary to these goals. In their actions abroad, the ‘nice’ Canadians have been silenced, and instead, some quite ugly characters are showing their faces.

More than in any other sector, Canadian corporate interests and public policies have become indistinguishable in relation to the extractive industries, which are dearest to the Harper government domestically and internationally (Payne 2012). Canadian pro-business actors in the south – governments, corporate lobbies and individual corporations – have fixated on liberalizing markets, securing investor rights, closing policy spaces, and aligning with broader US geo-strategic and transnational corporate interests. Other widely proclaimed goals, such as the pursuit of human rights, poverty mitigation and ecological sustainability, have been reflected primarily in the realm of discourse. Elsewhere we have focused on Canadian public policy as a framework to advance investor rights (Shamsie and Grinspun 2010, Grinspun and Mills 2012, Grinspun and Shamsie 2007); in this paper the focus is on corporate foreign regulatory intervention, with particular emphasis on environmental governance.

The activism of Canadian capital coincides with an unprecedented expansion of natural resource extraction in Latin America. Not only a priority for neoliberal regimes in the region, also left-leaning governments are embarked on a “new extractivism” that purports to finance
expanding social expenditures (Gudynas 2010). Particularly in the case of mining, post-neoliberal governments are pursuing market-friendly approaches and courting foreign investors with great zeal, as is the case in Argentina. Whether extractive capital, much of it originating from Canadian-owned or based companies, creates the conditions for more inclusive forms of development, or more likely, shapes the contours of extractive imperialism in the twentieth century, remains to be seen (Veltmeyer 2013).

Still, subordinate social forces can utilize democratic spaces to resist that imperialism by, for example, establishing laws and regulations that protect social and environmental rights, and, in doing so, stop or delay projects, or diminish the profitability of extractive capital. There are arenas of contestation where effective resistance to Canadian extractive capital cannot be ignored.

The international relations of the new extractivism bring together dissonant partners – a Canadian conservative government and for-profit extractive companies, with “progressive” governments in Latin America. Argentina has seen huge growth in Canadian mining exploration and investment under President Cristina Fernandez de Kirchner, including Barrick Gold’s Pascua-Lama project. Both governments publicly emphasize the importance of mining and a vision of progress embodied in the extraction process, while limiting environmental laws and other regulations that could disrupt that process.

This paper examines the impact of Canadian extractive capital through a case study of mining investment in Argentina and legislative efforts to protect remaining Andean glaciers from large scale mining activity. Protecting these glaciers is important because of global warming and other severe threats to water security in mountainous regions, such as glacier melting, pollution of underground sources, diminishing flows in rivers, and desertification. This is the story of how a Canadian transnational corporation, supported by the Canadian government, has severely weakened protection efforts in Argentina, hampering efforts to address climate change and secure the basic human right of access to water.

I will proceed by reviewing the environmental challenges facing Argentina’s Cuyo region, specifically water security. I examine the environmental impact of mega mining in high altitude locations and the policy context of the mining boom in Argentina. I then turn to the
passage of the Glacier Act, its legal aftermath, and conclude with the context of regulatory intervention and democratic governance.

**Glaciers and water security in the Cuyo region**

Cuyo is a region of less than three million people in central-western Argentina (Scandura 2012). Although the scope of the region has evolved, Cuyo commonly refers to the provinces of San Luis, Mendoza, San Juan, and La Rioja. The region is dominated by the Andes Mountains, lying in its eastern slopes, and up to the western boundary with Chile, high in the Andes. The climate is extremely arid and the plains and mountains dominate the landscape. The population is concentrated in the oases, which occupy about 4% of the land but hold 98% of the population and the economic activity (CRA-INA 2009). Agriculture requires irrigation and specializes in viticulture, Cuyo’s main product, with its agribusiness derivatives. It is also a region of magnificent national parks and tourism. There is also great mining potential in the area, and it houses some of the country’s major oil fields (Scandura 2012).

It is by now clear that climate change is having considerable impacts on Argentina, and the Cuyo region in particular. In many countries, climate change is already seen through its impacts on water and food security, extreme weather events and migration flows. Internationally, projections indicate that the continuing impact of climate change may precipitate political and socioeconomic crises, including increased local, regional, and international migration (Manderson). Within this larger framework, the studies that focus on Argentina (Franchini 2011) show that the current and expected consequences of climate change on the country’s natural and human environment are wide in scope and profound in intensity, and the Cuyo region is seriously affected. Temperature is expected to rise in the mountainous areas of Cuyo, with decreasing levels of precipitation (snow) and continuing glacier retreat. The rivers fed by this snowfall and the glaciers that give life to the region’s main cities, such as San Juan and Mendoza, are expected to see volume flow retreats, leading to a water crisis in the not far future (Franchini 2011, 9).

A study funded by the Japan International Cooperation Agency summarized the state of the understanding of climate change in the country (SAyDS 2009, 43-44 3198). It provides a

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2 The Argentina-Chile boundary line runs along the highest summits which divide eastward and westward water flows.
sobering analysis for the Cuyo region by scientist José Boninsegna. The oases of the West are particularly vulnerable to climate change because of their dependence on the availability of irrigation water and the intensity and concentration of agricultural activities. The rivers used for irrigation, hydropower and human consumption originate primarily with the snow and ice bodies in the Andes. The hydrological cycle in the Central Andes depends on the amount of snow in the basin, and atmospheric temperature. The melting snow produces higher flows in the spring and summer, decreasing to a minimum during the winter. Predictions for the decade 2021-2030 indicate an increase in temperature across the region in the range of 1.25 to 1.5° C, with reduced snowfall in the Andes of about 100 mm of water equivalent. The probabilistic analysis for that decade indicates an average decrease of 13% of river flow in the provinces of Mendoza and San Juan.

