

Human Rights Trade-Offs in a Context of Systemic Unfreedom: Work vs. Health in the
Case of the Smelter Town of La Oroya, Perú.

by

Areli Valencia
LL.B., Pontifical Catholic University of Perú, 2000

A Dissertation Submitted in Partial Fulfillment
of the Requirements for the Degree of

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Supervisory Committee

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Abstract

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Over the last few years, the town of La Oroya, in Perú's central Andes has received significant international attention due to the alarming number of children suffering from high levels of lead poisoning as a result of pollution from the town's smelter. Paradoxically, instead of collectively unifying voices to claim the protection of their health and environment, a significant portion of members of this community opted to minimize the problem with the purpose of defending job opportunities at the smelter.

This dissertation examines the deep structural causes that have placed residents of this community in the difficult position of having to sacrifice their human right to health in order to preserve their right to work at the smelter.

I argue that the La Oroya community acquiesced in forfeiting their own rights because they have been historically trapped in a "context of systemic unfreedom." This is a historically formed and politically and economically reproduced context of human rights abuses, a context that affects the overall well-being of individuals and communities, and diminishes their ability to challenge such abuses and transform their realities.

To assess the exact contours and components of the context of systemic unfreedom in La Oroya, and respond to the question of how this context has encouraged the trade-offs of health for work, I have designed a "capability-oriented model of human rights." Conceptually, this model builds upon structural approaches to human rights proposed by authors such as Paul Farmer, Tony Evans and Mark Goodale. It also adopts Séverine Deneuline's relational-political interpretation of the capability approach

pioneered by Amartya Sen. Methodologically, a salient feature of my model is its incorporation of voices of affected community members as an important source of knowledge.

Results of this study show the extent to which the context of systemic unfreedom in La Oroya has been sustained by the interconnection of a constellation of factors: *environmental* (historical pollution); *institutional* (economic dependency, the state's leniency in enforcing the smelter company's environmental obligations, the extraction-based model of economic development in Perú, the institutional fragility of the human rights discourse); *social* (migration, loss of collective identity, socio-economic and gender inequalities, uncertainty about pollution, limited access to information, assignment of responsibility for pollution-based illness to individuals, stigma against the poor); and *personal* (individual values and needs, characteristics of individual identity). These factors have converged over time and intersected at the macro, meso and micro levels, trapping residents from La Oroya in a vicious cycle of disadvantage.

I conclude by suggesting that, in order to effectively address "systemic unfreedom" in this smelter town, both short-term and long-term solutions are required. That is, in addition to promoting the completion of proposed environmental mitigation and soil remediation plans in La Oroya, I offer suggestions towards reversing entrenched socio-economic and gender inequalities and reconstituting a collective community identity. Fundamentally, the ultimate goal of structural transformation in La Oroya requires addressing current patterns of power, economic dependency, and domination, thus fostering changes in the state's vision of development.

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Dedication

To Christopher, for inspiring my work and giving me innumerable reasons to smile.

To my family, for their infinite love and protection that makes the distance from
home easier to bear.

To the participants of this study, for giving me the opportunity to get *closer* to my
roots in dear Perú.

Abbreviations

AIDA: Inter-American Association for Environmental Defense

AIDSESEP: Interethnic Association for the Development of the Peruvian Jungle

BLL: blood lead levels

CA: capability approach

CDC: Center for Disease Control and Prevention

CEDHA: Centre for Human Rights and the Environment

CONACAMI: National Confederation of Communities Affected by the Mining Industry

CPC: The Cerro de Pasco Corporation

DIGESA: Peruvian Ministry of Health's Environmental Health Directorate

EIA: Environmental Impact Assessment

EPA: United States Environmental Protection Agency

ESSALUD: National Health Insurance

FP: public functionary

GDP: Gross Domestic Product

HDI: Human Development Index

HDR: Human Development Report

HRA: human rights activist

HUD: United States Department of Housing and Urban Development

IACHR: Inter-American Commission on Human Rights

ICCPR: *International Covenant on Civil and Political Rights*

ICESCR: *International Covenant on Social Economic and Cultural Rights*

ICMM: International Council for Mining and Metals

ICSID: International Centre for Settlement of Investment Disputes

ILO: International Labour Organization

INDECOPI: Peruvian National Institute for the Defence of Competence and Intellectual Property

INEI: Peruvian National Institute of Statistics

MC: member of the community of La Oroya

MEM: Peruvian Ministry of Energy and Mines

MINSA: Peruvian Ministry of Health

MOSAO: The Movement for the Health of La Oroya

NGOs: Non-Governmental Organizations

OSINERGMIN: Peruvian Supervisory Board for Investment in Energy and Mining Projects

PAMA La Oroya: Environmental Mitigation and Management Plan for La Oroya

RDS: respondent-driven sampling

SIS: Integral System of Health

SDH: Social Determinants of Health

SPDA: Peruvian Society for Environmental Law

TC: Constitutional Tribunal of Perú

The National Strategy: National Health Strategy to Provide Treatment to People Affected by Toxic Metal Contamination

UDHR: *Universal Declaration of Human Rights*

UN: United Nations

UNDP: United Nations Development Programme

UNES: Consortium for Sustainable Development in La Oroya

USAID: United States Agency for International Development, Peru Mission

WHO: World Health Organization

Note: Some abbreviations and acronyms have been left in Spanish and the nomenclature has been translated into English.

