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Sovereignty as Concession: Extraction(ism) and the Limits of Statehood

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ABSTRACT

This article offers a fundamental reconsideration of the weak state paradigm. It submits that African states are not weak because they have failed to reach some universal threshold of statehood. They have rather been rendered unsovereign by a legal-economic architecture that's been refined over more than a century and actively maintained to produce exactly this outcome. The colonial concession, the structural adjustment program, the bilateral investment treaty, and odious debt are not sequential historical episodes. They are the continuous operation of a single structural logic that leads to the subordination of African political authority to the imperatives of capital accumulation. To say this is not to collapse the distinction between colonial and postcolonial regimes. Formal independence, legal personality under international law, and the (however constrained) existence of elected governments are real differences between the colonial and postcolonial state. The claim, rather, is that extractive constitutionalism represents a transmutation of colonial logic, in other words the substitution of direct territorial control with juridical encasement rather than its elimination. The notion of "extractive constitutionalism" refers to the use of legally binding instruments, most prominently concession agreements, investment treaties, and special economic zone regimes, that function as de facto constitutions at the project level.

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1. Introduction

This article offers a fundamental reconsideration of the weak state paradigm. It submits that African states are not weak because they have failed to reach some universal threshold of statehood. They have rather been rendered unsovereign by a legal-economic architecture that's been refined over more than a century and actively maintained to produce exactly this outcome. The colonial concession, the structural adjustment program, the bilateral investment treaty, and odious debt are not sequential historical episodes. They are the continuous operation of a single structural logic that leads to the subordination of African political authority to the imperatives of capital accumulation. To say this is not to collapse the distinction between colonial and postcolonial regimes. Formal independence, legal personality under international law, and the (however constrained) existence of elected governments are real differences between the colonial and postcolonial state. The claim, rather, is that extractive constitutionalism represents a *transmutation* of colonial logic, in other words the substitution of direct territorial control with juridical encasement rather than its elimination. The notion of "extractive constitutionalism" refers to the use of legally binding instruments, most prominently concession agreements, investment treaties, and special economic zone regimes, that function as de facto constitutions at the project level.

Sovereignty, understood as the principle that states hold ultimate authority within their territories and enjoy equal juridical standing before international law, has long served as the organizing fiction of the international order. In Africa, this fiction has always been thinner than elsewhere. For the past half century, debates on African statehood have converged on the disabling premise that the postcolonial state is deficient, either too weak, too porous, or too captured to govern "as expected." This article argues that this diagnosis is structurally problematic. The "weak state" is not a developmental failure but an intended product of an international legal-economic order designed to keep African states open to capital penetration, unable to impose conditions on extraction, and chronically indebted. These instruments do not merely regulate economic activity. They pre-commit states to specific legal and fiscal regimes that insulate investors from policy change and popular demands for beneficiation, while relocating dispute resolution beyond the reach of domestic institutions and democratic accountability.

Section 1 consolidates the critique of the weak-state paradigm and integrates the five theoretical frameworks that ground the alternative. Section 2 theorizes sovereignty through concession and draws on the Schmittian dominium/imperium distinction to differentiate formal from substantive sovereignty. Section 3 elaborates the three mechanisms in detail and provides an empirical anatomy of extractive constitutionalism in the Democratic Republic of Congo (DRC). The conclusion turns to methodological and political implications, and considers how the architecture itself might be transformed.

2. The Weak State Paradigm and Its Critique

The mainstream literature on African statehood, from Robert Jackson's 'quasi-states' and William Zartman's 'collapsed states' through the institutionalism of Jeffrey Herbst and Robert Bates, converges in their underlying predicate that the African state's problem is internal. Whether framed as neopatrimonialism, weak bureaucratic capacity, a shallow fiscal base, or a fragile monopoly on violence, the diagnosis is one of developmental failure. The prescriptions that follow are correspondingly inward-looking: better governance, stronger institutions, anti-corruption measures, property rights and further liberalization. Mkandawire is a partial exception to the grouping above. His work with Soludo was among the most sustained African scholarly critiques of structural adjustment as an externally imposed and empirically failed project (Mkandawire and Soludo, 1999), and his 2015 demolition of the neopatrimonialism framework made explicit that it delegitimizes African elites and justifies external technocratic control by the IMF, foreign experts, and donor-dominated NGOs (Mkandawire, 2015). That argument is closer in spirit to the structural critique advanced here than to the internalist accounts with which he is sometimes grouped. Where the tension lies is in his developmental state scholarship, which remains focused on what kinds of African states could deliver transformation—a question that inevitably centered on building internal institutional capacity rather than on dismantling the external legal and financial architecture constraining it (Mkandawire, 2001).