The retreat of the glaciers in the Andean region is ongoing. On the southern border between Argentina and Chile (the Southern Ice Cap), only one of 50 glaciers are growing, another is in equilibrium and 48 are receding (SAyDS 2009 3198). In the Cuyo region, located further to the north and part of the Andes desert, there is less glacier coverage, and it is also retreating. For example, a study of glaciers in the mining region to the northeast of San Juan concluded that between 1959 and 2007 the area of glaciers and snow patches decreased by 15%. One of the largest glaciers in the region, Canito, decreased 40% in the same period (Pitte 2011). As glacier retreat is accelerating, the past is not a good guide to what we can expect in the next few decades. A study that mapped changes in 270 of the largest glaciers between Chile and Argentina showed glaciers have lost volume on average “10 to 100 times faster” in the last 30 years than over a span of 350 years (MercoPress 2011).

Inevitably, there is already a direct impact on water security in the region, which is expected to worsen. Water resource planners in the Mendoza area estimate a 30% reduction in the annual availability of water in the next twenty years when accounting for population growth (SSRH 2007, Annex 2). The pressures have begun. The governor of Mendoza declared a “water emergency” in October 2010 in view of diminished flows in “the rivers that feed the province, especially the Rio Mendoza, as a result of the absence of snowfalls during winter 2010.”3 The

3 All translations of Spanish quotations are by the author.
governor established a Provincial Water Warning System which, in the short run, will help assist affected populations. In the longer run it calls for improving the efficacy and efficiency of water distribution and use and, controversially, increasing the use of underground water to substitute for diminishing ground sources (Los Andes 2012). This is illustrative of the difficulty of dealing with long term environmental threats, as various experts suggest there is already an overexploitation of underground aquifers in Mendoza, leading to salinization, endangered agriculture, and expanding desertification (Llop and Fasciolo 2011).

This brief description highlights the complexity of environmental management in the Cuyo region, and particularly to the question of water security. The crucial political question of how to allocate increasingly scarce water resources among competing uses (human consumption, agriculture, tourism and mining) is already acute. The province of San Juan, on the northern border of Mendoza, faces similarly daunting prospects. The provincial capital of San Juan, located in an arid area where only 3% of the land is habitable, was built on an oasis that saw population growth over the years by gradually improving its access to water, thus extending habitable arable areas (Nacif, Espinosa, and Martinet 2011). Agriculture, a key economic activity, remains challenged since agricultural valleys, such as Tulum in proximity to San Juan, are being threatened by a double pressure: desertification and urban expansion (Taber and Nozica 2011).

**Environmental impacts of mega-mining**

Large scale mining is a recent phenomenon in Cuyo, as in most of Argentina, and its growth has elicited a lively discussion of its environmental impacts, which are profound. Open pit mining is typically associated with significant devastation of the ecosystem, including deforestation, contamination and alteration of the water, as well as destruction of habitats. The extraction of hard rock metals, such as gold and silver, is generally done in open cast mines, usually accompanied by leaching processes – the application of chemical products to filter and separate the metal from other minerals. The extraction site becomes a desolated and stark landscape, lacking any life, since the operation starts with the removal of vegetation and soil, followed by extensive dynamiting and removal of materials. Leaching agents – such as sulphuric

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4 This paragraph and the next are based on WRM (2003).
acid in the case of copper or a solution of cyanide and sodium in the case of gold – are potent contaminants of surface and groundwater. These chemical solutions not only release the desired metals but also mobilize other heavy metals such as cadmium.

Mining activity consumes an enormous amount of water, reducing the water table around the site and drying up wells and springs. Water is usually contaminated by exposure to the acids formed by mining activities. The small particulates of heavy metals separate from the waste, disseminate by the wind, land on the soil and in the beds of watercourses and are slowly absorbed in the tissues of living organisms. Hazardous chemicals used in the various stages of metal processing, such as cyanide, concentrated acids and alkaline compounds, although supposedly controlled, usually end up in the drainage system. The alteration and contamination of the water cycle has very serious side effects on the surrounding ecosystems and people (WRM 2003).

Although proponents of mega-mining tend to downplay the effects, it is evident that mining in the Cuyo region is affecting water security in several important ways. It draws large amounts of water for the extraction and processing of materials, which is then permanently unavailable for other uses, contaminates water sources, and contributes to glacier retreat (more on this below), thus endangering the flow of rivers. One aspect of mining investment that has not been emphasized in the literature is that it can also affect water security indirectly by shaping the regulatory regime that is crucial to maintain such security.

Two mines that have been at the centre of the ‘glaciers and mines’ controversy are Veladero and Pascua-Lama. Both projects are operated by Barrick Gold, one of the largest gold miners in the world, headquartered in Toronto. The Veladero mine started production in 2005 and is located in the San Juan Province, at elevations of more than 4,000 metres, less than 400 kilometres northwest of the city of San Juan. The Veladero mine provides gold and silver ores from two open pits; it had at the end of 2011 proven and probable reserves of 10.6 million ounces of gold and an estimated remaining useful life of 14 years. The other project, Pascua-Lama, is the first binational mining project in the world and is developing a gold mine open pit on the border between Chile and Argentina, at elevations that reach 5,000 meters, approximately 10 kilometres from Veladero mine. Pascua is located in the Chilean province of Huasco, while Lama is situated in the Argentinean province of San Juan. In 2010, Pascua-Lama had proven and
probable reserves of 17.8 million ounces of gold, with 671 million ounces of silver contained within the gold reserves. The approval process for the controversial Pascua-Lama project has been prolonged and convoluted on both sides of the border, delayed by fierce opposition from a variety of stakeholders both locally, nationally and internationally. One of the major controversies has had to do with its impact on adjacent glaciers. These projects acted as catalysts in the political process leading to the enactment of the Argentinian glacier law.

The Veladero and Pascua-Lama mines are located squarely within the area recognized by UNESCO as a biosphere reserve, one of the few biologically-intact areas in South America. The San Guillermo Biosphere Reserve is located in the Province of San Juan and contains an area of about one million hectares and represents diverse environmental values and potential for the sustainable utilization of resources. The area has rich biodiversity, with the highest concentration of vicuñas and guanacos in Argentina; amazing scenery with great tourism potential; an archaeological site with remains of more than 10,000 years of human presence; and the head of a hydrological basin. It also contains vast reserves of metal ores in low concentration, requiring the disruption of large areas of terrain to be exploited (FCD 2008).