Chapter 1

The Case Study of the Smelter Town of La Oroya, Perú: The Trade-Offs between “Health” and “Work”

1.1 Introduction

The reconfiguration of the world order since the widening and deepening of global capitalist society in the 1990s has led states to a process of accumulation and social valuation of economic growth as the most effective path to promote social progress.¹ This economic growth-dependent mentality, which fits comfortably with neoliberal and market-oriented policies,² has been widely implemented in low and middle income countries and, more specifically, in those that possess significant natural resources. International economic institutions—such as the World Bank, the International Monetary Fund, and national governments—have promoted mining and extractive activities in these countries as conducive to advancing development and reducing

¹ I am intentionally emphasizing the economic dimension of the contemporary process of globalization. However, it is important to note that equating globalization with capitalism risks being too reductionist. The process of globalization, in fact, touches on various and distinct domains of our social life far beyond its economic reach. In this study, I draw primarily on McGrew *et al.*, for whom globalization is best understood as “a process (or set of processes) which embodies a transformation in the special organization of social relation and transactions—assessed in terms of their extensity, intensity, velocity and impact—generating, transcontinental or interregional flows and networks of activity, interaction, and the exercise of power.” See Anthony McGrew, David Held, David Goldblatt & Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Cambridge: Polity Press, 2009) at 16.

² As with globalization, neoliberalism is understood in diverse and contested ways. To understand the process of neoliberalism in Perú, this dissertation builds upon the work of Brenner *et al.*, for whom neoliberalism is not an all-encompassing concept but an “unevenly developed *pattern* of restructuring that has been produced through a succession of path-dependency collisions between emergent, market-disciplinary regulatory projects and inherited institutional landscapes across places, territories and scales.” See Neil Brenner, Jamie Peck & Nik Theodore, “Variegated Neoliberalization: Geographies, Modalities, Pathways” (2010) 10:2 *Global Networks* 182.

poverty. Yet, these countries still report high rates of child malnutrition, low life expectancy, poverty, and deprivation in general.³

Mirroring such a predicament is the case of Perú. In this country, the strategic role the extractive industry has gained over the last few decades has created a paradoxical scenario of gains and losses in terms of human wellbeing. On the one hand, the current model of economic development has created unprecedented sustainable economic growth in terms of gross domestic product (GDP); on the other hand, the expansion of extractive activities has triggered tremendous conflict in the communities located in rich mineral resource territories. A series of reports on conflicts in the mining industry published by the Peruvian Ombudsman's office show that these conflicts are primarily related to social and environmental factors. Such socio-environmental conflicts often illustrate a tension between communities, private companies, and the state over the control, use, or access to land, natural resources, and the protection of the environment.⁴ In the context of Perú, the socio-economic consequences of these conflicts call into question the very notion of "development," as does the fact that so-called sustainable "economic growth" is not being effectively translated into a better quality of life for the communities near mining projects,⁵ nor is it enhancing national employment⁶ or significantly reducing poverty.⁷

³ Michael, Ross, *Extractive Sectors and the Poor: An Oxfam America Report* (Washington: Oxfam America, 2001).

⁴ Since 2004, the Peruvian Ombudsman's Branch for Governance and the Prevention of Social Conflict has published reports showing the inextricable link between mining activities and the occurrence of conflicts. Their monthly reports are available online: Government of Perú <<http://www.defensoria.gob.pe/conflictos-sociales.php>>. According to the Ombudsman's Office, "social conflict" is defined as the public struggle between different actors that seek to influence the organization of social life.

⁵ For instance, in the case of Perú, De Echave and Torres argue that mining activity and poverty are positively correlated. Drawing on the human development index (HDI) introduced by the United Nations Development Programme, the authors defend the thesis that the more mining activity in a province, the less achievement in human development indicators. See José De Echave & Víctor Torres, *Hacia una estimación*

This critical moment in the history of economic development in Perú—particularly the direct implications it has had in terms of human rights abuses and the deprivation of human wellbeing—sets up the larger contextual motivation for this study. To explore such a context and provide deeper insights into the impact the extractive industry has had on the lives of individuals and communities over time, this research project focuses on the case study of the smelter town of La Oroya, Perú. The La Oroya case—often referred to as a case of human rights trade-offs—portrays how residents of this community have been unfairly pushed into the dilemma of having to defend employment opportunities in a smelter that is the main source of environmental pollution and health deprivation in their town. A central concern of my research is to critically assess the factors underlying how and why this community was forced to face such a paradox in the first place.