This article breaks with that consensus. It argues that the African state is not a failed approximation of a Weberian ideal but the necessary product of an international legal-economic order designed to keep such states open to capital penetration, unable to impose conditions on extraction, and perpetually indebted. Weakness is not inherited but structurally produced. To make this argument, the article draws on, and extends different convergent bodies of scholarship, brought here into systematic dialogue.

3 Sovereignty as Concession: Extraction(ism) and the Limits of Statehood

First, Quinn Slobodian's intellectual history of neoliberalism demonstrates that the Geneva School's project was not market liberation but market encasement. The neoliberal insight, Slobodian shows, was that "the market does not and cannot take care of itself" (2018: 2). The goal was to design institutions that inoculate capitalism against democratic interference, thereby creating a "double government"—a cultural and an economic government—that helps insulate corporate authority from popular demands for social justice (2018: 12-16). Mining concessions and agro-industrial megaprojects in Africa are encasement mechanisms par excellence. Similarly, the stabilization clause, commonly found in investor agreements, is a derivative of this neoliberal anxiety about unconstrained democracy.

Second, Antony Anghie's forensic genealogy of international law demonstrates that the colonial encounter was not peripheral but constitutive of the sovereignty doctrine. International law, Anghie shows, was built from the beginning to manage the problem of non-European peoples and their resources. The "dynamic of difference"[1] thrives on the supposed deficiencies of the non-European world to justify intervention (Anghie, 2005). Critical International Relations scholars have demonstrated that this logic persists in the contemporary language of "weak states," "governance gaps," and "humanitarian intervention" (Grovogui 1996; Niang 2018). Extractive constitutionalism is merely the latest iteration of this enduring structure.

Third, David Harvey's concept of accumulation by dispossession refers to the ongoing economic mechanism through which land, resources, and fiscal space are transferred from collective or state ownership to private capital. Unlike primitive accumulation, which Harvey treats as a one-time originary event, dispossession is continuous. Under this arrangement, the state serves as the necessary facilitator of its own dispossession (Harvey, 2003). However, Harvey's framework under-theorizes the legal machinery that makes dispossession durable. Extractive constitutionalism supplies that missing juridical account.

Fourth, Katharina Pistor's work on the legal coding of capital provides the missing micro-foundation for the concession-as-constitution claim. Pistor argues that capital is not a thing but a legal construct. An asset becomes capital only when national legal systems, backed by state coercion, selectively encode it with four core attributes: priority, durability, universality, and convertibility (Pistor, 2019). The concession agreement is the paradigmatic encoding instrument. It transforms a mineral deposit into protected capital by granting the investor priority over subsequent claimants,

[1] Anghie's "dynamic of difference" names the mechanism by which international law has historically constituted a gap between European/non-European societies, civilized/uncivilized, developed/developing, and then generated legal and institutional frameworks ostensibly designed to close that gap, while in practice reproducing the hierarchies that justified intervention in the first place. The concept is central to his argument that the sovereignty doctrine was not extended to the non-European world but constructed through the colonial encounter, in ways that structurally subordinated non-European peoples to the governance imperatives of imperial powers (Anghie, 2005).

including the host state's taxing authority. It ensures durability against regulatory change via stabilization clauses, universality across jurisdictions via International Centre for Investment Disputes (ICSID) arbitration, and convertibility into liquid assets. In this framework, the "weak state" is not one that fails to protect capital; it is one that has been legally encoded to protect capital too well, at the expense of all other public functions.