Possible pollution to the population’s water source has generated a high degree of concern and unease among residents who are mindful of the high risks of both air and water pollution and the implications for the health of the population and biodiversity in the area. Civil society organizations claim that mining activity has presented both a direct environmental threat to the biosphere reserve and a major barrier to the completion of a consensual multi-stakeholder plan for its long term management (FCD 2007, 2008).

While the impact on the region’s glaciers has been controversial, Barrick has systematically denied such impacts. Barrick’s first response to concerns about the potential Pascua-Lama impact to glaciers was that they were not technically glaciers but “glacierettes” whose value as a provision of water for communities downhill is “insignificant.” As pressure grew against Barrick’s initial proposal to dynamite and move glaciers, it finally admitted the presence of glaciers and committed not to destroy them. Instead it now plans to dig beneath the glaciers, raising questions about unknown impacts such as glacier stability.

There is extensive documentation regarding impacts on glaciers in the vicinity of Pascua-
Lama and Veladero. An early example was a Chilean government report that rejected Barrick’s claim that the retreat of the three glaciers contiguous to the exploration area of Pascua-Lama was due to climate change. Between 1981 and 2000, the Toro I glacier diminished 62%, the Toro II glacier 71%, and the Esperanza glacier 70%. Such melting rates, it concluded, can only be explained by disruption from the exploration activity, in particular dust changing the albedo effect\(^5\), raising the rate of melting. The authors concluded that as the project evolves from exploration to construction (the current stage) to extraction, these effects would accumulate and spread to glaciers in the surrounding area (Escobar Caceres 2006). Recently the Center for Human Rights and Environment (CEDHA\(^6\)) documented the significant deterioration of numerous glaciers in the Pascua-Lama project influence areas (Taillant 2013). Regarding the Veladero mine, currently in the extraction stage, Barrick reports on glacier monitoring of merely a handful of the more than 150 glaciers in the vicinity of the site (CEDHA 2011).

Despite Barrick’s denials of the environmental impacts, these concerns have created obstacles to the Pascua-Lama project and impacted on its schedule and finances. The obstacles include a lawsuit filed by Chilean indigenous communities who claim that the project has harmed water supplies and the glaciers that help feed local streams and rivers. In May 2013 Chile’s environmental superintendent ordered all work on the project halted due to serious environment violations, and has levied Barrick a record fine of US$16 million. The company has further delayed the mine’s start-up (originally set for 2013) to 2016, assuming that Chilean authorities will approve new water management systems that to date have not complied with permit conditions. Partly as result of these setbacks, the budgeted cost of the mine, originally estimated at $3 billion, has now soared to more than $8 billion (Kosich 2013).

In 2011, geologist and glaciologist Juan Pablo Milana highlighted the uncertain environmental risks of these projects when he revealed that the Veladero mine had suffered an unreported colossal landslide of its waste pile, which contained remains of contaminated rock debris. The enormous waste pile, larger than 50 football fields, slid nearly half a kilometer before

\(^5\) Albedo relates to the amount of light reflected by the ice surface. As it gets dirtier and darker, the ice reflects less light and heats up due to increased absorption of energy.

\(^6\) In Spanish, Centro de Derechos Humanos y Ambiente, based in Córdoba.
it came to a stop on an access road. A publicly available image from Google Earth shows the waste pile slithering down the mountainside after the collapse (Taillant 2011).

**Mining investment boom**

Although mining has been a core economic activity in Chile for long, large scale mining in Argentina is a recent phenomenon (STC 2006). Despite being rich in mineral reserves, sizeable investments in mining only began in the mid-1990s under the Carlos Menem government, when a new regulatory framework was adopted with the assistance of the World Bank. Argentinean law incentivizes exploration and mineral extraction investment and the importation of capital goods, through assurance of 30 years of fiscal stability, exemption of tariffs on capital goods, double deduction on exploration expenses, accelerated amortization, a 3% limit on royalties, and a host of other legal, financial and infrastructural incentives.

A pillar of the advantageous legal environment was a unique bilateral mining treaty signed between Argentina and Chile in 1997 and ratified by Argentina in 2000 (STC 2006, La Nacion 1997). This controversial agreement opened a massive tract of land in the Andean border area for joint exploration and mining. The agreement covers fiscal, customs and migration principles to be applied for operations along the border area, requiring legislative amendments in both countries. The agreement’s critics allege that it has created a third “virtual” country, ruled by the extractive corporations. They argue it is unconstitutional due to the extent of prerogatives it provides to foreign enterprises investing there, allowing them an exemption from legal frameworks which all other citizens and enterprises must uphold. This project was seen as first benefiting Barrick Gold’s Pascua-Lama project (Alcayaga, Luna, and Padilla 2004).

The legal environment for mining in Argentina, which business circles laud as “most stable and transparent” (STC 2006, 5), is undoubtedly one of the most favourable in the world for foreign investors. The Argentinean federal government, although nominally committed to “sustainable development,” downloaded responsibility for the environmental regulation of mining to provincial governments. Promotional material from the Under Secretariat of Mining

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7 Insert the following coordinates in Google Earth: 29°22'45.00" S 69°57'40.58" W.

8 These incentives were created through a number of laws including the Mining Investment Act of 1993.
boasts Argentina’s outstanding geological opportunities, claiming 75 percent of the areas with significant mining potential remain unexplored, and reminds investors of the “high return rates … explained by the fiscal incentives that shape a highly competitive mining tax regime and the advantages derived from regional integration” (referring to the bilateral mining treaty with Chile). It concludes by emphasizing that the “internal rates of return for gold and copper mines in Argentina rank among the highest in the world” (SEDEMIN Undated-a, 16).

