CHAPTER 2

Deeply Rooted Grievance, Varying Meaning: The Institution of the Mining Canon

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Neo-institutional economics maintains that institutions matter for the long-term performance of the national economies. Douglass North sets this agenda by studying "the rules of the game," rather than the organizations playing by them. Formal and informal norms are fundamental elements in the formation of incentive structures for economic, social, and political decision-making. Institutional change "shapes the way societies evolve through time and hence is the key to understanding historical change" (North 1990: 3). In Peru's contemporary economic policy of development, a central rule of the game is the mining canon, a law that requires national government to give back 50% of mining's income taxes to the producing regions. This fiscal rule was amended several times before emerging in its current form: "the effective and adequate participation regional and local governments enjoy regarding total income and income obtained by the state from economic exploitation of natural resources."[1] How did such a rule of the game come about and why?

Three analytical dimensions help us to tell this story: legacy, contingency, and agency. By legacy, we mean the long-nurtured institutional

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regime in which the short history of the mining canon unfolds. We underline two features of this legacy and its reproduction. On one hand, the canon is but a new chapter of decentralization history in a resource-dependent political economy. Elites and a wide range of social actors of the country's interior perceive an unfair political and economic system that prioritizes Lima's progress over interior development, especially in the Andes and the Amazon (Contreras 2002, 2004; Barclay 2009; Orihuela 2012). In Peru, a country of rich geography with natural resource development, Lima is constructed as the national center thanks to income from resource wealth outside the capital. On other hand, the canon funds the reproduction of a weak state. The absence of a well-entrenched "national project" has fed, for over two centuries, the reproduction of a weak republican state, widely seen as absent, incapable, and corrupt (Basadre 2005; Cotler 1978; Quiroz 2008). The material and subjective legacy of this state failure shapes the social construction of the mining canon and new state action. As the chapters in this book demonstrate, no significant state-making project emerged with the canon windfall; instead, the focus was on spending the mining canon as fast as possible on public building works and infrastructure (see in particular Dargent and Chavez, and Orihuela and Paredes in this book).

Secondly, by contingency, we refer to historical events external to the canon political process that contribute to the creation of "political opportunity" for changing rules. Our analytical toolkit borrows concepts from historical institutionalism and research on contentious politics (Collier and Collier 1991; McAdam et al. 1996; Tarrow 1998). The historical events we consider are the "critical junctures" defined by the 1979 and 1993 Constitutions and Paniagua's Transitional Government of 2000 at the end of Fujimori's regime, along with domestic political processes and critical events of varied significance. Contingent processes include the politics of resource nationalism in the 1970s, the deep economic and political crisis of the 1980s, the dismantling of democracy in the 1990s, and its restitution over the last 15 years. Critical events encompass the 1973–1974 and 1979 oil crises, the catastrophic occurrence of El Niño climate anomaly in 1983, and the 1982 and late-1990s international financial crises that damaged macroeconomic conditions and reduced government expenditure in the interior.

Thirdly, in our reading of the canon's history, while as legacy and contingency set the context, agency has to be considered for a complete analysis. Although it is very likely that agents will behave as actors and follow the script set by domestic institutional history in path

dependence, or the one set by transnational networks and the international institutional environment, agents always have some degree of freedom from social structure. Or they imagine so. These imaginings can become a reality. Foucault, for example, in his genealogical inquiry on the construction of governmentality, posits how all-pervasive material and institutional constraints do not entail the disappearance of agency. On the contrary, the complexity of state apparatuses allows for moments of resistance and eventual institutional rearticulations enabled by the very normative structures that frame agency (Foucault 2000). Similarly, agentic approaches of new institutionalisms find that institutional entrepreneurs are willing and able to transform institutions by embedding their agency (Campbell 2004).

Moreover, what we have found in our archival analysis is plenty of imagination and agency. In particular, ideas and discursive exchanges in Congress and the public sphere mattered a great deal. Thus, the case of mining canon supports the conceptualization of institutional change ultimately as a result of discourse and discursive exchanges (Schdmith 2008). For us, this contention on the importance of ideas and discourse refines—rather than dismisses—the conceptual framework of new historical institutionalism in the social sciences, on which we critically build our argument (Streeck and Thelen 2005; Thelen and Mahoney 2010). Within the structural features of Peru's politics of decentralization, at particular historical contingencies, institutional entrepreneurs proposed a wide array of meanings to the label "canon," which began as a legal term for an obscure tax and became the banner-word for regionalism. From a historical perspective, the mining canon is nothing but a "black box" (Latour 1988) or an empty word (Laclau and Mouffe 1985): Its actual meaning has changed over time, subject to the creativity of institutional entrepreneurs (see the evolution of the term's legal meaning in Annex 1).

This legacy, contingency, and agency perspective of institutional change at work in this chapter draws on the previous work of Orihuela (2013, 2014a). We find that neo-institutional economists could learn to better conceptualize institutional change from historical and sociological neo-institutionalisms, as well as from scholarship on contentious politics and political opportunity structures (Campbell 2004; Pierson 2004; Greif 2006). The "rules of the game," and their associated organizational ecology, are social constructs; their evolution, and the passions and interests behind them, must be read with a historical perspective.

In Peru, the legacy of regional grievances and state failure has shaped the making and remaking of the mining canon at the rhythm set by

contingent processes and sudden crises, with the creativity of accidental heroes, decentralization avengers, and eccentric institutional entrepreneurs that make up the Peruvian polity. The remainder of this chapter is organized in schematic periods. Section 1 depicts the "prehistory" of the canon. Section 2 tells the story of the birth of the oil canon (1971–1983), which opened the door for the mining canon. In a classic example of how formal rules commonly mean very little in Peru, a first version of the mining canon was passed but never enforced; Sect. 3 narrates this story (1984–1993). Section 4 details the struggle in making the canon return and its success in creating an enforced rule of the game (1994–2014). Section 5 presents our conclusions. The appendix includes relevant canon statistics and legal milestones of interest.