This chapter will outline this dissertation’s key organizing ideas. First, I will discuss the relevant literature on mining conflicts, development, and human rights in the Peruvian context. I will explain how the identified themes and unresolved questions presented by this body of literature led me to select the La Oroya case. Second, I will introduce the facts that seem most immediately relevant to the recent socio-

de los efectos e la actividad minera en los índices de pobreza en el Perú (Lima: CooperAcción, 2005). From a different methodological perspective, Barrantes, *et al.* argue that households in mining districts are worse off than the rest of Peruvian districts in terms of consumption per capita. Such disadvantageous conditions are higher in the case of mining districts in the rural highlands. Thus, the rural condition is key to determining poverty in these cases. See Roxana Barrantes, Patricia Zarate & Anahi Durand, “*Te quiero pero no*”: *Minería, desarrollo y poblaciones locales* (Lima: IEP and Oxfam, 2005).

⁶ A 2003 study reported that, while the mining sector contributed to 40% of exports, it did not generate more than 3% of national employment. See Manuel Glave & Juana Kuramoto, “Minería, minerales y desarrollo sustentable en el Perú”, online: PAHO <<http://www.bvsde.paho.org/bvsacd/cd29/mineria/cap8-10.pdf>>.

⁷ United Nations Development Programme (UNDP), *Sustainability and Equity: A Better Future for All*, The 2011 Human Development Report (New York: UNDP, 2011) indicates that Perú has the second highest level of poverty among South American nations.

environmental conflict in La Oroya. Next, I will discuss how this study will contribute to the design of a new research agenda for examining the impact of mining and socio-environmental conflicts on peoples' lives; I propose a contextual approach to investigating the multiple yet interconnected ways that the realization of human capabilities and human rights are systemically affected in communities exposed to long-term extractive activities. I will then reflect on the interdisciplinary orientation of this study, highlighting the richness of interdisciplinary research while at the same time identifying its challenges and potential limitations. Next, I will introduce the research questions and objectives of this study. Finally, I will sketch out the content of the chapters that follow.

1.2 Mining Conflicts, Human Rights, and Development in the Peruvian Context

Over the last decade, a significant number of studies have devoted a great deal of attention to understanding the dynamics of mining conflicts and their possible solutions or transformations, and analyzing the new culture of resistance and mobilization that such conflicts are creating in Perú. These studies—of varied theoretical perspectives and methodological approaches—show important points of convergence and highlight the need for further investigation.⁸ This section draws on the most recent and relevant works on mining conflicts, development, and human rights in Perú. This body of literature almost unanimously points to the neoliberal reforms of the 1990s as the political

⁸ It is worth noting from the outset that the studies selected in this review concentrate primarily on what is called *gran minería*, which refers to mining activities undertaken by transnational corporations, some of them in association with local private investors. Thus, these studies fail to discuss the problems arising from artisanal mining. The latter constitute a different and equally complex area of research that goes beyond the scope of this dissertation.

economic context influencing the emergence of social conflict and the exacerbation of tensions that existed in mining communities prior to this neoliberal turn.

In *Defendiendo derechos y promoviendo cambios* [Defending Rights and Promoting Changes], the authors draw on the human rights approach to make visible the new culture of resistance emerging in the context of mining conflicts at the community level and beyond.⁹ They highlight the role of transnational social movements and civil society organizations in using the human rights discourse to expose the “faces” and “voices” of those directly affected by these conflicts. Among the variety of issues underscored by mining conflicts are the struggles of rural and indigenous communities to maintain autonomy and self-determination, the defence of alternative ways of living, and the preservation of traditional livelihoods—issues that, by and large, make readily apparent the current competition between private companies, the state, and communities for the use of natural resources. Some authors frame these struggles as a problem of “governance,” suggesting greater participation and the implementation of legal mechanisms of consultation as the panacea to minimize their emergence and intensity.¹⁰ Although participation in decision-making stands out as an undeniable crucial mechanism to deal with the most visible dimensions of mining conflicts, this alternative remains insufficient when the structural problems informing such conflicts (i.e. entrenched inequalities, misrecognition of cultural difference, and disregard of local aspirations of wellbeing) are left unattended. In fact, the research in *Defendiendo derechos y promoviendo cambios* shows that the promotion of participatory dialogue, although

⁹ Martin Scurrah, ed., *Defendiendo derechos y promoviendo cambios* (Lima: Oxfam, Instituto del Bien Comun and IEP, 2009).

¹⁰ Alejandra Alayza Moncloa, *Comunidades y minería: Consulta y consentimiento previo, libre e informado en el Perú* (Lima: CooperAcción, 2007).

important, is alone insufficient to produce enduring changes at the macro level. The Peruvian government's lack of commitment to promote stronger environmental legislation and, foremost, its lack of willingness to enforce existent regulations often allow mining companies to ignore previous dialogue with communities. In light of this unpromising institutional scenario, the book suggests that in addition to looking for participatory solutions, we must reflect upon what pushes us to negotiate our natural resources in the first place, the conditions under which such negotiations take place, and which individuals or groups are left behind or allowed to become subverted in such negotiations.¹¹ Undertaking this kind of reflection may lead us to respond to one of the most puzzling questions raised—and left unanswered—in the book: Why do changes advanced by human rights activism remain trapped at the local level without influencing greater transformations at the national political level?