This warm invitation stimulated aggressive action in the Argentinean mining sector, from both large multinational and junior mining companies. Between 1995 and 1998 the first “world-class” mining projects were initiated in Argentina and approximately US$1.8 billion was invested (STC 2006). The Argentinean government celebrates that the decade 2002-11 has been one of dizzying rates of growth in the mining industry – with 434% growth in exports, 3311% in the number of projects, 664% in exploration (meters), 1948% in dollars invested, 431% in employment, and 841% in the value of production (SEDEMIN Undated-b).

Such precipitous growth of large scale mining has, not surprisingly, triggered reactions and resistance from communities affected as well as a host of social groups and organizations. During the last decade Argentina has witnessed social unrest and increased political mobilization both against controversial mining projects and also against legislation seen as giving away resources to foreign companies. One social justice organization framed their discontent as follows:

But for all these millions [of mining profits], the Argentine people are left with nothing but the negative impact of the environmental, social and environmental damage caused by large scale activity. As foreign corporations are enriched by Argentina's natural resources, local populations suffer from numerous violations of their rights and see their future seriously compromised (SERPAJ 2008).

Big mining is seen as causing irreversible environmental damage, contaminating the water, soil and air with heavy metals and chemicals. This pollution is harmful to fauna and flora, and linked to serious, sometimes even fatal, diseases. Local populations see their economic activities compromised, including agriculture, due to lack of water and pollution, increasing the mortality of livestock (SERPAJ 2008). Since the majority of the mining activity happens in the provinces sitting on the eastern slopes of the Andes, that concern extends to the health of glaciers in the mountains. The vocal debate about the impact of the Pascua-Lama project on glaciers
focused Argentinean public opinion and helped mobilize a political drive to protect them from mining. Those were the underpinnings for Argentina’s so-called “Glacier Act.”

**Passage of the Glacier Act**

The 1994 amendment to the Argentine Constitution vested the power to legislate on environmental matters in the provinces. Nevertheless, the federal government retained the power to establish minimum standards to be met throughout the country (Guidi and Rios 2011). The Glacier Act, promulgated officially on October 28, 2010, represents a legislative effort to protect delicate glacial and periglacial areas as well as key freshwater sources from the pollution and destruction caused by natural resource extraction.

The story of how this law came into place is a long saga as it has in fact been passed twice. With the full support of its Committee on Natural Resources and Environmental Conservation, the Chamber unanimously and without debate adopted the law on November

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10 The term “periglacial” is important and controversial in the analysis that follows, in particular, because it does not have a unique scientific definition. The earliest definition, and the one most applicable here, refers to geomorphic environments located in the periphery of ancient land glaciers (Pidwirny 2010). These are environments where frost action is dominant in the landscape. A related term is “permafrost,” a condition where a layer of soil, sediment, or rock below the ground surface remains ‘permanently’ frozen (defined as a period greater than a year; note that the definition does not require ice to be present) (Pidwirny 2010). Permafrost is not a necessary condition for the identification of periglacial landforms, since the latter may undergo annual freezing and thawing. However, many periglacial regions are underlain by permafrost which influences geomorphic processes. An inference relevant to the analysis (which often hinges, politically, on identifying areas that are “periglacial”) is that the presence of permafrost in areas adjacent to a glacier or ice sheet would confirm them to be periglacial.

11 It has been widely followed in the media. The La Nacion newspaper, for example, has followed this story, in which Canada’s Barrick Gold appears as a central character in the plot. A search for “Ley de Glaciares” in http://www.lanacion.com.ar will elicit a list of articles.

12 The original law proposal was submitted to the Chamber of Deputies on October 1, 2007 by Marta Maffei, an opposition deputy from Buenos Aires, in collaboration with Deputy Miguel Bonasso. A journalist and politician, and formerly a close associate of President Cristina Kirchner, they had a falling out when, in 2008, Bonasso pursued the Glacier Act. Later Bonasso published a book entitled El Mal (The Evil), in which, according to Maria Amuchastegui (2012), he “describes Canadian mining company Barrick Gold as a ‘virtual third country’ [where] laws [are] created at its behest and pays little in the way of taxes, all while destroying glaciers to obtain water and leaving cyanide in its wake.”
2007. The law proposal moved to the Senate which, based on recommendations of two committees, on October 22, 2008, voted unanimously to approve it.\(^{13}\)

Three weeks after this rare unanimous and bilateral support, President Cristina Kirchner surprisingly vetoed the law. While Congress could have rejected the veto with a vote of two thirds of both Houses, this option was not exercised despite the prior unanimous support. After the veto, it became clear that the support of many senators and deputies from the official parties had dissipated.\(^{14}\) According to the press, Mining Secretary Jorge Mayoral, a close ally of the industry, instigated the veto (Genoud 2009). The veto stated that the executive branch already had adequate environmental legislation and had taken appropriate action on environmental issues. Moreover, mining and oil extraction in glaciers should not be restricted by an “absolute prohibition of activities” as the law required and admitted that “governors of the mountain range area have expressed concern” that it will affect investment and jobs” (La Nacion 2009a). The press referred to this rarely used measure as the “Barrick Veto,” given perceptions about that company’s influence with the President (La Nacion 2009a).

How can one explain the unanimous support in Congress for this law, and then the sudden presidential veto? According to Martin Amorós (2011), a keen observer of the Glacier Act legislative process, it appears that the parliamentary process evolved very quickly, with little debate or consultation with external stakeholders, and did not allow time for opposition forces to coalesce to lobby Congress. Thus, the law reflected parliamentary perceptions of deep environmental concern among the public but not the economic interests that might by negatively affected. Amorós says it is also possible that opposing forces made the choice not to intervene in the legislative debate so as not to raise its public profile, and decided they had a better chance to stop the law by intervening directly with the executive branch. In retrospect, the presidential veto can only make sense as a response to aggressive opposition directed at the President; otherwise, how can one explain the ruling party’s about-face?