1 Notes for a History of the Canon's Pre-history

Writing a proper history of the canon's antecedents in Peru's republican history is a demanding enterprise that requires an extensive archival work. However, we believe that our notes and findings not only allow for a preliminary reading of the canon's past, but also lead to some lines of research for future archaeologies of legislation and public sphere debates.

The first task to be done toward a proper recollection of the canon's prehistory is to strictly define what exactly we mean by the term, that is, to locate and describe the main features of the canon that differentiate it from other types of taxes or decentralization policies. A common mistake is to follow the past uses of the word in other laws. This is misleading, because the majority of uses of "canon" in the past bear no relation to the spirit of decentralization. That is why we contest one of the sources that posits Simon Bolívar and his "patent contributions" ("*contribuciones de patentes*") (Chavez Oré 2004) as the first canon, and when another (Klaver 2002) speculates with the "mining stamp" ("*timbres de minería*")[2] of Leguía's presidency (1919–1930).

Our intention is to propose a broad definition of canon and then to collect laws and bills that share the canon's key features in order to evaluate the extent to which they are faithful to its spirit. Our broad definition proposes that the canon is a right (absolute or relative, temporary or permanent) of the producing regions to what is considered a fair share of benefits from the extraction of natural resources in their territories. It has two key features: (1) The canon is a share of fiscal benefits (achieved via levying tax on extractive companies directly or through redistributing

state income), and (2) this share is distributed in the region where resources were extracted.

Applying these criteria, we can say that in some sense, the mining stamps of President Leguía's government had some relation to the developing of the canon, because it directed resources collected from mining activities to specific mining delegations. Nonetheless, more research is needed to determine whether these mining delegations had sufficient autonomy from the state and whether they had roots in the mining region. In contrast, Bolívar's patent contribution was not close to the notion of canon, as it was only a tax administered by the central government on resource extraction.

Looking further back, we have found an 1845 bill[3] that exemplifies the canon structure fully; we consider this bill the oldest known precursor of canon ideas. This bill was not passed as a law, but it is a sign that more profound research in parliamentary archives can disclose a richer prehistory of canon building, a much more robust legacy than previously believed. The 1845 bill proposed an "ice concession" ("*estanco de las nieves*") in Ayacucho: state control of the business of selling ice from the Andean mountains, which had various uses.[4] The bill earmarked the concession's profits to the building of a girls' school in the same region. The concession's structure—state appropriation of a relevant resource—was very popular at the time (Contreras 2012), especially in 1842 when the state became involved in the guano business. But while the guano monopoly did not share a canon structure, this "ice concession" did: It was the region's own resource and, more importantly, the benefits were set to cover an expense specific to Ayacucho. However, the bill did not pass precisely because of its new structure (*El Comercio*, 1845).

We argue that the canon has to be understood with a historical perspective, looking at the legacy of decentralization politics in particular. Literature on decentralization history notes that the struggle against centralism has been a constant theme since the conquest of Peru, while support for decentralization projects has been cyclical (Contreras 2004). The most important decentralization project of the Republican era followed the war with Chile, between 1886 and 1895. Its main cause was the state's inability to collect taxes, rather than an ideological project (though this was not absent and was particularly encouraged by modernizing political figures such as Manuel Gonzalez Prada and Andrés Avelino Caceres). This was a time of fiscal decentralization, in which these regions and municipalities became responsible for collecting

taxes in their districts with the purpose of covering their own expenses. However, this only applied to direct taxes; the central government continued to administer trade tariffs and other indirect taxes, which were considered more important (Contreras 2012).

Another key chapter in Peru's decentralization history takes place in the Amazon department of Loreto. Its border, always in dispute (with Colombia and Ecuador), and its scant importance in the state's eyes made Loreto somewhat difficult to include in the national picture. The time period between 1860 and 1895 was key to the region's development. This started with negotiations between the government and Amazon elites on tariffs and exemptions, and ended with Loreto's frustrated federalist project, the most radical decentralization effort in Peru's history (Barclay 2009). Although this project was short-lived, it constituted a historical legacy that functioned as a background against which to evaluate the nature of Loreto's subsequent regional movement and regional movements nationwide in general. We believe that this particular chapter of national history, alongside regional frustration with the "fictitious prosperity" of the rubber boom (1880–1918), generated a legacy of regionalist political culture. This culture shaped the emergence of the Defense Front of the People of Loreto and their fight for the oil canon in the 1970s, as developed in the next section (Barclay and Santos 2002).

The legacy of the developmental state failure also matters for the mining canon story. A developmental state failed to emerge in mid-twentieth-century Peru. Following the trend of establishing development corporations, the USA established the Tennessee Valley Authority in 1933 and Chile created the national development corporation—CORFO—in 1939. Additionally, President Prado Ugarteche created the Peruvian Amazon Corporation in 1942 and Santa Valley Corporation in 1943. Santa, located in Ancash, was the most ambitious project, dreaming of producing energy and steel. However, the project was immediately involved in corruption and patronage scandals. Peru switched to laissez-faire policies under General Odría (1948–1956), but after his government ended, regional development corporations multiplied, beginning with the emblematic Corporation for the Reconstruction and Industrial Development of Cusco in 1957 and Board for the Rehabilitation and Development of Arequipa in 1958. By 1968, there were a total of 17 corporations, almost one per region. Given the international trend of developmentalist policy ideology, earthquakes opened the window of opportunity for corporations (Orihuela 2014b).