Fifth, Saskia Sassen's analysis of "expulsions" and the denationalization of state functions illuminates the fate of the state's jurisdictional shell. Sassen argues that contemporary capitalism no longer simply exploits within national territories but actively expels people, livelihoods, and entire economic domains from the social contract. The mining concession area is a territory of expulsion; it is not ungoverned but re-governed by a private legal order. Sassen further shows that state functions such as security, dispute resolution, and fiscal collection are systematically denationalized and reassigned to private or transnational bodies (Sassen 2006; 2014). The African state retains formal sovereignty precisely because its substantive functions have been hollowed out and reassigned to the concession's internal governance regime. The state becomes a jurisdictional shell, a recognized territorial entity under international law that no longer performs the public-good functions that once justified that recognition.

Further, Susan Strange's concept of structural power provides the integrative architecture for this paper's three-mechanism model. Strange argues that power in the global political economy has shifted away from relational power (A getting B to do what B would not otherwise do) and toward structural power, in other words the power to shape the very frameworks within which states and other actors operate (Strange, 1988). She identifies four primary structures: security, production, finance, and knowledge. The African state is structurally embedded in a grid of constraints that Strange's framework helps better explain (Strange, 1996). Extractive constitutionalism is the translation of structural power into enforceable legal form. The concession mechanism captures the production and knowledge structures; the debt mechanism anchors the finance structure, and the state/non-state coercion mechanism redefines the security structure.

Extractive constitutionalism provides a conceptual synthesis of the strands briefly analyzed above. The key characteristics that stand out are the governance of African territory through corporate concession and outside of democratic constitution, the prioritizing of private property over the production of public goods, and the encasement of capitalism in the legal architecture of the mine. The next section theorizes sovereignty through concession by distinguishing between formal and substantive sovereignty; it draws on the Schmittian argument that underpins that distinction.

3. Extractive Constitutionalism: A Framework

Sovereignty in resource-rich African states in particular is not simply constrained by external forces. It is actively restructured through three interlocking mechanisms that together constitute extractive constitutionalism, that is the use of legally binding instruments that pre-commit sovereign authority to the protection of capital at the project level (Merino, 2022). First, the concession does not function as an ordinary commercial contract but as a micro-constitutional instrument that binds future governments through stabilization clauses and displaces disputes to investor-state arbitration. Second, sovereign debt disciplines state behavior long before any particular concession is signed, often compressing fiscal space and enforcing compliance through market pressures and legal obligations. Third, coercion is reoriented from public security to the enforcement of concessionary order.

As the organizing premise of the international order, sovereignty implies that states have equal juridical standing and a degree of responsibility for political governance. In the African context, however, this premise has long been treated as aspirational. Institutionalist, Weberian, and critical traditions converge in framing the African state as limited, if not incapable of performing the basic functions associated with sovereign authority. The argument this article makes is that sovereignty itself is being reconfigured through legal and economic arrangements that systematically limit the scope of state action. This reconfiguration produces a split between formal sovereignty, which is marked by juridical recognition, territorial integrity, and equal standing before international law, and substantive sovereignty, which refers to the actual capacity to shape policy, regulate capital, provide public goods, and respond to domestic political demands.

Slobodian has shown how neoliberals appropriated Carl Schmitt's distinction between imperium, the world of territorial states where governments rule over human beings, and dominium, the world of property, where people own things, money, and land scattered across the earth. For Schmitt, the dominium/imperium distinction was more fundamental than the political demarcation of the foreign from the domestic (Slobodian, 2018, 10–11). To the extent that concession creates a jurisdictional split, this distinction is central to the African governance structure. The mining company essentially operates in dominium; it is governed by property rights, contracts, and international arbitration. The host state retains imperium only if it does not interfere with the economic constitution embedded in the concession. This distinction however becomes unsustainable where tax holidays and stabilization clauses remove the material basis that enables the state to provide public goods or where company towns perform such roles. The same goes for the 'secondment' of security forces to concession perimeters. In these configurations, dominium effectively subordinates imperium. The state's residual sovereignty is tolerated only as long as it guarantees the conditions for capital accumulation.