According to Romina Picolotti’s testimony to a Canadian parliamentary committee of the

\(^{13}\) There were only two disagreements with respect to one of the articles of this law (formally known as Law 26,418).

\(^{14}\) This account is based on Amorós (2011) and Veneranda (2011).
environment secretary at the time, “Canadian companies operating in Argentina did not want a glacier protection law to limit their mining prospects and subsequently pressured the President into vetoing the law” (2009, 09:10). Picolotti adds that these pressures were accompanied by threats:

If the President would not veto the law, Barrick would work to block other financial bills that were critical to stabilizing the Argentine economy during the global financial crisis. The President capitulated to Barrick’s pressure and vetoed the bill, which has become known euphemistically as the Barrick veto (Ibid.).

Soon after the veto, Picolotti was fired from her ministerial job. Although there are different versions on the cause for her dismissal, the official version cited irregularities in her ministry. La Nacion sides with Picolotti’s version saying that “government officials admitted that the main reason for the expulsion of the Environment Secretary Romina Picolotti was her championing of this law” (La Nacion 2009a).

These events ignited a public debate marked by allegations on the close links between mining companies and government officials. The press reported that before and after the veto the President held meetings with the top executives of Barrick (La Nacion 2010b). At the time, Barrick was negotiating with the San Juan and federal governments for approval of the Pascua-Lama project. In April 2009 President Kirchner, San Juan Governor José Luis Gioja, and Mining Secretary Jorge Mayoral received Barrick executives, including Peter Munk, at the official executive residence (Casa Rosada). Although the mining sector benefits from an extremely generous tax regime, they were asking for additional tax breaks before proceeding with their $3 billion investment in Pascua-Lama. A few days later Peter Munk met with Michelle Bachelet, the Chilean president. The Munk visits ended disagreement between the two countries on tax matters, the last hurdle prior to the approval of the project (La Nacion 2009a). The project was officially launched two weeks later in a meeting at the Casa Rosada, which included President Kirchner, Barrick CEO Aaron Regent, Gioja, Mayoral and Canadian ambassador Timothy Martin (La Nacion 2009b).

With criticism of the environmental impact of large scale mining continuing and media reports about prominent local conflicts around particular mining projects, the drive to pass another version of the Glacier Act by Congress gained momentum. Meanwhile, the contacts between Barrick, other foreign investors, and government officials continued, with the apparent
focus responding to the drive to pass a national glacier law again. Peter Munk organized a meeting between President Kirchner and Canadian investors when she and several provincial governors, led by Gioja, visited Toronto for the G-20 meeting in June 2010. The official delegation assured the businessmen that Argentinean mining laws “shall not be modified” (Aranda 2010). In turn, Munk praised Kirchner for her “respect for the rules of the game” on tax issues and royalties that mining companies pay (La Nacion 2010a).

Hours after the provincial governors returned from Canada they met with mining Secretary Mayoral in Buenos Aires and issued a joint declaration affirming that environmental stewardship and, in particular, glacier protection is a provincial responsibility and they each commit to bring to their legislature a provincial glacier protection law under a commonly agreed “model law” (Provincial governors 2010). Press sources say that this strategy was the outcome of the governors’ meeting with Barrick in Canada (Aranda 2010). Although ostensibly to affirm provincial sovereignty over the issue, one needn’t scratch much under the surface to see that the real objective was to pre-empt an unfavourable outcome in Congress as it weighed a second glacier law (Romero 2010). In record-setting time and with little or no debate, several mountain provinces passed legislation that, in contrast to the vetoed national law, did allow for mining activity in periglacial zones subject to proper environmental evaluation and monitoring done by the (largely mining-friendly) provincial governments (Aranda 2010). This is how the new law was passed in La Rioja province only two days after the Buenos Aires declaration:

…without debate in parliamentary committees, without consulting scientific experts, and without paying attention to the demands of civil society organizations, the La Rioja Legislature passed the law “protecting the glaciers”, asserting that control will be exercised exclusively by provincial authorities. The bill was introduced only one day earlier by the Executive, and prior to that only officials knew of its existence (Aranda 2010).

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15 According to *Pagina 12* newspaper: “On 26 June, as part of the meeting of Group of 20 (G20) in Canada, the founder and chairman of Barrick Gold, Peter Munk, received the President and the governors Walter Barrionuevo (Jujuy), Luis Beder Herrera (La Rioja), Juan Manuel Urtubey (Salta), Gerardo Zamora (Santiago del Estero) and Jose Luis Gioja (San Juan)” (Aranda 2010).

16 This is a crucial distinction. Even advocates of mining agree that it should not happen in glacial areas (meaning, directly on top of glaciers). As in Pascua-Lama, they claim that mining can happen in the vicinity of glaciers (i.e., periglacial areas), taking the appropriate protection measures, without harming them. The Glacier Act passed federally in 2008, and later vetoed, had prohibited mining in both glacial and periglacial areas.
Despite all these efforts the legislative process in Congress continued and a new Glacier Act was passed in 2010. Supporters highlight the key role that citizen participation played in building momentum, particularly the analysis and advocacy of environmental organizations. In contrast, several mine-rich provincial governments, particularly San Juan, vociferously opposed the law. According to Greenpeace, these governments “didn’t want any glacier protection law, and when they saw it was inevitable they supported the least restrictive version, but ultimately they lost.” Furthermore, mining companies spent millions on newspaper ads nationwide, urging lawmakers not to support the bill, and on lobbying legislators from mining provinces. In Greenpeace’s view, the passage of the law was “a big step by Congress, in spite of the insistent and disproportionate pressure exerted by mining corporations against a glacier protection bill” (Valente 2010).