In *Minería y conflicto social* [Mining and Social Conflict], De Echave, *et al.* propose a conceptual framework to better understand the nature of mining conflicts in Perú.¹² Their central hypothesis is that mining conflicts cannot be resolved but must be transformed; in short, debates around conflict are transferred to different realms for balancing the diverse interests at play. This hypothesis builds on a methodology of cross-case studies selected on the basis of their heterogeneity (i.e. ancient vs. new mining projects) and geographical location (i.e. coastal vs. highland projects): “Tambogrande”

¹¹ For instance, the authors point to the need for a focus on gender when evaluating the consequences of mining and extractive projects. This is because the responsibilities for care that are typically undertaken by women increase when the community confronts environmental damage and public health crises. Also, in response to social conflict, mining companies traditionally negotiate solutions with men, who are seen as representative of their families, leaving unconsidered the opinions and needs of women.

¹² Jose De Echave, *et al.*, *Minería y conflicto social* (Lima: IEP, CIES, CIPCA and CBC, 2009).

(Piura),¹³ “Majaz” (Piura),¹⁴ “Yanacocha” (Cajamarca),¹⁵ “Antamina” (Ancash),¹⁶ “Tintaya” (Cusco),¹⁷ and “Las Bambas” (Apurimac).¹⁸ Referring to the data analysis of these emblematic cases, the authors argue that the intensity and dynamics of social conflicts depend upon two variables: the social *perceptions* about the magnitude of environmental risks and damage of mining activities; and the community’s capacity for advancing *collective actions* of resistance and negotiation. In the first case, perceptions tend to be strongly influenced by the historical antecedents of communities. For example, in communities in which the economy and people’s livelihoods are historically linked to mining activity, the expansion of a mining project will be perceived as less threatening than in communities with no mining tradition. In the second case, the success of collective action is linked to a diversity of factors—these encompass the degree of social fragmentation in the community and the capacity of the community to overcome this fragmentation with or without the technical support from extra local actors, such as

¹³ The “Tambogrande” economy has traditionally been based on exporting agricultural products. For this reason, the government’s plan to allow a Canadian mining company to operate in Tambogrande was considered a threat to the livelihood of this community. The conflict between the community and the state lasted from May 1999 to December 2003, when the project was rejected following public consultation.

¹⁴ The peak of the conflict in “Majaz” occurred in 2004-2005 and showed a great deal of polarization between those who opposed and those who supported the project. The conflict remains latent.

¹⁵ “Yanacocha” is one of the most complex cases in this study. The Yanacocha town is located in the province of Cajamarca, where the mining history can be traced back to colonial times. Mining activities since the 1990s have been characterized by progressive environmental pollution and illegal appropriation of community land.

¹⁶ “Antamina,” the biggest mining project in Perú, is considered a case of low intensity conflict. The local media and governmental authorities tend to refer to this project as the most socially responsible. However, these authors reports otherwise, and it is shown that there are varying levels of conflict among the two towns where the project is located.

¹⁷ “Tintaya” is described as the most successful example in this study, given the favourable space for dialogue among the state, the community and the operating mining company that has been built into the project. However, given the ever-present diversity of interests and social fragmentation, the emergence of new conflicts is a latent threat for this community.

¹⁸ The “Las Bambas” project generated high expectations in terms of job opportunities, distribution of resources to create better services, and improved infrastructure in the Apurimac region, which is considered one of the poorest in the nation. Still worrisome is the environmental impact of the project and the possible displacement and necessary resettlement of the community.

NGOs and established social movements. By combining these two variables, the authors develop a typology of four conflict scenarios that predict the intensity and durability of a conflict and the capacity to counteract or negotiate solutions. The analysis of De Echave, *et al.* is novel in providing a framework for understanding and predicting conflict transformation in the future. Nevertheless, the book still fails to provide a robust analytical tool for more deeply understanding the diverse origins of such conflicts—which would, perhaps, be better addressed by a single case study. More precisely, the De Echave, *et al.* proposal is coherent in its suggestions but lacks incisiveness in its analysis, remaining instead mainly descriptive. It leaves unexplored the complex ways people form perceptions, the processes through which people’s livelihoods initially become linked to the extractive industry, and also the forces that drive community fragmentation leading to the diminishment of their collective capacity to challenge the negative consequences of mining in their areas. Although the authors do make reference to “historical antecedents” in explaining why some communities become more “habituated” to the effects of mining activities than others,¹⁹ I posit that an in-depth examination of such antecedents would lead us to discuss issues of power and domination at the core of the relationship between the mining industry and the Peruvian state—issues that De Echave, *et al.* leave unscrutinized. Power and domination must be addressed if the “transformation” proposed by the authors is to be advanced within a framework responsive to social justice concerns.