I call these configurations "extractive constitutionalism." Three features are central to this constitutional function, beginning with temporal binding, which extends concessions across decades and multiple political cycles through stabilization clauses that lock in legal and fiscal terms. A second feature is jurisdictional displacement, whereby the externalization of judicial authority relocates investment-related disputes from domestic courts to international arbitration forums such as the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL). A third involves regulatory pre-commitment, in which concessions specify tax holidays, royalty rates, environmental standards, and labor conditions in advance, thereby constraining future governments' capacity to legislate in the public interest.

Three mechanisms structure the analysis of extractive constitutionalism, each examined in turn below: the concession form as a micro-constitutional arrangement, sovereign debt as a constraint on state behavior, and the redirection of coercive capacity toward extractive operations. These mechanisms tend to fragment sovereignty and redistribute authority across overlapping legal and institutional layers. Within the territorial boundaries of the state, specific zones such as mining sites, industrial corridors, and special economic areas become enclaves that are governed by regimes which differ significantly from the national framework. If domestic law continues to apply, it is supplemented, and in key respects constrained by contractual and international legal obligations. The state retains formal sovereignty while its practical exercise is conditioned by prior commitments to external actors. Understanding concessions in this way shifts the analytical focus; concessions are not simply indicators of bargaining asymmetries or governance deficits but institutional devices through which sovereignty is reconfigured and operationalized in the context of global capital flows.

4. Mechanisms of Constraint

4. a. *The Concession as Micro-Constitution*

Concession agreements in the extractive sector are typically framed as commercial contracts between host states and foreign investors. This characterization is formally accurate but analytically insufficient. In practice, these instruments operate as micro-constitutional arrangements: they define the scope of permissible state action, bind future governments, and reorganize jurisdictional authority in ways that exceed ordinary contractual effects. The most consequential of these effects is temporal. Concessions commonly extend over decades, often spanning multiple political cycles. Stabilization clauses range from "freezing clauses" that lock in the law as it exists at signing to "economic equilibrium clauses" that require compensation for any regulatory change that affects profitability. Concessions thus fix the legal and fiscal environment for the duration of the project, limiting the capacity of future governments to legislate in the public interest where such legislation would alter agreed investment conditions. Ordinary contracts bind parties to specific exchanges and do not typically constrain the legislative authority of future administrations. Concessions however encroach upon policy domains such as taxation, environmental regulation, and labor standards and place them under contractual discipline as can be seen in the case of the Democratic Republic of the Congo (DRC).

The DRC is frequently invoked as the paradigmatic case of the "resource curse"—a state endowed with vast mineral wealth but plagued by persistent poverty, institutional fragility, and recurrent conflict. However, as many critical scholars such as Cyril Obi have shown, the "resource curse" framing is first of all an ideological construct, a "spell of inevitability" that strips African political economy of historical depth, strips people of agency, and crucially, occludes the role of colonialism and transnational capital in producing the conditions the "curse" claims to explain (Obi 2010). The label obscures the fundamental fact that underdevelopment in the DRC is not paradoxical but the predictable outcome of a specific configuration of legal, financial, and coercive arrangements.

The contemporary governance of extraction in the DRC is a transformation of earlier concessionary systems. The Congo Free State, Leopold II's personal fiefdom from 1885 to 1908, remains the most scandalous iteration of the concession form in history. Vast territories were distributed to private companies (the Anglo-Belgian India Rubber Company (ABIR), the Anversoise, the Compagnie du Kasai) which exercised sovereign powers of coercion over land, labor, and life. Rubber quotas were enforced at gunpoint; villages that fell short were razed and hands severed as proof of bullets expended. Conservative estimates place the death toll at several million (Hochschild 1998). In the case of the DRC, dominium and imperium were not merely fused but rendered indistinguishable. The concessionary company *was* the state and the *Force publique* its army. Its public function was essentially revenue extraction. Roger Casement's 1904 report to the British government triggered what became one of the first international human rights campaigns. It forced Leopold to relinquish control in 1908 as the brutality of his system had become indefensible. The contemporary legal architecture of extraction in the DRC is a refined successor to that regime despite post-independence reforms that formally dismantled the colonial structure (Lowes and Montero, 2021). Nationalization policies, particularly under Mobutu, reasserted state ownership through entities such as Gécamines (state mining company). From the 1980s onward however, structural adjustment and subsequent liberalization reoriented the sector toward foreign investment, culminating in privatizations and joint ventures in the late 1990s and early 2000s.