The passage of the second Glacier Law was nothing like the quick, unanimous vote in 2008. The initial mine-friendly 2010 proposal, which watered down the 2008 version, was introduced by the ruling-party’s Senator Daniel Filmus and passed unanimously in the Senate, reflecting the strong political pressure on the Kirchner government to act. When it reached the Chamber of Deputies, it encountered contested terrain as two camps appeared. The first camp was led by Deputy Miguel Bonasso (who was one of the 2008 law’s promoters), emphasized environmental protection and supported a version of the earlier law. The other camp, led by Senator Cesar Gioja, chair of the Senate’s Mining Commission and brother of Governor Gioja, was focused on economic impacts and supported the mine-friendly version passed by the Senate. Bonasso and Filmus negotiated a compromise, which included a commitment from President Kirchner not to veto the law. The amended version was approved by the Chamber of Deputies and, upon return to the Senate, was hotly contested by those Senators who still supported the original pro-mining Senate version. In a divisive Senate vote, the compromise Bonasso-Filmus was finally approved 35-32. President Kirchner did not veto it, thus the law became official in October 2010.

The law that passed in October 2010 was very similar to the earlier bill vetoed in November 2008, defining “glacier” to include periglacial zones; prohibiting certain new activities in glaciers or periglacial zones, such as mining and hydrocarbon exploration and exploitation activities; altering the rules for assessing environmental impacts upon glaciers and
periglacial zones from human activity; and creating a National Inventory of Glaciers under the auspices of IANIGLA (the Argentine Institute of Snow Research, Glaciology and Environmental Sciences) (Guidi and Rios 2011). Although the new version was presented as a compromise between the two parliamentarians, it is a strong law and, according to environmentalists, in some ways an improvement on the one that was vetoed (Valente 2010, CEDHA 2010).17

Mining-friendly provincial governments, with the support of business lobbies, passed more flexible laws, arguing they had constitutional authority to manage their natural resources. By late 2010 three provinces – La Rioja, Jujuy and San Juan – had passed their own laws, and several others were planning similar action. These laws allow mining projects in glacial areas subject to the approval of an environmental impact assessment commissioned by the local government (the same was true federally before the new legislation). In contrast, the new national bill establishes an outright ban on mining activity in glacial and periglacial areas. The passing of contradictory national and provincial laws set the stage for a long court battle, which has not yet been completed, although, according to experts, ultimately Congress trumps the provinces in regulating mining activity (Henao 2010).

Finally, political events are important to understand the law’s passage and President Kirchner’s decision to support a strong version of the law. The press reported that Cristina Kirchner, hurt by accusations from environmentalists and political opponents of being in cahoots with big foreign mining companies, was eager to shed that image ahead of an October 2011 presidential election and was wary of the political cost of another veto as her husband and predecessor, Nestor Kirchner, was widely expected to run for president and needed the support of progressive, middle-class voters (Henao 2010).18

The legal aftermath

The new Act has faced an uphill battle since becoming law. At the time of writing, three years after its enactment, the main objectives of the law remain unrealized and dozens of mining projects at various stages of development proceed without real environmental control. La Nacion

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17 CEDHA (2010) raises hypotheses why Senator Daniel Filmus agreed to such a compromise.

18 This did not happen as Nestor died suddenly in October 2010, and Cristina ran instead and was re-elected.
refers to this as the second, silent, veto. While mining companies legally block the enforcement of the law, the Casa Rosada does not meet deadlines for inventorying strategic water reserves in the mountains. Since its passage, it has faced indifference at the Casa Rosada, which failed to act to enact the law, instead letting time lapse so it would be enacted *de facto* (Veneranda 2011).

The text of the law prohibits polluting activities in bodies of water and ice and surrounding areas, and states that a National Inventory of Glaciers must be completed by IANIGLA. The law required IANIGLA to begin sampling in areas where there are activities that could cause pollution in November 2010. The inventory of these regions, as a rule, was to be submitted within 180 days of the enactment of the law, that is, by 30 March 2011. However, the regulations required to implement the glacier inventory had to wait four months after the enactment of the law. Even then, declarations by the President’s chief of staff, Anibal Fernandez, showed the lack of commitment. He said that it would take one year to achieve “some definitions” for the analysis and that “within five years” there would be “some specific definition of what would be in the inventory” (Veneranda 2011).

One year later, the inventory had barely started, and the technical team’s task manager acknowledged that the glaciers in the “conflict provinces” were the last planned to be surveyed. By then, environmentalists claim, mining projects will pollute or cause the disappearance of glaciers in jeopardy (Veneranda 2011). Three years later, no progress has been made in the preparation of the inventory in the Northern provinces where mining takes place more intensively: San Juan, La Rioja, Catamarca, Salta and Jujuy. IANIGLA presented the first national inventory report to Senate (IANIGLA 2013), but the document does not include the major mining provinces. The head of the Institute said that the Northern provinces showed no interest in adhering to glaciological studies, as they were aware of the legal process in San Juan (La Nacion 2013).

The inventory has not yet been implemented because a federal court in San Juan granted an injunction in November 2010 suspending the implementation of several key articles of the glacier law as potentially unconstitutional as a federal intrusion into provincial jurisdiction over natural resources (CIJ 2010b). Although the initial suit was ostensibly launched by miners’ unions and a business association, they acknowledged they had the support of Governor Gioja and the press claimed that mining companies backed the suit. Further, Barrick’s Argentinean
subsidiary directly sought and obtained two similar injunctions with the same court a few months later, explicitly stating that the Glacier Act would create “a state of uneasiness and uncertainty” regarding the prospects for the Veladero and Pascua-Lama developments (CIJ 2010a). The elements of the law Barrick objected to call for the national government to define what a glacier is, inventory the remaining glacial and periglacial areas in Argentina, prohibit any activities that destroy glaciers, ban mining in glacial and periglacial areas, and require companies to provide an environmental impact statement at the national level (Associated Press 2012).

Clearly Barrick wants the legislation killed because of its preference for San Juan’s Glacier Protection Law, which protects glaciers but excludes permafrost. This is a crucial distinction as both Veladero and Pascua-Lama appear to be viable under the provincial interpretation (as long as they don’t touch adjacent glaciers) but are likely illegal under the federal one (as much of the activity area might be determined to be periglacial). For example, the Veladero waste pile mentioned earlier appears to be entirely within a permafrost area (Taillant 2011).