Unlike the majority of studies on this topic, *Minería y territorio en el Perú* [Mining and Territory in Perú] adopts a post-colonial perspective that directly challenges

¹⁹ De Echave, *et al.*, *supra* note 12 at 194.

the current understanding of development in Perú.²⁰ It makes explicit the need to rethink the economic development model in order to allow space for the diversity of knowledge, culture, and aspirations of certain forms of development envisioned by both indigenous and non-indigenous mining communities. While other authors also criticize the Peruvian model of economic development for reflecting economic theories from the beginning of the last century,²¹ the unique contribution of this book is its proposal that we rethink development from “below”—a “bottom-up approach.”²² This proposal is of particular relevance in a context in which, at the end of the 20th century, the territories of 3,326 of the 5,680 formally recognized peasant and indigenous communities were occupied by mining concessions.²³ This explains why indigenous and peasant communities are emerging as the main social and political actors resisting the expansion of mining and other extractive activities. This scenario leads the authors to suggest that resistance against neoliberal policies and the narrow vision of development promoted by these policies is simply a reformulation of the struggle against colonization.²⁴ If this is the case,

²⁰ José De Echave, Raphael Hoetmer & Mario Palacios, eds., *Minería y territorio en el Perú: Conflictos, resistencias y propuestas en tiempos de globalización* (Lima: Programa Democracia y Transformación Social, 2009).

²¹ Juana Kuramoto & Manuel Galve, *La minería Peruana: Lo que sabemos y lo que aun nos falta por saber investigación, políticas y desarrollo en el Perú* (Lima: Grupo de Analisis para el Desarrollo-GRADE, 2007) at 135-181.

²² The phrase “development from below” draws on Boaventura de Sousa Santos’ description of “globalization from below.” This concept reframes the debate about globalization to incorporate voices and concerns of activists and community members in response to the dominance of what he calls “modern epistemologies” or a Western vision of the world largely promoted by international organizations such as the World Bank, the International Monetary Fund, and the World Trade Organization. See Boaventura de Sousa Santos, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (New York: Verso, 2008).

²³ De Echave, Hoetmer & Palacios, *supra* note 20 at 15.

²⁴ It is worth noting, however, that the authors do not specifically employ the word “colonization.” I have located their work in the field of post-colonial studies because they draw on the work of de Sousa Santos and Arturo Escobar for building the theoretical framework of the book. Both latter authors are well-known for their contribution to post-colonial studies. See Arturo Escobar, *Encountering Development: The Making*

the question remains: If these conflicts have gone unresolved for so long, how can transformation occur in such complex contexts? The problem is exacerbated by the narrowness of possible solutions to conflict that the Peruvian government prescribes. Evidence from various cases, such as those mentioned in the literature reviewed above, suggests that government by and large sees two only possible solutions to conflicts: redress or the discrediting of conflict. In latter cases, the authors submit, the conflict is argued to be a result of external manipulation by NGOs or the ideology of radical environmentalist groups. From this perspective, mining conflicts are isolated problems rather than a manifestation of deep structural causes. In this respect, Bebbington and Bebbington ask whether social and environmental conflicts related to mining activities constitute an issue of redress or, alternatively, an issue of justice.²⁵ Under the umbrella of redress, which generally reinforces existing unfair institutional arrangements, we can achieve short-term solutions. However, this option will always leave open the possibility that a more generalized and destructive conflict will emerge in the future. By contrast, social and environmental justice—which are less prone to the acceptance of trade-offs—insist on the need for structural transformation.²⁶ This approach proposes we rethink development from a perspective that is more inclusive and participatory, one that acknowledges the existence of conceptions of community wellbeing that may clash with

and Unmaking of the Third World (Princeton, NJ: Princeton University Press, 1995); Boaventura de Sousa Santos, *Another Knowledge is Possible: Beyond Northern Epistemologies* (New York: Cambridge University Press, 2005).

²⁵ Anthony Bebbington & Denise Humphreys Bebbington, “Actores y ambientalistas: Continuidades y cambios en los conflictos socioambientales en el Perú” in De Echave, Hoetmer & Palacios, *supra* note 20 at 69.

²⁶ *Ibid.*

national goals of development²⁷ but are fundamentally compatible with human rights goals.

I base my research agenda on at least two important considerations that arise from this literature review. First, mining conflicts are something more than resistance against mining activities in the aftermath of neoliberal reforms. This is not to deny the reality that such politico-economic contexts have triggered an unprecedented number of social conflicts. Rather, my claim is that many of these conflicts have more complex structural causes with undeniable historical roots. Therefore, such historical antecedents deserve more in-depth investigation. Second, mining conflicts not only expose the need to rethink the idea of “development” in Perú, they also call for such thinking to take place within the more demanding framework of social justice. This is a commitment, in principles and actions, to the fact that Perú’s social progress should not continue to be built on the deprivation and subordination of some individuals and communities.²⁸

Motivated by the need to respond to the aforementioned considerations, I selected the smelter town of La Oroya as the focus of my dissertation. Methodologically, the use of a single case study allows for in-depth exploration of the historical antecedents and politico-economic dimensions underlying such conflicts. In fact, the La Oroya case itself stands out for its historical significance. This case relates to the very origins of capitalist development based on large-scale mining in central Perú. As such, it constitutes a rich and unique source that allows us to better understand the systemic impact of the industry

²⁷ James Copestake, ed., *Wellbeing and Development in Peru: Local and Universal Views Confronted* (New York: Palgrave Macmillan, 2008).