The temporal dimension of extractive constitutionalism is visible in the evolution of the DRC's mining code. The 2002 Mining Code, adopted under significant external influence, established a highly favorable regime for foreign investors, from low royalty rates to extensive tax exemptions and guarantees of legal stability. Many contracts concluded under this framework incorporated stabilization clauses that effectively froze these conditions for twenty to thirty years. When the Congolese government sought to revise the code in 2018 in order to increase royalties and taxes, the response from major mining companies was immediate. Firms invoked stabilization provisions to argue that the revised code could not be applied to their existing projects. The government's attempt to alter fiscal terms was framed as a potential breach of binding commitments that would expose the state to compensation claims. In response, Glencore suspended operations at the Mutanda mine, citing adverse economic conditions; it deployed production withdrawal as leverage against regulatory change. This episode illustrated how concessions function as temporal constraints on sovereignty: regulatory change became contingent on the terms of prior agreements and on the consent, therefore, of investors.

At the regulatory level, most contemporary agreements relocate dispute resolution from domestic courts to international arbitration forums, commonly under ICSID or UNCITRAL rules. This shift displaces sovereign adjudicatory authority. Disputes involving public law questions to do with taxation, regulatory change, and expropriation are removed from national legal systems and submitted to tribunals operating outside the host state's constitutional framework. Arbitral panels are not embedded within domestic systems of accountability. Their members are drawn from a small pool of commercial lawyers, and their decisions are enforceable across jurisdictions through international conventions. The result is a parallel legal order in which claims against states are adjudicated according to standards that prioritize investment protection, often without equivalent consideration of public policy objectives. In constitutional terms, this amounts to a partial externalization of judicial sovereignty. Even where formal proceedings are not initiated, the threat of arbitration exerts a disciplining effect and polices the boundaries of permissible state action. The global record of investor-state disputes reinforces this asymmetry. Claims brought by investors against states frequently involve large financial stakes, and adverse awards can impose significant fiscal burdens. For a state such as the DRC, with limited fiscal capacity and high exposure to external debt, the risk of arbitration outcomes further constrains regulatory autonomy.

Although this paper focuses on international arbitration and investment treaties, it is important to bear in mind that domestic constitutional orders in African states have been deployed both to entrench and to contest extractive arrangements. South Africa's constitutional litigation around mining rights for instance, or the Kenyan constitutional provisions on land and natural resources, illustrate how domestic constitutional law is a site of contestation that the framework of "extractive constitutionalism" could also address.[2]

[2] The South African Constitutional Court's decision in Aquila Steel v Minister of Mineral Resources (2019) illustrates both the promise and the constraint of a strategy that challenges the architecture's operations without contesting its foundations. The Court overturned a defective prospecting right granted to a company whose title traced to Cecil Rhodes's colonial land concessions, reaffirming the state's custodianship over mineral resources and the principle that non-compliant applications cannot stand.

Beyond temporal and jurisdictional effects, concessions actively shape regulatory frameworks by specifying in advance the conditions under which economic activity will occur. Tax holidays and reduced royalty rates limit fiscal extraction. Exemptions from import duties reshape trade policy at the project level. In addition, bespoke environmental and labor regimes alter the application of national law within concession areas. In some cases, infrastructure, security, and social services are organized through the concessionaire, further blurring the distinction between public and private functions. The combination of these provisions creates a project-specific governance regime that operates alongside, and sometimes in tension with, the general national legal order. Once embedded in legally binding agreements and backed by international enforcement mechanisms, these arrangements become difficult to alter without incurring significant financial and reputational costs. The state is thus placed in a position where its capacity to adapt regulation to changing circumstances is constrained by prior commitments (regulatory pre-commitments), a significant shift from ex post regulation to ex ante limitation.