Board and corporation failure gave political ammunition for recentralization processes under the Revolutionary Government of the Armed Forces (1968–1989), especially in the first stage of General Velasco Alvarado (1970) and the government of Fujimori (1990–2000). These two eras are considered the two most radical periods of "structural reform" of the twentieth century in Peru involving the recentralization of state affairs. While Velasco's government leaned toward the left, Fujimori's leaned toward the right. In 1980 and 2000, known as the two occasions when democracy was resumed, decentralization played a central role. Nevertheless, the absence of a developmental state legacy contributed to frame policy debates as the elected ruler in Lima and those of the interior continued to struggle with one another. There were no instituted autonomous bureaucratic structures to carry out the job of fostering regional development.

2 1971–1983: From Nationalism to Regionalism of Natural Resources

This period begins with Loreto's regional social movement for an oil canon. Despite the lack of primary sources that link the 1976 Legal Decree to Loreto's conflict, our reading of secondary sources tells us that the political environment shaped by Loreto's social movement was decisive. Most remarkably, it meant that the word "canon" was introduced in political discourse. Contingency mattered a great deal. The nationalization of resources was revived in the sixties and seventies in Latin America. For example, Peru's historical rival Chile had started the "*chilenización*" of copper under the government of Christian Democrat, Eduardo Frei Montalva (1964–1970), which characterized the governments of Belaúnde and the Revolutionary Armed Forces (1963–1968 and 1968–1980) in Peru. Belaúnde's slogan was "the conquest of Peru by Peruvians." However, an agreement with a USA company on oil concessions in the Pacific continental shelf, with the eleventh page missing from the contract (the stuff of novels), sparked the coup by the reformist military led by Velasco. The (full or partial)nationalization of extractive industries (oil, mining, and fishmeal) came about in coming years (Contreras and Cueto 1999; Barclay and Santos 2002). However, by the late seventies, in public debate and grassroots politics, nationalist discourse began to lose ground to a renovated regionalism of resources. Natural resources belonged to the nation, according to Lima-based

rulers, but regional political elites and social forces contested that they actually belonged to the producing regions.

2.1 Seizing Oil Income: The Loreto Regionalist Movement

To study the agency of Loreto, we consider the significance of both contingency and agency. We understand the rise of the Defense Front of the People of Loreto as part of the wave regional movements that stretches from 1968 to the mid-1980s, and also as a part of Loreto's specific regional history, outlined above. Loreto makes up an exceptional case of regionalism. After the federalist project of elites in the late nineteenth century, the Great Depression and fall of rubber prices created momentum for protest in the 1930s. Later, in 1968, given that Loreto has a frontier rainforest economy based on commerce, a law reducing tax exemptions produced massive and violent mobilizations (Rodríguez 1981).

In 1971, the discovery of new oil reserves by the state-owned company Petro-Perú reactivated regionalist mobilization in Loreto. Santos and Barclay (2002: 409) quote businessman Joaquín Abensur who declared that any future oil income had to be the property of Loreto and its people. The regionalist discourse alluded to the rubber boom as something that left little or nothing for the region compared with what Lima seized, an idea that was more rhetorical than based on evidence (Santos and Barclay 2002). Historical facts aside, the regionalist sentiment was strong and, by 1972, ideas emerged on how to seize the oil income for Loreto. The term "canon" had reentered the public sphere with the 1969 decreed fisheries canon ("*canon pesquero*"), which increased the fiscal contributions of the industry to the state. An oil canon for Loreto, however, would break the principle of fiscal centralization. The 1972–1975 oil boom in the region soothed the regionalist impetus.

Later, the crisis became an opportunity. The "resource curse" for Loreto meant that surges in oil prices damaged the local economy with inflation. In addition, by 1975, the national economy was in crisis and fiscal austerity measures were implemented. Regionalist mobilization resumed in 1976–1980, constituting a precedent for pro-canon regionalist mobilization elsewhere in the country (Henríquez 1986).[5] In 1976, a series of spontaneous and disorganized pro-*canon* protests ended in repression and political crisis. The government developed the oil canon law: 10%

of production value would be returned to the department of Loreto for 10 years, to be transferred by state-owned Petro-Perú (see Annex 1).

Why did an autocratic government pass a "rule of the game" that constrained its finances? The repression of discontent in a context of economic turmoil was not seen as a sustainable option. However, there was more to this than pragmatism in facing mobilization. The law has been read as part of a sustained military effort to gain social support and political allies in the country's interior (Henríquez 1986: 165). Barclay and Santos (2002: 411) highlight the importance of Loreto's Chamber of Commerce lobby with the military government as a prominent cause.

Yet, law enforcement so often is an issue in the Peruvian state, and this time was no exception. It took another year for the law to be properly regulated and another 2 years for the first transfer to occur, which was "much less than the promised 10%" (Barclay and Santos 2002: 410). The delay was due to passive resistance of top government officials to implementing the law, thinking it could become the beginning of the end to fiscal centralism and Petro-Perú's bad financial situation (Barclay and Santos 2002; Glave and Kuramoto 2014).

For one reason or another, the delay generated a new and better-organized popular movement. In 1978, the Defense Front of the People of Loreto (*Frente de Defensa del Pueblo de Loreto*, FDPL) was born. Its First Popular Assembly was massive, with 143 delegations, which included one of the Chambers of Commerce. With the vote of the people, a trade unionist won the leadership of FDPL, signaling the primacy of the left in the regionalist movement. The canon was now one item of a long list of demands for regional development (Rodríguez 1981). In addition, toward the end of his government, General Morales Bermúdez began to pay part of the canon debt to Loreto and Ucayali. Even in 1980, a gold canon was legislated for the department of Madre de Dios (DL 22916), although the law's text did not phrase it as a "canon" explicitly.[6] This time, the percentage was established at 3% of gold production.

2.2 The 1979 Constitution and Return to Democracy

The national political process fed on the regionalist one and vice versa. The 1977 National Strike had weakened the central government, which ended up calling a Constitutional Assembly in 1978. The first parliament, after a decade of dictatorship, was already operating when a one-day strike took place in Loreto. Declarations of solidarity with the

strike and calls for canon payment came from parliamentarians across the political spectrum.