²⁸ This claim can also be framed as a shift from a conception of development as modernization—in a Western sense—to one that integrates development with ethics from “within” a given context. The latter suggests reimagining development in different and more effective directions to promote human well-being.

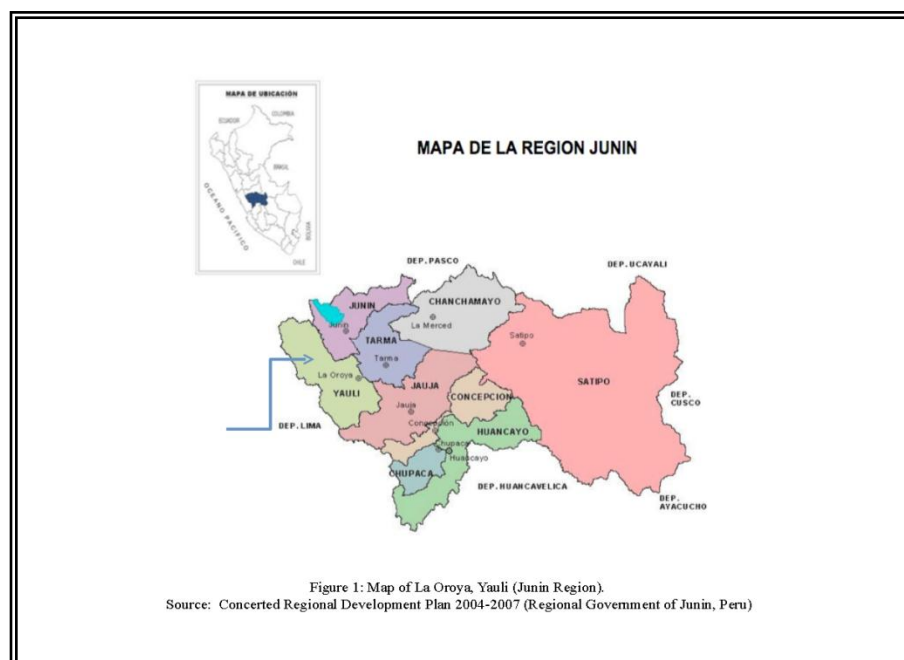
on people's lives over time. As I shall discuss throughout this dissertation, while on the one hand this case speaks about the politico-economic alliances that have sustained and reinforced the power and domination of this industry in Perú, on the other hand, the La Oroya case effectively reveals that the costs of the mining industry's evolution—the impoverishment of communities and the extermination of cultures and traditional livelihoods—has led to the gross human rights violations we identify at present.²⁹ The La Oroya case reveals a process of politically and economically driven social transformations characterized by dispossession of land, economic dependence, power imbalances, environmental degradation, reinforcement of inequalities, reshaping of values, transformation of identities and community relationships and, furthermore, the weakening of capacities and internal power necessary for both individuals and communities to maintain autonomy over their own destinies. Thus, what we see today in La Oroya in terms of human rights violations—more explicitly, the human rights trade-offs between health and work—is only the “tip of the iceberg,” mirroring the unfortunate consequences of a more complex problem.

1.3 La Oroya Conflict: The Seemingly Intractable Paradox between “Health” and “Work”

In the heart of Perú, in the midst of the central Andes at 3,740 metres above sea level, lies La Oroya, a smelter community—the focus of this dissertation. The city of La

²⁹ I posit that most of the pervasive effects resulting from the process of socio-economic transformation of La Oroya over the last century are also being seen in the diverse mining conflicts that have unfolded recently. These events include, most notably, the imposition of a possibly unwelcome new economic activity, the impact of such activity on traditional livelihoods, its environmental effects, and the transformation of values and community relationships. In my view, these are more reasons to defend the strategic importance of the La Oroya case.

Oroya³⁰ belongs to the Province of Yauli, Department of Junín. It is situated 185 kilometres from the city of Lima, the Peruvian capital. The La Oroya territory forms part of the Mantaro Valley, an area historically known for its richness in agricultural products and abundant mineral resources.



Towards La Oroya, a typical high altitude scene opens up of dry, isolated portions of grassland spreading over the mountains near Ticlio, alerting travellers that their destination is near.³¹ But something else also distinguishes the La Oroya landscape. As one approaches the neighbourhood of La Oroya Antigua, where the metallurgic refinery is located, a lack of urban planning and the impoverished living conditions become visible. This is exacerbated by obvious environmental shortfalls, as a thick cap of grey dust (metal tailings) covers the mountains. The absence of vegetation, together with the

³⁰ As described in the Municipal Plan, La Oroya encompasses three areas: La Oroya Antigua, La Oroya Nueva, Chulec y Mayupampa. See Municipality of Yauli, La Oroya. *La Oroya, Plan de Desarrollo Urbano 2004-2014: Memoria Descriptiva* (2005).