The fiscal implications of concessionary arrangements in the DRC have been widely documented. Investigations into transactions involving Gécamines, particularly those linked to Dan Gertler, reveal substantial revenue losses from undervalued asset sales and opaque joint ventures. A single Gécamines asset sale generated an estimated loss of approximately $60 million. Gerter is a controversial Israeli businessman, founder of DGI (Dan Gertler International) group of companies. He has extensive investments in DRC, including gold, diamond, copper, cobalt, iron ore among other things. Gertler's name appears more than 200 times in the Panama Papers and in 120 documents regarding his relationship with Glencore. The US Department of Treasury specifically named Dan Gertler in the Office of Foreign Assets Control (OFAC) financial sanctions list for corruption and serious human rights abuse and under the Magnitsky Act. It blocked his US-based assets and prohibited firms to do business in dollars with him.[3] According to The Economist, the sanctions document stated that Gertler had "amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals."[4] It determined that corruption, oil and mineral deals had undermined "the rule of law" and *economic growth* in DRC, a country impoverished by decades of predatory extractivism.[5]

However, the case also exposes a limit: litigation remains tethered to the statutory framework that structures extraction.

[3] The Economist "Beny Steinmetz gets jail, Dan Gertler a reprieve," 30 January 2021. "Issuance of Global Magnitsky Executive Order; Global Magnitsky Designations" Treasury.go. United States Department of the Treasury and Office of Foreign Assets Control (OFAC). 21.12.2017 https://ofac.treasury.gov/recent-actions/20171221

[4] The Economist "Mining firms are dismayed by a new Congolese mining law" Cape Town, South Africa. 10 February 2018. https://www.economist.com/business/2018/02/10/mining-firms-are-dismayed-by-a-new-congolese-mining-law

[5] Eric Lipton, Dionne Searcey "Fight Over Corruption and Congo's Mining Riches Takes a Turn in Washington," The New York Times. 2 April 2023.

The US Treasury has documented 1.36 billion in revenue losses across related deals, while civil society organizations have advanced estimates reaching $3.7 billion (The Sentry, 2021). These figures are typically framed as the results of corruption or mispricing. While such factors are undoubtedly present, they are more accurately understood as outcomes produced by a gatekeeping architecture in which access to state assets is intermediated through politically embedded brokers. In this configuration, value extraction is not a deviation from the system; it is the system's normal mode of operation. The legal frameworks governing these transactions—tax exemptions, royalty structures, profit-sharing agreements—are themselves products of negotiated commitments that limit the state's claim on resource revenues. The fiscal weakness of the Congolese state is not simply a problem of administrative incapacity but the product of regulatory pre-commitments that structure how value is generated and distributed within the extractive sector.

4. b. *Debt as Discipline*

If the concession binds the state at the project level, sovereign debt disciplines state behavior long before any particular agreement is signed. Debt operates as a structural constraint that compresses fiscal space, shapes policy incentives, and enforces compliance through market pressures and legal obligations. Historically, structural adjustment program of the 1980s and 1990s performed this function directly. Conditionalities dismantled the developmental state, compelled states to compete for foreign investment on terms they could not set, mandated the privatization of natural resources and public services, and required acceptance of arbitration forums such as ICSID. Debt thus became a lever under the adjustment mechanism.

In the contemporary period, the disciplinary function of debt has become more diffuse but no less effective. A further layer of discipline operates through speculative dynamics in international capital markets. When Eurobond yields spike on the basis of credit downgrades or political uncertainty—as they did sharply for Ghana, Kenya, and Zambia between 2022 and 2024—states face immediate fiscal contraction regardless of any change in underlying economic conditions. The rating agencies that trigger these cascades are themselves embedded in the same financial order whose instruments they assess. Vulture funds that purchase distressed African sovereign debt at cents on the dollar and proceed to litigate for full repayment further illustrate the point that what is commonly framed as market discipline is often closer to extraction by another name.