A cleft developed between centrist and left-wing views about the canon, in Lima as much as in Loreto. In parliament, Héctor Vargas Haya (from the APRA party) supported the struggle for the canon, but criticized the events of violence. The left's most radical members wanted the FDPL to administer the canon. A Second Popular Assembly in Iquitos called Loreto-elected parliamentarians "traitors to the cause," thus aligning with the maximalist program of the left-wing. After this protest escalated, representatives of economic elites abandoned the organization (Barclay and Santos 2002).

This process shaped the 1979 Constitution. The second chapter of Part III, "Economic Regime," is entitled "On Natural Resources." Composed of six articles, one declares that it is the state's goal to promote Amazonian development (Art. 120). Another declares that "it corresponds to the zones where natural resources are located, an adequate participation of the resulting rent, in harmony with a decentralizing policy" (Art. 121). Thus, "canon" as a name did not enter the Constitution, but it did so in spirit.

Agency of institutional entrepreneurs further translated the meaning of canon. Loreto's struggle had a viral effect on the rest of the country. According to Henríquez (1986), eleven pro-canon mobilizations took place in six departments between 1978 and 1984.[7] Moreover, pro-canon sentiment spread thanks to changes in political discourse. Lawmakers brought their own examples into a discussion of the paradox of the beggar on a golden stool, appropriating the mythological phrase used by nineteenth-century naturalist Antonio Raimondi to describe Peru: The wealthiest provinces in resources are nonetheless the poorest.[8] The nationalist rhetoric of resources used by Velasco's regime, the radical first stage of military dictatorship (1968–1975), was now translated to defend a regionalism of resources. In Velasco's discourse, foreign capital looted resource-rich Peru (Velasco Alvarado 1970). In regional elite discourse, national resource wealth benefitted Lima but not provinces where the resources lay and where poverty ruled.

Chapter 121 of the 1979 Constitution was drafted, as laws commonly are, in such a way as to leave space for interpretation and somehow make everyone happy. Celso Sotomarino, a key member of the Commission for Natural Resources of the Constituent Assembly

that drafted this chapter, recalled the indecision when defining canon payment.[9] The task was not easy, given that defining percentage of adequate participation involves issues such as state budget stability. Deciding whether the base will be a new direct tax to companies or a percentage of the already existing income tax was even more complicated. This topic permeated discussion until 2001 and only subsided with the boom in commodity prices, making income tax-based canon worth a great deal.

With the end of military rule and return of democracy, the most popular presidential candidate Belaúnde said that if he were elected to office, he would pay all the canon debts (Barclay and Santos 2002). The pendulum was moving back toward decentralization. This generated excitement in the Loreto electorate, which gave him 66% of the vote. In turn, this changed the power equilibrium within the FDPL in favor of commercial elites over the left-wing. The Chamber of Commerce of Loreto then went on to direct the front and negotiated with the government over the oil canon (Barclay and Santos 2002). In 1981, a government decree (177–81 EPC) established that the canon would be 10% of the net value of extracted resources (the cost incurred by operations being deductible). This caused a major upset and reactivated the Loreto protest movement demanding payment of "the true canon" (Rumrill 1982). After a tug of war with Ecuador, in 1982 the government relented and issued a Canon Act that stabilized the right to a 10% ad valorem resource until depletion, along with a statement regarding the inviolability and ownership of the canon to Loreto and Ucayali (the department of Loreto had been split in two). After this concession, the power of FDPL declined, although it became a mythical figure in the imagination of the people of Loreto.

However, the saga of the oil canon did not end there, since due to Article 121 of the Constitution it should be given to other oil-producing regions, such as Tumbes and Piura. One more time, the written law itself did not amount to its actual enforcement. The occurrence of El Niño in 1983 created a political opportunity for canon struggle, Loreto style (Henríquez 1986).[10] Thus, Law No. 23630, which gave oil canon to Piura and Tumbes, was decreed in 1983. In the law, the canon was not defined as a share of income tax, but rather a share of oil industry profit. The percentage was the same as in Loreto's canon and both were raised to 12.5% the following year.

3 1984–1993: More Lawmaking, Few Rents, and New Policy Ideology

This period in our chronology can be summarized as a decade of increasing legal developments with little law enforcement. The contingency of external shocks matter a great deal during this period. Experiencing a decade of crisis, the economy was hit by the 1982 debt crisis and the 1983 El Niño, and aggravated by García's inflationary populist experiment (1985–1990), national government authorities were unwilling to make effective canon legislation primarily because there was little canon income to share. The Fujimori regime (1990–2000) that followed stabilized and opened the economy, privatized state-owned oil and mining enterprises and, with commodity prices rising after the "lost decade," witnessed an inflow of foreign capital into extractives (Glave and Kuramoto 2003). However, tax breaks for courted multinationals and centralization needs of the autocratic regime reduced the chances for canon enforcement.

In fact, Fujimori's centralism can be explained by García's regionalism failure (1985–1990). Having taken up the banners of decentralization during his presidential campaign, García's administration implemented a decentralization process that grouped old departments into new regions (12 in total). The mix of economic crisis and prominent cases of corruption—a term associated with the regime in general—delegitimized the initiative. It was easy for Fujimori to recentralize. The old specter of the barbaric provinces that should not have autonomy, particularly money in hand (for they would spend it in the wrong way), was revived (Contreras 2002).