The San Juan injunctions effectively stopped the implementation of the law in the province. However, they did not determine the constitutionality of the law. The Supreme Court of Justice agreed to resolve this matter (CIJ 2011), and in July 2012 it issued a ruling reversing the preliminary injunctions from the San Juan federal court that had blocked key parts of the glacier protection law. This ruling, a serious setback for Barrick and other mining companies, effectively allows for implementation of the law to continue, but the high court has yet to decide on the constitutionality of the overall law, or rule on environmental organizations’ requests for an immediate halt to Barrick's high-altitude mining. In the meantime, IANIGLA’s inventory has not even commenced in the Province of San Juan, so for the moment this latest ruling has no practical impact on existing projects.

As last resort, Barrick can always rely on international agreements designed to protect investor rights (and, in particular, the 1993 Argentina-Canada Foreign Investment Promotion and Protection Agreement, FIPA). If ever the Glacier Act would bring about the abandonment of the Veladero or the Pascua-Lama projects, Barrick could demand millions or even billions of dollars in compensation from the Argentinean government because these mining projects were approved by governments at all levels. Barrick says that by 2010 it had already committed over 25% of the
capital for Pascua-Lama (Henao 2010).

**Conclusion: Regulatory intervention and democratic governance**

Rather than emphasize the direct environmental impacts on water security, my focus has been on indirect impacts from distortions in national and local environmental governance. From this perspective, it is important to identify and expose corporate intervention, with the active support of corporate-friendly foreign governments, on political and bureaucratic processes intended to set in place environmental regulation. Such regulatory interference represents a threat to democratic governance, to the livelihoods of future generations and ultimately to the planet itself.

The need for strong and effective environmental regulation at every scale – international, national and local – is evident in the face of multiple ecological threats, especially when major economic lobbies and governments are driven by other considerations (i.e., profit and economic growth). One example arises from the aforementioned meeting of water resource planners in Mendoza, who, facing an estimated 30% reduction in the annual availability of water per inhabitant in the next twenty years, identified regulatory weaknesses as the key concern (SSRH 2007). In particular, they pointed to weak planning and programming of water resources, lack of coordination among water management bodies, increasing contamination of water systems, poor defences against sediments carried by water, and progressive deterioration of groundwater aquifers. The speedy implementation of the Glacier Act, including the completion of a scientific inventory of high mountain hydro resources and the enactment of effective measures to protect them from extractive activities would constitute, no doubt, a step in the direction suggested by these planners. In contrast, the efforts by Barrick and other local and foreign forces to stop, stall and obstruct the Act constitute, no doubt, a step in the wrong direction.

Democratic governance and institutions are gravely affected. Although some aspects of foreign intervention are transparent (such as the two legal injunctions obtained by Barrick’s subsidiary to stop the implementation of the Glacier Act in San Juan), most of it happens behind the scenes. It is thus difficult to ascertain the boundaries between legal activities and corruption as defined under either Argentinean or Canadian law. Even if everyone’s actions are legal, they are still disruptive of the democratic rights of Argentines to make their own choices. Others
paint a much darker picture. Argentinean Federal Prosecutor Gustavo Gómez describes what he calls the “cycle of corruption” when “companies are allowed to operate without adequate regard for the environment and subsequently use their enormous profits to ensure ever-increasing impunity” (Gomez 2011). He says that companies pay to get impunity, for example by asking supportive governors and politicians to mobilize the police against those who protest.19

There is a perception that for corporate actors to have such an apparent influence on the Argentinean political process there must be hidden motives. The secret tax benefits provided for Pascua-Lama are controversial and led to the resignations of high government officials (La Nacion 2010b). In addition there were legal accusations, such as the July 2010 request from a federal judge to investigate an alleged secret agreement between the federal government and mining companies to develop the Pascua-Lama project. The claim is that the agreement was linked to the presidential veto in late 2008, and it calls for “an investigation of possible influence peddling by President Cristina Kirchner in favour of Barrick Gold given the possibility of a secret tax agreement” involving value added and income tax benefits. The allegations also involve Governor Gioja, his brother Senator Gioja, and Secretary of Mining Jorge Mayoral (Rosemberg 2010, Ruiz and Scarpinelli 2010).20 The filing also requests an investigation of the personal links between the Gioja brothers (Cesar, who is president of the Senate’s Commission of Mining, owns a mining supply firm), Mayoral, and Barrick.

Surprisingly, the most damning accusations of Barrick’s undue influence in San Juan come directly from Senator Cesar Gioja.21 In May 2011 the Gioja brothers were politically opposed when Governor Gioja pursued a provincial constitutional change that would allow him to be re-elected as governor beyond existing term limits.22 Cesar opposed the constitutional change and aspired to be the next governor. In the heat of the campaign Cesar accused the San

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19 He mentions that Barrick Gold got the police to act in San Juan against Greenpeace activists who were blocking the entrance to the mine (Gomez 2011).

20 Although these allegations were filed with a federal judge, to my knowledge no investigation was pursued.

21 The sources for this paragraph, including all the quotes, are: MDZ (2011) and Ruiz and Scarpinelli (2010).

22 Why the family feud? Cesar denied the rumor suggesting Jose Luis had broken a promise to support Cesar becoming the next governor, and instead sought to change the term limits (MDZ 2011).
Juan government of being an instrument of Barrick, alleging that of billions of dollars of company profit, only 30 million went to the province due to the minuscule 3% royalty rate. “It's a ridiculous value that needs to be modified” but is maintained due to “pressure from the company for this not to change and I think the decision to continue with this team ([the José Luis] government) has to do with the need to not break this distribution mechanism that favors the company.” He also suggested that the company is behind the constitutional change, pointing to a “spectacular mobilization” of the “Yes” campaign, “with funds that nobody knows where they come from.”

