



## Original article

# Struggle from the margins: Juridical processes and entanglements with the Peruvian state in the era of mega-mining<sup>☆</sup>



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## ABSTRACT

This paper examines the creation of spaces of legal marginalization for anti-mining activists in the region of Cajamarca, Peru. Central state interests in promoting the course of extractive ‘development’ have simultaneously undermined many of the legal conditions for political participation and rights assumed in ‘developed’ liberal democratic states. Based on a series of interviews in Cajamarca, I examine how legal marginalization is experienced in a nation-state where citizens are “guaranteed” fundamental human and indigenous rights. I highlight two processes: the transfer of jurisdiction of Conga Mine cases from Cajamarca to Lambayeque and the systematic archiving of activists’ claims. These processes reveal the manner in which political actors co-produce paradoxical spaces of law that are played out in the daily lives of activists. I argue that the “Rule of Law” is rendered flexible and that members of rural communities and grass-roots organizations, such as the legally-recognized *Rondas Campesinas*, are actively positioned in marginalized legal spaces outside the functioning of regular juridical processes.

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## 1. Introduction

The primary objective of this paper is to explore how the central state in Peru, in the face of mounting opposition to large-scale mining projects, renders the “Rule of Law” flexible in order to promote its interests and those of the mining industry. Through this ethnographic analysis of the legal dimensions of anti-mining activism in the Cajamarca region, I hope to contribute to the growing body of work examining the criminalization of protest in the (neo) extractivist governments of Latin America (see Svampa, 2012; Bebbington, 2012; Acosta, 2013). The ensuing discussion is centered on what I consider to be the creation of marginal legal spaces in the context of mining conflicts. For the purposes of this analysis I abstract two groups of political actors, the central state and anti-mining activists, whose composition is heterogeneous and more complex than this analysis is capable of demonstrating. Nevertheless, reifying these opposing actors as bounded groups serves as a heuristic for understanding how the everyday enactments of legal processes can generate legal marginalization.

In this paper, I am specifically concerned with addressing how legal marginalization comes to be co-produced and how it is experienced by anti-mining activists. The analysis is informed by the following questions: How are the central state’s political interests undermining the legal conditions for the political engagement of citizens assumed in a liberal democracy? And how do rights discourses lead to marginalization instead of empowerment?

I elicit these processes of legal marginalization through an account of the Peruvian central state’s legal strategies, carried out at different levels of the juridical apparatus, which overwhelmingly work against activists. The first strategy involves a resolution by the Judiciary branch which effectively redirected cases related to the Conga mining project conflict to the Second Penal Courts of the Lambayeque Region; cases which under regular circumstances would be tried in the courts of Cajamarca. The second strategy entails two practices. The first is the systematic archiving of legal claims filed by activists against State and corporate agents. The second is what I refer to as “preemptive archiving,” the rejection of activists’ attempts to press charges. In abstracting the central state, I refer to it as a more or less unitary entity constituted by President Humala’s administration and the broad range of government bodies at the national (centralized) scale. I define the juridical apparatus as an institutional structure shared by judicial entities at different scales (i.e., national, regional, provincial, municipal). The Judiciary, even as a component of the central state, also operates at

<sup>☆</sup> This paper is based on a presentation given at the LASA Conference in May 2015. To protect activists’ identities, pseudonyms are used throughout the paper except in the cases of public figures and technical experts.

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local scales. The more scrutiny given to the upper-case “State”, the more we encounter complexity and heterogeneity belying this reified concept (Gupta 2012).<sup>1</sup> A more nuanced examination of the State is outside the scope of this paper, but it serves us to note that in the context of socioenvironmental conflicts in Peru, the central state is met with opposition from other sectors of the State, such as local government officials (i.e., regional presidents and mayors) and the Ombudsman’s Office.

This research was conducted in Lima and Cajamarca during a summer of fieldwork spanning seven weeks in 2014. I complemented data from that season with a subsequent trip to Cajamarca in July 2015, which allowed me follow-up with interlocutors and to engage with other activists in the cities of Cajamarca and Celendín. In 2014, I worked with a team of lawyers from the International Institute on Law and Society (IIDS/IILS) in Lima that leads human and indigenous rights’ cases on natural resource and territorial claims. The Institute has a long history of working with the *campesino* (small-holding farmer) population in the region of Cajamarca, which facilitated my entry as an unknown anthropologist into activists’ circle of confidence.