3.1 The First Law on Canon

After the oil canon laws, the next legal milestone was Law 24300 of 1985,[11] which specified that the Constitution's Art. 121 defined "income" as the total amount of taxes derived from the exploitation of natural resources, instead of the ad valorem tax on the production of the oil canon; however, income was also not limited only to income tax. This definition was to be applied to any future canon. Law 24300 was the result of a long debate that started in the previous Congress. About 20 bills on different natural resources and in different regions were proposed from 1980 to 1985. Bills passed through three parliamentary

commissions (Constitution, Economy, and Energy and Mines) and the Executive before reaching at the Senate for the first time in May 1984. The debate regarding "adequate participation" referred to in Article 121 centered on how to determine whether "income" was exhaustive. At the end, it was established that no less than 20% of the income was to return to the producing regions. The Executive would define the percentage of participation for each resource.

The translation of the "black box" canon again took place. Legislators applied Article 121 of the 1979 Constitution in a number of ways. Interpretations of what "canon" and "income" meant differed widely, reflecting ideology and persuasion skills. In the presentation of the article's first version, defended by Congressman Núñez Mendoza (chair of the Mining Commission), it was proposed that the Constitution referred to a redistribution of income, rather than to a new tax. The argument was based on an interpretation of the last part of Article 121, where it was phrased that the article shall be enforced "according to a decentralizing policy." The idea distilled from Senate debates, where Luis Alberto Sánchez—a historical leader of the once revolutionary APRA party—and others postulated the difference between "income" and "canon," in which "canon" was a new tax and "income" only a share of an already constituted state income. However, this position was combined in the first draft with a definition of income as a share of profits, as was done in the case of the oil canon.

The bill's second version presented an ambiguous formula that tried to please both positions, those who thought it necessary to give a share of the value of production and those who did not want a double taxation for companies. This formula determined the canon as "no less than 2%" of production, but stipulated that the payment should be done with collected taxes. This formula generated complaints from several congressional representatives; Rafael Vega García (from the conservative party, PPC), for instance, requested more clarity in defining the law only as a share of income already received by the state, and definitely not as a tax.

The final version was reached after many delays and a heated debate. For the first time, it clearly established the definition of the canon as a share of all incomes received by the state as a result of mining activity. However, some ambiguity remained in the law, because it did not affect the existing oil canon and gold canon, which maintained their particularities and were determined according to another base. This situation provoked a revealing discussion where delegates from regions without a canon (Moquegua,

Junín, etc.) clashed with those that already had one and defended its specificity (Loreto, Piura, etc.). It was with these measures that the debate became more heated, and although there was no consensus, the defense of previous canons triumphed on the principle that nobody was losing anything.

In sum, the 1985 Law defined concepts key to the current canon structure; however, it did not have much real impact, because the law was not enforced and no new canons were established until 1996 with the mining canon. The economic crisis of the late eighties and a subsequent failure of regionalization toward the end of García's government put a halt to regionalist dreams. Nevertheless, the legal basis for future canon legislation had already been settled.

3.2 The New Policy Context of Structural Adjustment

The contingent nature of political institutions became, yet again, dramatically evident. In the 1990s, the politics of decentralization were radically reshaped by the politics of structural adjustment. The "interventionist state" of Velasco and García was to be demolished. Economic crisis and political chaos were such, with hyperinflation and the Shining Path targeting Lima, that outsider Fujimori found himself in front of an enormous window of opportunity for policy and institutional change. He made it to the office, switched from promising there would be no structural adjustment to carrying one out, and closed Congress in 1992. The Shining Path leader also ended up captured and political violence began its demise. Fujimori became so popular that neoliberal reforms could be carried out without major opposition. In 1993, at the peak of his popularity, a new Congress was voted in, which gave him majority; social mobilization, in turn, was repressed in the name of pacification. This was not a good time to mobilize for the canon (but northern Tumbes and Piura did so and ended up succeeding, as explained below). Also, Fujimori was delivering infrastructure and technocratic social programs.

It was in such a new transformative policy context that canon rules of the game were once more "clarified," but this time in a more meaningful way, within a policy ideology aiming to promote foreign private investment in mining and oil. The 1992 General Mining Law, joined to Decree 708, a fundamental regulation for sector liberalization, once again *translated* the 1979 Constitution's Article 121. By "the resulting income," it referred exclusively to a percentage of income taxes paid by

mining companies. More specifically, the mining canon was established as 20% of income tax, the floor level that the 1985 Law set.

The evolution of what canon means, in discourse as much as in law, shows that the mining canon—and fiscal decentralization in wider terms—and the fostering of private investment were not opposite policy goals. Instead, one political project shaped the construction of the other. The record shows that canon goals became functional to private investment goals. Between 1985 and 1994, the meaning of the canon changed, from being close to a royalty on mineral production at the period's beginning to being legally defined as a percentage of income tax by its end. We speculate that economic forces favored the arrangement: They reduced the possibility of new contributions while minimizing the feasibility of a return to mobilized regional discontent of previous decades.

3.3 Peruvian Neoliberalism Meets Canon: The 1993 Constitution

The legislators did not want the Constitution of a new economic regime to reproduce the previous old "statist" model. Indeed, our review of archives suggests that Article 121 of the 1979 Constitution was not going to survive; it did, however, becoming Article 77 of the 1993 Constitution. In fact, this time, the Constitution's text actually used the term "canon." As a sign in the change of policy paradigms, however, the Article migrated from a Natural Resources Title (in the old Constitution) to a Budget Title (in the new one), emphasizing a redistributive character rather than developmentalist one.

Although almost all of the parliamentary debates that we have looked into tended to be in favor of the canon and decentralization, legislators also sought to characterize the canon from the perspective of their particular political interests. On the one hand, the interest of official legislators of the Right (*Renovación* and PPC parties) was to clarify that the canon was not a tax or royalty, and to make the central state a mediator in the financial transfer from mines to the producing regions. Obviously influenced by a political climate of confrontation, the Constituent Congress legislators of the opposition used the canon as a political weapon. Their main complaint was that the 1993 Constitution distorted the canon, undoing decentralization by subjecting it to the interests of foreign capital.