Included in the Executive Order is the list entities "affiliated with" Gertler, namely "Moku Mines D'or SA, Moku Goldmines AG, Fleurette Energy I B.V., Fleurette Africa Resources I B.V., African Trans International Holdings B.V., Fleurette African Transport B.V., Oriental Iron Company SPRL, Iron Mountain Enterprises Limited, Sanzetta Investments Limited, Almerina Properties Limited, Interlog DRC, Kitoko Food Farm, Karibu Africa Services SA, and Ventora Development Sasu." Global Magnitsky Human Rights Accountability Act Annual Report, Federal Register (Report). 28 December 2018. https://www.federalregister.gov/documents/2018/12/28/2018-28311/global-magnitsky-human-rights-accountability-act-annual-report

Bilateral debt, particularly from non-traditional lenders, often carries opaque terms and collateralization arrangements that further erode sovereign autonomy. The restructuring of Zambia's debt in 2020-4, for instance, unfolded under conditions set by the IMF and the G20 Common Framework, with creditor committees shaping fiscal policy well beyond the formal terms of the agreement.

The DRC's external debt, which includes historic odious obligations from the Mobutu era, structural adjustment loans, and more recent borrowing from China, compresses fiscal space and limits the government's ability to renegotiate concession terms. China has become the largest bilateral creditor to several African resource-rich states, including the DRC, Zambia, and Angola. Chinese loans to the DRC, often collateralized against future copper and cobalt shipments, exemplify a form of bilateral debt that constrains sovereign autonomy without the same investor-state arbitration mechanisms typical of Western investment. The $6.2 billion 'Sicohydro' deal of 2008, renegotiated in 2018, which swapped infrastructure construction for mining rights, is a classic case of debt-for-resources extraction. Collateralization against future resource shipments exposes the state to commodity price volatility beyond its control.

The category of odious debt or debt incurred without the consent of the people and not used for their benefit, has gained renewed attention in African legal and political circles. While the doctrine remains contested in international law, advocacy for its recognition represents an attempt to delegitimize debt obligations that originated under coercive conditions or through corrupt means. Even without formal recognition, the threat of odious debt claims can alter negotiation dynamics, as seen in recent discussions around the DR Congo's historic debt obligations.

China's position in this architecture is both analogous and distinct. Chinese resource-backed loans—collateralized against future commodity exports rather than governed by ICSID arbitration—compress sovereign fiscal space without the formal conditionality of Western International Finance Institutions (IFIs). The absence of policy conditionality means that Beijing does not prescribe privatization or fiscal targets, but does not guarantee greater policy space in practice. Commodity collateralization substitutes market price risk for policy risk; a fall in cobalt prices translates directly into debt distress regardless of government choices. Moreover, Chinese loans are disproportionately concentrated in resource-rich states, and their opacity makes public accountability structurally difficult.[6] If the form of constraint differs, the sovereignty-eroding outcome is largely comparable.

In many ways, debt and concessions reinforce each other. A state burdened by debt is a state that cannot afford to renegotiate concession terms, to tax foreign investors at higher rates, or to risk ICSID proceedings. The fiscal space that debt erodes is precisely the space that would be needed to reassert substantive sovereignty over resource extraction. Debt thus performs the same sovereignty-corrosive function as the

6 The loan terms of most China Development Bank agreements are confidential.

concession; it achieves at the macro level what the concession achieves at the project level.

4. c. *Coercion as Enforcement*

The third mechanism concerns the reorientation of state coercive capacity. In resource-rich African states, the state's monopoly on legitimate violence is not only weakened or contested; it is selectively redeployed to secure extractive operations. This operates through two related dynamics. Security at concession perimeters is simultaneously privatized and militarized: companies such as MMG and Glencore maintain substantial private security contingents. At the same time, the national armed forces (FARDC units in the eastern DRC) are effectively deployed to serve concessionary rather than public security mandates. The boundaries between corporate and state coercion blur accordingly.