Cesar’s allegations feed into widespread perception that Barrick plays a dominant role in the province. In the words of a Veladero labour leader, “Unfortunately I have to say that Barrick Gold is who rules in San Juan” (SJC 2012). References to Barrick, coupled with strong opinions, are commonplace in daily press and informal conversation. A pamphlet pasted on university walls on the occasion of a mining conference reads: “Gioja + Barrick = Death.” In the words of academic Mirta Antonelli, mega miners construct legal frameworks to suit their needs, such as the provincial glacier acts. Not driven by provincial autonomy, their real purpose is to “put territories and water in the hands of and under the power of pro-mining governors so that mining companies can then decide” their fate (Aranda 2010).

Up to now the focus has been on corporate intervention. The Canadian government has also played a central, although behind the scenes, role in the saga of the Glacier Act. The casual observer could easily miss that aspect and believe there is little here to teach about Canada’s role in the world, as it has not acted directly but rather has set the stage for Barrick and other corporations. When corporate capital engages in controversial activity in foreign countries, the well-rehearsed official response is that Canada cannot be blamed for the behaviour of a few corporate “bad apples” that do not represent Canadian policy.

Is Canada indeed a bystander and Barrick a misbehaved corporation trying to distort policy processes and erode environmental conservation in Argentina for its own pecuniary

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23 Search the term, for example, in *Diario de Cuyo* at [www.diariedecuyo.com.ar](http://www.diariedecuyo.com.ar). “Barrick” is a commonplace reference in daily conversation – virtually every local adult is familiar with the company (author’s observation).

24 Author’s observation during a university visit in San Juan.
interests? Or is the Canadian state creating an economic, political, diplomatic and ideological context that nurtures and facilitates Barrick’s actions?

The latter is the clear answer. Considerations beyond the scope of this paper are part of the picture, such as the state’s role in establishing investor-driven legal regimes, institutional settings, and policy sets domestically and abroad. This includes “free” trade and investment treaties, welcoming investment codes, ‘flexible’ labour market policies, lax labour and environmental regulation, industry-lead guidelines for ‘corporate social responsibility,’ legal impunity for crimes committed abroad25, and responsive export credit agencies.26 Within this broad framework, the promotion of extractive capital in the south is a Canadian priority (Gordon and Webber 2008, Veltmeyer 2013). In testimony before Parliament, a recognized academic paraphrased a Latin American Sub-secretary of Energy and Mines saying “As far as I can tell, the Canadian ambassador here is a representative for Canadian mining companies” (Hansard 2011).

Despite the Pascua-Lama controversies, rather than treating Barrick as a bad apple, the Canadian government has been a forceful promoter. Barrick’s CEO met with President Kirchner in May 2009 in the Casa Rosada to launch Pascua-Lama, in the presence of the Canadian ambassador. More symbolic was the February 2010 ‘Crossing of the Andes’ in San Juan, commemorating the bicentenary of Chile and Argentina’s famous liberation struggle, but, this time, including the Canadian flag held by Ambassador Timothy Martin riding next to Governor Gioja.27 At the highest level, Kirchner met with Prime Minister Harper on the sidelines of the Seoul G-20 “and the central theme of the meeting was the Barrick Gold investments.” Five months earlier they had met during the Toronto G-20; “in that opportunity they were joined by Barrick Gold’s CEO, Peter Munk” (Diario del Cuyo 2010).

The actions of Barrick Gold in Argentina cannot be seen in isolation from Canada’s foreign and economic policy. Canadian citizens must, regrettably, share responsibility for the

25 See North and Young (2013).
26 There is a vast literature [provide citations].
27 The photo can be seen at: http://www.flickr.com/photos/joseluisgioja/4326801080/sizes/o/in/photostream/.
role our government and our corporations have played in defeating the Glacier Act, for disrupting democratic processes in Argentina, and for another setback in our response to global warming. We can take hope from the courageous resistance of community organizations, environmental groups, social justice organizations, and progressive politicians in Argentina and Chile, and the international solidarity behind them. Here in Canada, we need to take action to make sure that in the future Canada adopts a different posture and that Canadians indeed become the “nice guys” we purport to be.

References


Aranda, Darío. 2010. "Las provincias que rompen el hielo." Pagina 12, 12 July.


Reuter's, Aug 17.


IANIGLA. 2013. Presentan el primer informe del Inventario Nacional de Glaciares. Mendoza:
Instituto Argentino de Nivología, Glaciología y Ciencias Ambientales (IANIGLA),
Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET).

Kosich, Dorothy. 2013. Barrick’s huge Pascua-Lama gold mine start-up now delayed to mid-
news?oid=196171&sn=Detail.


Mendoza." In ia 2011: Informe Ambiental, 68-75. Mendoza: Secretaría de Medio
Ambiente, Gobierno de Mendoza.

Los Andes. 2012. Jaque declara la emergencia hídrica - Diario Los Andes. Los Andes,
http://www.losandes.com.ar/notas/2010/10/1/jaque-declara-emergencia-hidrica-
518304.asp.

Manderson, L. "Social and public health effects of climate change in the '40 South'." Wiley

MDZ. 2011. "Lo dice César Gioja: "el Gobierno de San Juan es funcional a la Barrick"." MDZ

MercoPress. 2011. Mountain glaciers in the Andes are melting the fastest in 350 years.
MercoPress (5 April), http://en.mercopress.com/2011/04/05/mountain-glaciers-in-the-
andes-are-melting-the-fastest-in-350-years.

Nacif, Nora Elsa, María del Pilar Espinosa, and Marta Graciela Martinet. 2011. Una Ciudad
Oasis de Zona Sismica. Revista Iberoamericana de Urbanismo, Universidad Nacional de
San Juan 6 (7), http://www.riurb.com/pg_numeros_anteriores_2011_06Dossier_00.html.

North, Liisa, and Laura Young. 2013. "Generating rights for communities harmed by mining:
legal and other action." Canadian Journal of Development Studies/Revue canadienne
d'études du développement no. 34 (1):96-110.