³¹ A car travelling from Lima to La Oroya (travel by car is the only mode of transport available on this route) crosses a range of mountains on a highway full of steep curves. The Ticlio Mountain, located 5,000 metres above sea level, is famous among travellers for being the world's highest railroad crossing.

lifeless river, makes readily apparent the legacy of almost a century of smelter activities.³²

On a regular day in La Oroya, life seems to happen at a normal pace for the 18,606 inhabitants.³³ Children play on the streets after school while a group of retired smelter workers, talking together on a street corner, enjoy the afternoon. Commercial activities are also common. Vegetables and meat products from Tarma and Huancayo, the closest cities to La Oroya, are sold in street markets; the *juguerias*³⁴ and small restaurants are busy in the Marcavalle Square, located halfway to La Oroya Antigua; and on the main highway in town, hoards of *colectivos*³⁵ and big trucks transport commuters and industrial products from different parts of the country. All these events may well typify an ordinary day in the community of La Oroya, except that activities of the metallurgic refinery—the most important smelter in the country and main source of economic development in town—have been suspended since June 2009.

This suspension followed a dramatic period of social conflict in La Oroya, which peaked between 1999 and mid-2009. During those years, community members in La Oroya faced a discomfoting reality: smelter pollution, a visible and dangerous entity they have lived with since the smelter was built in 1922, was finally proven to be causing serious consequences for the community's health. Children were the most visibly

³² For an account of the impact of smelter activities in the process of desertification of La Oroya, see Edwin Alejandro Berrospi, *Los humos de La Oroya: Contaminación de los suelos y la vegetación* (Lima: Andes and Oxfam America, 2004).

³³ Peruvian National Institute of Statistics (INEI-Junín). *Censos 2007: Perfil sociodemográfico del departamento de Junín*.

³⁴ *Juguerias* refers to small kiosks in which fresh fruit juices are sold. People usually stop there for fresh orange juice before starting work, at lunch time, or at the end of the day.

³⁵ *Colectivos* describes the common method of public transportation in La Oroya, which consists of an automobile transporting no more than four passengers at a time for a fixed price.

affected. Practically overnight, members of this community found themselves trapped in a paradox: the metallurgic refinery, historically the main source of employment in the town, was clearly also the main source of environmental pollution and health risk. This conundrum resulted in some individuals being forced to sacrifice the defence of their (and the community's) health in order to preserve job stability.

The origin and unfolding of social conflict in La Oroya was a response to immediate causes, but this conflict is also more broadly embodied in complex structural causes. While the focus of this dissertation's investigation is this latter complexity, the proposed task cannot be effectively accomplished without first disclosing the immediate causes—as I will do in the following paragraphs.

In the context of drastic neoliberal reforms, the La Oroya smelter was privatized and sold in 1997 to the US-based Doe Run Resources Corporation/the Renco Group Inc. (Doe Run). Those were years during which, for the first time, environmental regulations were introduced to regulate mining and other extractive activities in Perú.³⁶ Although technically incipient and in many cases below international standards, such regulatory framework allowed the Peruvian state to supervise companies' compliance with

³⁶ In effect, in parallel with widespread neoliberalism, the 1990s also symbolized an increase in environmental awareness, which had received little attention in previous decades. By and large, such an awakening was motivated by a growing global movement driven by the 1987 United Nations "Brundtland Report" entitled *Our Common Future* that forced sustainable development and environmental protection onto national agendas. Subsequently, the Rio de Janeiro "Earth Summit" in 1992 also greatly influenced the emergence of the environmental movement in Latin America. In the case of Perú, the new environmental code of the 1990s dictated the principles and guidelines for environmental management. The *General Mining Law* approved by Supreme Decree 014-92-EM (3 June 1992), established that new investments in this sector were subject to "environmental impact assessment studies" (EIA) prior to permission being granted to start activities; whereas old operators, like the La Oroya smelter, were subject to the "Environment Management and Mitigation Plan" (PAMA) for progressive compliance with new legal standards. For that purpose, environmental legal obligations were established for the extractive industry, including the creation of maximum permissible levels of toxic element in gaseous emissions and liquid effluents from mining-metallurgic activities approved by Ministerial Resolution No. 315-96-EM/VMM (19 July 1996) and Ministerial Resolution No. 011-96-EM/VMM (13 January 1996), respectively. Later, in 2001, Supreme Decree No. 074-2001-PCM (24 June 2001) established national standards for air quality.

environmental obligations. In line with this new legal context, the privatization contract of the La Oroya smelter stipulated dual legal obligations for the Peruvian state and Doe Run to deal with the historical problem of smelter pollution affecting this community. Such obligations were concretized in the Environmental Mitigation and Management Plan for La Oroya (“PAMA” in Spanish), expected to be completed within *10 non-renewable years*, expiring on January 13, 2007.³⁷ Under the PAMA, the Peruvian state agreed to assume responsibility for historical pollution in La Oroya and, in turn, to implement a soil remediation plan. Doe Run agreed to implement, in summary, the following projects to modernize the smelter: (a) treatment of water effluent, and management and proper storage of solid waste; (b) control of gas emissions and the application of technologies for concentrating sulphur dioxide; and (c) construction and completion of two new sulphuric acid plants.³⁸

Controversial technical decisions mediating the implementation of the PAMA were present from the beginning. For instance, under the approval of the Environmental Affairs Directorate for the Ministry of Energy and Mines, Doe Run was authorized to complete the latter two projects at the end. These were the most expensive projects, but also the most effective in reducing air pollution to meet national permissible standards. Furthermore, the state decided to postpone the design and implementation of the soil remediation plan until Doe Run first lived up to its obligations under the PAMA.³⁹

³⁷ According to article 9, *General Mining Law, Supplementary Regulation Regarding the Environment* (Supreme Decree No. 016-93-EM) (1 May 1993).