I spent five weeks at the IIDS/IILS office in Lima and made two separate week-long trips to Cajamarca. Working at the Institute’s office embedded me in the daily activities that constitute one node of articulation between international, national, and local scales of socioenvironmental struggles. There I learned about the legal underworking of mining conflicts in Peru. The subsequent analysis about the legal marginalization of activists is informed by conversations and situations I was a part of at the Institute. During the first trip to Cajamarca, I collaborated with the Institute’s lawyers and a communications intern by conducting 12 interviews as part of a larger set of interviews the Institute was undertaking. Later, I returned to Cajamarca on my own for a second week-long trip. On this latter occasion I participated in the marches commemorating the five Cajamarcan killed by the police in the July 2012 general strike protest. Casual conversations with movement leaders and participants during moments of lull helped me construct a fuller portrait of the profound impacts mining struggles have had on activists.

The interviews I conducted with the team on my first trip to Cajamarca are being used in a case under review by the Inter-American Commission on Human Rights (IACHR). Importantly, they also shed light into dynamics which remain obscure to larger sectors of society and in relation to broader analyses of mining conflicts in the region. The interviews, which primarily focused on human rights’ concerns, also elicited personal narratives about activists’ experiences at different moments of the conflict. When examined against the backdrop of the increasing number of penal prosecutions of socioenvironmental defenders (*defensores*), these accounts become highly relevant. Peru’s National Coordinator of Human Rights (CNDDHH) estimates that, between 2012 and 2013, about 70 percent of the two thousand people judicially processed in contexts of social conflict were involved in socioenvironmental struggles. In this same report, the CNDDHH remarks that although penal processes against State or corporate actors generally lead to impunity, the primary threat to socioenvironmental activists is “hostigamiento judicial” (judicial harassment) (2014:49). Velazco Rondón et al. (2015) reached similar conclusions about the tendency in Peru to both militarize and criminalize protests related to the extractive industries. This study contributes to the literature on the increasing criminalization of protest by providing fine-grained accounts that complement the macro-scale data already available.

<sup>1</sup> Throughout the paper the upper-case State refers to the broad, conceptual understanding of the state.

This paper also represents an initial incursion for understanding the judicialization of mining politics in Cajamarca, a process which I argue paradoxically produces spaces of legal marginalization for Cajamarca’s activists. I begin by providing a brief introduction to mining in Peru and then examining in closer detail the Yanacocha and Conga mining projects, both based in Cajamarca. The following section builds on what Comaroff and Comaroff (2012) call the “judicialization of politics” as it examines the legal marginalization experienced by activists through the framework of liberal rights discourses. This section sets up the theoretical framework through which I analyze the chosen case studies. Consequently, the next section lays out the two cases of legal marginalization being examined: the transfer of jurisdiction and systematic archiving. I incorporate excerpts from the interviews I conducted in both case studies, thus providing the reader with a more accurate picture of activists’ testimonies and personal readings of the legal dynamics they are a part of. Indeed, activists’ experiences with the legal system suggests that what lies beyond judicialized mining politics is the politicization of the “Rule of Law.” Drawing on these critical theoretical orientations, I conclude by starting to unravel how the legal marginalization of anti-mining activists in Peru is indicative of paradoxical spaces of the “Rule of Law.” I argue that the central state and activists, constituting groups of actors on opposite sides of the mining conflict, co-produce paradoxical spaces of law through their engagement with (in) a common legal system.

## 2. Extractive histories, present-day convergences

### 2.1. Background

Mining has a long history in the Andes, dating back to pre-Columbian times. Today, legal, State-sanctioned mining in Peru is limited almost exclusively to industrial mining. The scale of industrial mining operations, however, has undergone a remarkable growth with the advent of new technological processes. These large-scale mines, also referred to as mega-mines, are characterized by the removal of large quantities of low-grade mineral ore bound within the soil. The low-grade quality of mineral ore necessarily requires a greater quantity of water and earth to be processed in order to profit from extraction. Subsequently, the extent of mining in open-pit, large-scale operations is larger than in deep vein mining. Large-scale mining also differs substantially from small-scale mining, a persistent activity in the lowland regions of Peru.<sup>2</sup>

Understanding the current economic dynamics associated with the extractive industries in Peru requires looking at how the continental neoliberal turn of the 1980s took shape in Peru. The 1980s financial crisis ushered the desire for an effective solution to the nation’s economic problems. The election of President Fujimori was the culmination of multiple social interests that sought a head of state with few links to the old political classes. Fujimori deployed an austerity program informed by neoliberal principles which continue to impact the lives of Peruvians to this day. The neoliberal economic measures promulgated by Fujimori in the 1990s opened the borders of Peru to a flood of capital investment

<sup>2</sup> Small-scale or artisanal mining is also a controversial topic in Peru. It is generally maligned by a central state that favors large-scale operations that bring in multi-million dollar investments. Due to its unregulated, and henceforth illegal, status, artisanal mining has also garnered increasing opposition from local communities, many of which are indigenous communities located in Peru’s Amazonian regions. Hilson (2002), however, provides excellent evidence for governments to provide more support of small-scale mining given its importance in economies at various scales (local, national, and global), placing the question of the legalization of small-scale mining activities at the crux of these debates.

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