One way or another, it is easy to understand how the canon can change from being a demand that can successfully mobilize regions

against extractive capital and the state, which came to be seen as a "looting" of the region's resources, to being allied to the extractive industry's interests. Establishing the canon as being nothing but a matter of state resource distribution neutralizes the use of the canon legislation as a weapon for demanding more tax contribution from the industry. This cancels the possible articulation of regional demand for a more radical redistribution, with wider exigencies of new relations between foreign capital, the state, and labor, which was the spirit of Loreto's regional movement when driven by the left-wing.[12] In this sense, the 1993 translation of the original canon idea was clearly under a neoliberal hegemony that halted regional demands, while at the same time pleased foreign investors by decoupling the canon from further taxes.

4 1994–2014: Back to Canon Struggle, New Policy Turn, and Unforeseen Supercycle Prices

The last period of this story is the new mining inflow. Under Fujimori, a vast program of privatization took place, which included the mining sector, partially nationalized in the 1970s, and oil sector, fully nationalized in the 1970s. Moreover, to further guarantee that the era of resource nationalism was over, the new legal environment offered tax stability contracts and tax breaks (Legislative Decree 708 and the General Law of Mining of 1992s new version). With the domestic economy stabilized, privatized, and deregulated, and a new international environment post-Lost Decade, foreign capital made its way into extractive industries. The canon, accordingly, increased dramatically, but not immediately: Investment periods are relatively long before mining production starts. Companies were given tax breaks, and most importantly, the dramatic surge of commodity prices took a decade, after the late-1990s financial crises. Privatization, new mining, and the commodity supercycle gave a new context to canon politics.

4.1 Piura and Tumbes Mobilized, Constitution Amended

In 1994, an interesting regional movement took off again, this time from the north, a territory typically ruled by the APRA. The movement's central demand was a defense of canon money that Piura and Tumbes received since 1983. The oil canon was under attack because its

new definition as a percentage of income tax in the 1993 Constitution reduced the income of Piura and Tumbes. In addition, the project to privatize Petro-Perú and the government's discourse that privatization would bring more investment and therefore more canon was strongly rejected by various local actors. The oil canon (the only existing canon at the time) was paid by state-owned Petro-Perú; the fear was that privatization would effectively terminate the canon.

The regional movement is still to be studied for a full account, but in newspaper reports (*El Comercio* and *La República*), we observe that protests and strikes were organized in order to collect signatures for legal initiatives (a procedure admitted under the new Constitution). The National Elections Board (*Jurado Nacional de Elecciones*) stated that they were unable to verify the validity of all signatures, which prompted a demonstration from Piura to Lima by almost all the region's mayors. Grassroots pressure caused Fujimori's party to accept a debate in Congress on the canon issue in October 1994; Fujimori's congressional representatives proposed a bill to resolve the issue. This was a clear move toward appropriating and neutralizing the movement's power. The debate was a scenario for the opposition's accusations, which claimed that the canon was being dismantled, and for the ruling party to state its defense.

In his opening remarks introducing the bill, Congressman Torres y Torres Lara—from the ruling party—mentioned that it reflected the people's will, even though the mayor of the Grau Region's legal initiative failed to make it to Congress. Torres y Torres Lara's bill proposed, as a solution, that canon money should be fixed at "no less than what it was in 1994" and that if the amount collected in income taxes was lower, the state should pay back the difference. He wanted this patchy solution to pass in order to avoid a more radical constitutional amendment, but failed. This is how the Constitution's chapter about the canon changed the canon's base from income tax to total fiscal income and rents. The ruling party did not give up its opposition to direct contribution by extractive companies, however, which could have led to a slippage in their revenue and legal security.

The criticisms made by the opposition were especially ironic. Congressional representatives Pease, Olivera, and Cáceres Velásquez[13] commented on the "miraculous" nature of the change of opinion on this matter by the ruling party, precisely in an election year. This went along with broader criticisms to Article 77. In this long debate, a chorus of voices appeared with various proposals for reform, some of which were

radical, calling for 50% of canon, and others more restrained. A sector of the right (PPC and Renovación) emphasized the need to promote investment and not use the canon as a "blind production tax," which was one of the possible interpretations of the unclear constitutional term of "income." Within this line of argument, the way to increase the canon was by promoting more investment.

A growing consensus was to require giving the canon to regions that did not have one, or at least the establishment of a general framework for canon legislation. At this point of the story, an issue was settled that has now become very contentious in other Latin American contexts (Bolivia and Brazil): An agreement was reached to limit canon transfers solely to the producing regions. Due to its particular origin (oil canon ad hoc law), it had always seemed clear that the canon would be transferred to the producing regions, but in the scenario of a more general law, some began to argue in favor of an extended distribution of canon resources. Curiously, the idea to extend the distribution of canon income came from a conservative politician (Chirinos Soto) who wielded the argument that all Peruvians had equal rights to state resources. This argument was seen by some congressmen as a trick that aimed to eliminate the canon absolutely, so they argued that the canon was limited to the region as a compensation for the imbalances brought on by the presence of mining or oil industries (economically and environmentally). Regional leader and early environmental activist, Julio Díaz Palacios was one of those congressmen. At the end of the debate, the protection of the canon was deemed a priority, and a pragmatic argument, which contended that maintaining the canon only for the producing regions did not imply losses for non-canon regions, prevailed.[14]

In congressional debates, parliamentarians rehearsed several arguments, definitions, and fears that illustrated the ideologies and interests that tested the bid for the canon. The lesson provided by these debates is very simple: The canon is indisputable. Every member of Congress would celebrate it, given that voters praised political forces in the struggle for it; yet, each parliamentarian wielded a different discourse around the word, trying to appropriate it and fill it with meaning and features responding to their particular ideologies and interests.