Alongside this coercion, artisanal mining is systematically criminalized in favor of industrial operations despite the fact that large numbers of Congolese citizens depend on informal mining for their livelihoods. Enforcement measures range from evictions to arrests and the use of force, all justified in terms of legality, safety, or the fight against 'illegal' mining, but their effect is to prioritize concessionary rights over subsistence practices. In sites such as Musonoie near Kolwezi in the Lualaba Province, the coerced displacement of artisanal miners has been linked directly to the expansion of industrial concessions in the context of growing demand for cobalt and copper. There are countless similar examples across the DRC. Artisanal miners lose their livelihoods without gaining formal employment in return. The result is a sharp asymmetry between labor input and captured value. In this regard, coercion is not a secondary or pathological feature of extractive governance but rather a key pillar that ensures compliance on the ground. The state's coercive apparatus is reoriented from public security to the enforcement of a legally and financially structured regime of extraction.

5. Conclusion

This article argues that the weak state framework is structurally inverted. African states' weakness is produced by a legal-economic architecture that's been refined through various mechanisms which the concept of extractive constitutionalism has sought to capture. The Democratic Republic of Congo is not an aberrant case of the resource curse but a normal operation of extractive constitutionalism made visible.

If the constraints on African sovereignty are embedded in the legal-economic framework itself, then the question is not how states can better operate within that framework, but how the latter might be transformed. This calls for debt restructuring based on justice rather than solvency. Odious debt doctrines, however contested in international law, provide a lever for delegitimizing obligations incurred under coercive conditions or through corrupt means. Advocacy for their recognition, combined with coordinated sovereign debt restructuring mechanisms along the lines of the UN's Common Framework but with binding authority, could reopen fiscal space currently closed by creditor committees and credit rating agencies.

Second, there needs to be a renegotiation or withdrawal from bilateral investment treaties (BITs) and the ICSID regime. Several African states such as South Africa, Tanzania, and Mozambique, have begun to terminate or amend BITs that grant foreign investors rights that exceed domestic protections. Regional coordination through the African Union could establish a continental investment protocol that subordinates investor protections to public policy objectives linked to taxation, environmental regulation, and local beneficiation. The African Mining Vision (AMV), adopted in 2009 but largely unimplemented, provides a dormant constitutional template for such a reorientation.

Further, the reclamation of jurisdictional authority requires legislative and judicial strategies to resist the externalization of dispute resolution. National courts must be empowered to hear investment disputes. Arbitration clauses that remove disputes from domestic jurisdiction can be challenged as contrary to public policy and the constitutional order. The 2018 mining code revision in the DRC, even where partially defeated, demonstrates that the attempt to reassert sovereign authority over extraction is politically possible even under severe constraints.

Given the enduring nature of the architecture of extractive constitutionalism, legal and institutional reform alone will not suffice. Its dismantling will require sustained political mobilization at multiple scales: local struggles against concessionary displacement, national coalitions for fiscal transparency and contract renegotiation, regional initiatives for debt justice, and transnational solidarities that link African resource movements with global climate and labor organizing. The challenge is to scale and connect fragmented initiatives across the continent and beyond.

As the specific cases discussed above and much more that cannot be covered here show, the conventional framing of the DRC as a failed state is a stalking horse that conceals enduring patterns produced by the interaction of concessionary law, debt constraints, coercive practices, and multiform corruption. Sovereignty in this configuration is neither absent nor irrelevant. It is exercised through specific instruments that bind the state to a set of commitments oriented toward the facilitation of extraction. The Congolese state retains formal authority over its territory, but the terms under which that authority is exercised are structured by a broader legal-economic architecture. In this sense, the persistence of impoverishment alongside mineral wealth is not a paradox but the predictable outcome of extractive constitutionalism.

One key implication of the sovereignty-through-concession framework is methodological. It shifts analytical attention from what states cannot do to what they are designed not to do. The pseudo-/proto-/quasi-state literature assumes that African states are incomplete or failed versions of a Weberian ideal. This article argues that they are realizations of a neoliberal capitalist ideal in which sovereignty is deliberately fragmented, encased, and subordinated to the world economy. The political implication is that if weakness is structurally produced, the solution cannot be piecemeal capacity-building within the existing framework but rather its structural transformation.

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