4.2 The 2001 Mining Canon Act

Contingency was key once again, this time with the late-1990s financial crisis that shrunk fiscal revenue and Paniagua's 2000–2001 transitional government, who was from Cusco and a decentralist. There had been no

political will in the second period of Fujimori to rule a canon Framework Law as claimed in the 1994 debate on constitutional reform outlined above. It was during the 1-year transitional government of Valentin Paniagua, with a Congress of the old ruling party in the minority and strong alliance of provincial congressmen discontent with centralization and the scarcity of fiscal resources that the adoption of the law happened, a few weeks before finishing the brief presidential mandate. The fall of Fujimori's regime left congressmen without a clear political direction, making regional identification a pole of attraction. Also, opposition leaders who previously defended the canon gained more strength and prestige, while defenders of the decade-long ruling party disappeared from the scene. The always vociferous Fujimori supporter Congresswoman Chávez this time was quiet: "(we) have to do much self-criticism and reflection."[15]

The new law's main feature, which forms the legal cornerstone of the current canon, was the increment of percentage from 20% of income tax to 50% of total fiscal revenue produced by extractives. The fiscal effects of the Russian Crisis have much to explain about this increase. The chair of the Energy and Mining Commission, Rómulo Mucho, justified that a better definition of "appropriate participation" was a fifty-fifty distribution between the central government and producing regions. In accordance with the canon applied to the totality of taxes and contributions, not only of income tax, the law established that canon money should be unaffected by tax deduction or benefits, which the next government would amend in the name of private investment.[16] The new Framework Law not only regulated the already existing mining canon, but also created a canon scheme for gas, forestry, and fisheries. Previous regulations for the oil canon were left untouched.

The analysis of projects, proposals, and interventions of lawmakers in the debate gives us a concise summary of three decades of canon politics. The minority opinion, advocated by Fujimori party's Congressman Lam, was against the high percentage of 50 as there was the risk of creating fiscal imbalances in the state and among regions,[17] repeating the classic fiscal conservative argument rehearsed in past debates. Another classic debate revived was the controversy over whether the canon was a new tax on production or a redistributive mechanism of fiscal income already collected. There was also harsh criticism toward Fujimori's politics to favor private companies. For example, Congressman Cuaresma from Cusco denounced: "everybody talks about canon that really represent in disguise the interests of companies."

The most picturesque speech in the redistributive struggle was that of Congressman Ríos, who represents the new politics of mining development in Peru. A former mayor of Huaraz, known for several "sacrifice marches" from Huaraz to Lima, which included chaining himself to the gates of parliament and walking carrying a cross over his shoulders in Lima, he demanded more mining royalties for Ancash. Being his first (and last) intervention in 2000–2001 plenary, given he vowed not to speak if not to defend the canon, he claimed "suppliantly," "humbly," and "as a Christian" for the passing of the Canon Act bill. Full of religious references, his speech was also characterized by a strong criticism of the Ancash mining companies, whom he accused of theft (through concealment of profits and tax benefits laws) and discriminating against the native people. Against these evils, the canon appeared in his discourse as a redemption that solved all conflicts. His alleged Christianity did not stop him from receiving a bribe of Fujimori's strongman Vladimiro Montesinos to move to Fujimori's party, a bribe captured in the notorious videos ("*vladivideos*"). More recently, Ríos was self-proclaimed as "the father of the canon" and offered to transfer S/. 500 of canon to every resident in Ancash. Ríos became governor of Ancash in the 2014 regional election, an excellent demonstration of how the word "canon" was invested with meanings that go way beyond its original scope.

In summary, the 2001 law ended up being more ambitious than the previous canon arrangement, brought by the constitutional reform of 1994. We can place it between the maximalist figure of an ad valorem tax following the oil canon's shape in 1976 and the minimalist canon of the 1993 Constitution's first version, which limited the canon to a small share of mining income tax. On the one hand, it ruled the highest percentage of canon share ever seen (50%), but on the other, it finally closed the debate on the issue of "taxes and contributions," restricting them to fiscal income already collected by the state, not an additional tax. And yet, this chapter by no means constitutes the end of canon history: A myriad of reform proposals followed the next decade, and many of them created new legal developments regarding the fifty-fifty split (Barrantes et al. 2010). The 2001 law's legacy is that for over a decade, it framed the canon debate as "how to divide the 50% that rightly belongs to producing regions."

4.3 Unforeseen Prices, Canon Boom

The price surge buried much of regional political elites' discontent. Budgets in regional governments such as Ancash grew 810% between

2003 and 2007. However, it was not long before new discontent emerged. With prices coming up, left-wing and nationalist voices asked for a special tax or introduction of royalty, as in Chile. The 2006 juncture was particularly important, when then-nationalist radical Ollanta Humala lost the presidential race to populist Alan García. Converted to neoliberalism, and this time enjoying a global boom instead of financial downturn, García managed to make Congress pass a "voluntary contribution" scheme to be spent by the companies themselves, since the state was characterized as slow and inefficient. In the neoconservative rhetoric of García, the legacy of weak state capacity was used to justify a decision to not expand its role, given the new international economy context.

Thus, the supercycle configured a new arena, a politics of abundance, and it was not all good news. In particular, prices skyrocketed but were also volatile. When price volatility drives canon transfers down, it was not the global economy but the Ministry of Economy and Finance (MEF) who received the blame of mayors and governors. Legacy was key. It was of little help that the MEF had established a new National System of Public Investment (*Sistema Nacional de Inversión Pública*, SNIP) in the late-1990s. SNIP was designed in times of scarcity and was biased to favor the funding of infrastructure, given the absence of well-working developmental state structures (Orihuela 2014b). The old rivalry between the interior and Lima for fiscal autonomy produced a new chapter of bitterness.

More instability in canon transfers was due to constant changes in the distribution index with successive laws.[18] Changes in the distribution index were, sometimes, much needed corrections to previous mistakes in the law's drafting. The most scandalous example of this was when Miraflores and San Isidro, high-income districts of the capital Lima, received more money than Oyón, a poor mining site. The rush at the time of Canon Act drafting in 2001 mainly caused these problems. Successive corrections solved the problem by focusing canon rules more according to poverty index and mine proximity, than by the population alone. Nevertheless, the correction of distribution nonsense was not the sole principle for law modifications; petty politics of regional leaders whose political careers hinged mainly in obtaining more canon share for their constituencies were also important (Barrantes et al. 2010).

If the old mining conflict depicted in this chapter had been about how to divide the rents between Lima and the producing regions, the new mining conflict is about (i) dividing the big share received by

the producing regions within the regions and (ii) local communities opposing the entry of new mining (see Paredes and de la Puente in this book). Regarding this second form of conflict, the government's dominant discourse, business leadership, and the national press show that discontent with mining is the result of regional and municipal government "inefficiency" in spending canon money. This inefficiency is understood as the inability to spend the entire allocated budget that, as seen, had grown outrageously. If only the canon were well spent, communities would be welcoming mining companies, the argument goes. The signs of global downturn and strengthening of local opposition to new mega projects (Conga in the north and Tía María in the south) show that mining will not be growing as fast as during the previous decade. A politics of scarcity will shape canon developments over the next few years.

5 Conclusions

The canon is a central feature of the political economy of resource-based development in Peru. The rule of the game is the historical result of struggles between political-economic forces clashing on whether to favor fiscal centralization in Lima or fiscal autonomy of the producing regions. It is more than a law. The canon embodies the deep-rooted grievances of state absence and inequality between Lima and the interior. Yet, despite being a response to a structural feature, the specific meaning of the canon has evolved over the years.

Given the legacy of historical grievance between Lima and the interior, external economic conditions created different contingencies, or political opportunity structures, for canon developments: the oil and energy crisis of the 1970s, the debt crisis in the early 1980s, the financial crises in the late 1990s, and the supercycle that came last and just ended. Domestic political processes also defined contingency. The governments of the Armed Forces in the 1970s and Fujimori in the 1990s were central for the birth of the canon and for its definition as a redistributive scheme of already existing taxes and contributions, respectively.

The legacy of a weak state, joined to the bitter relationship between Lima and the interior, with no legitimate developmental state structures, shaped the thinking of the canon as a resource for paving roads and building local infrastructure. Local economic development spurred by the canon focuses on asphalt and cement-based initiatives.

Legacy and contingency define the context in which agency is embedded. The very same structural feature of a quarrel between Lima and the interior has given place to various definitions of the canon. Over time, the institution of the canon has evolved through discourse. The role of ideas is key: Canon thinking was shaped by resource nationalism in the 1970s and by neoliberalism in the 1990s.

Persuasion and deliberation played important roles at different legal debates of the last three decades. Political entrepreneurs, such as the current Ancash Governor Waldo Ríos, aim to reinvent the canon and reinvent themselves as the canon's true fathers: Canon instituted rent-seeking and corruption. In turn, mining interests found in the canon—defined as a redistribution of already existing taxes—an instrument for their corporative goals: tax stability and more government expenditure in mining localities that more and more opposed new mining ventures. The meaning of "canon" changed over the years, mobilization after mobilization, law after law, and debate after debate.

Notes

1. Law No. 27506, *Mining canon Framework Law*.
2. This was in reference to Legal Decrees 4642 and 4928.
3. We thank Rafael Tapia for this finding. It will also be included in a forthcoming book on the interventions of Juan Bustamante, an important figure in Peruvian regionalism and liberalism in his role as Deputy. This book will be published by the Congress of Peru Press.
4. Medical, mostly. It was also an important economic activity for the zone's indigenous people.
5. See note 9.
6. Legal discourse was the same used for Loreto's canon, which emphasized the region's poverty and isolation in contrast to the remarkable wealth it brought, and was to bring to the whole country. The formula was once again the ad valorem tax, applied this time to the price of gold, which the *Banco Minero* acquired from Madre de Dios miners.
7. Loreto (4), Ucayali (1), Tacna (2), Ilo (2), Huancavelica (1) y Pasco (1). Out of these movements, we are especially interested in the movement in Ilo (Balvín 1995), because it is one of the first with an environmental demand in its defense of water resources. The environmental demand was already present in constitutional debates, but its link with the canon did not come until later.

8. See *Diario de Debates de la Comisión de la Asamblea Constituyente de 1978–1979.*
9. See *Diario de Debates del Congreso Democrático Constituyente, Ley 26390.*
10. The author compares this to the case of Puno, in which natural disasters also generated a regional movement. However, the characteristics of each case are different, Puno consisting of more worker- and sector-related demands.
11. See drafts of *El Diario de Debates de la Cámara de Senadores y de Diputados de 1984, Ley 24430.*
12. This idea of the political importance behind articulating varied demands is based on Laclau and Mouffe's analysis of the construction of hegemony and possibilities for its subversion (1985).
13. Olivera and Cáceres Velásquez were two of the many passionate defenders of the canon that later fell from grace with the public opinion due to corruption problems. The case of Cáceres Velásquez is emblematic. After being elected by an opposition party in 2000, he was paid by Vladimiro Montesinos, Fujimori's shadowy advisor, to support the ruling party.
14. See *Diario de los Debates de la Comisión de Reforma de la Constitución. Congreso Constituyente Democrático. 1994.*
15. See Diario de *Debates del Congreso de la República 2000–2001, Ley 27506.*
16. See *Decreto de Urgencia* 2002–01 in Annex 1, Table A1.1.
17. However, he stated in his minority report that a yearly increase to a total of 50% could be considered.
18. See Annex 1, Table A1.2.

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