³⁸ Ramón Pajuelo, *Medio ambiente y salud en La Oroya* (Lima: CooperAcción, 2005).

³⁹ The main argument was that in order to ensure the effectiveness of soil remediation, the complete control of toxic emission was needed. Since the most effective projects in reducing air pollution were left to the end of the PAMA completion, the state decided to postpone fulfilling its own obligations until air contamination was effectively controlled by Doe Run.

Shortly after the commencement of Doe Run smelting activities, the Peruvian Ministry of Health's Environmental Health Directorate (DIGESA) released the results of the first governmental study, undertaken in 1999, on blood lead levels (BLL) in La Oroya.⁴⁰ Study findings were conclusive: 99.1% of the children under 10 years old tested reported blood lead levels higher than 10ug/dl, the maximum permissible level established by the World Health Organization (WHO). The average level was 33.6ug/dl BLL, over three times the maximum. Another fundamental finding of this study was confirmation that the smelter was the principal source of pollution. Further, people living closer to the refinery were found to be at the greatest risk.⁴¹ The recommendation was straightforward: unless the principal source of pollution was effectively controlled, or the affected population was removed from the polluted areas, medical treatment would remain ineffective.

The startling results of this governmental study were confirmed and expanded as more studies continued surfacing with additional evidence. The Consortium for Sustainable Development in La Oroya ("UNES" in Spanish) yielded similar results with regard to children and reported that similar levels were present in pregnant women as well. Children tested reported an average of BLL of 39.49ug/dl, whereas the average for

⁴⁰ Ministerio de Salud—Environmental Health Directorate, "Estudio de plomo en sangre en una población seleccionada de La Oroya" (Lima, 23-30 November 1999). The study tested 364 children between 2 to 10 years of age and 201 people over 10 years of age from the neighbourhoods of La Oroya Antigua, Santa Rosa de Saco, and La Oroya Nueva.

⁴¹ This is based on study results that showed that people living in La Oroya Antigua, the closest neighbourhood to the smelter, reported the highest levels of BLL when compared to the other two neighbourhoods tested. The study suggests that the principal problem of air pollution is linked to the presence of lead. During the assessment period, the lead levels in the air were reported to have reached a maximum of 27.53 ug/m³, which is 17 times in excess of the standard permissible lead levels, which are a quarter of 1.5 ug/m³ according to the U.S. Environmental Protection Agency.

pregnant women was even higher, at 41.81ug/dl.⁴² In addition to air pollution, evidence of contamination was also found inside people's homes, bringing to the fore the long-term housing problem in La Oroya.⁴³ Another study conducted from June 2004 to June 2005 determined that even newborns in La Oroya had an average of 8.84ug/dl BLL.⁴⁴ Finally, a 2005 study conducted by the School of Public Health from the University of Saint Louis, Missouri, found high concentrations of cadmium and arsenic, in addition to lead, in residents' blood.⁴⁵

The initial response of Doe Run was to blame historical contamination and automobile pollution as the fundamental causes of lead levels and other toxic metals in children's blood in La Oroya, but the seminal study *La Oroya Cannot Wait* quickly dismantled the company's hypothesis.⁴⁶ Based on official environmental monitoring

⁴² Consorcio UNES, "Evaluación de niveles de plomo y factores de exposición en gestantes y niños menores de 3 años de la ciudad de La Oroya" (Lima: CooperAcción, Cenca and Filomena Tomayra Pacsi, 2000). The study assessed BLL in a sample of 48 pregnant women and 30 children under 3 years of age from the neighbourhoods of La Oroya Antigua and Santa Rosa de Saco.

⁴³ Astrid Cornejo & Perry Gottesfeld, *Interior Dust Lead Levels in La Oroya, Peru* (Lima: Asociación Civil Labor, Occupational Knowledge International and CooperAcción, 2004). The study used the US HUD and EPA standard for risk assessments and for clearance to reoccupy a home following lead abatement, which considers 40ug/ft² as the permissible level for lead in floors. Samples taken from floor dust on housing interiors in La Oroya reported that 88% of such samples exceeded the HUD/EPA standards. The results were quite striking, given that many residents of La Oroya opted to remain at home as a way to protect themselves from external air pollution. Regrettably, poverty conditions and poor infrastructure do not allow for a "lead safe" housing environment. In many instances, unsealed floors and cracked/porous walls make the task of a proper clean-up of interior lead dust difficult.

⁴⁴ Godofredo Pebe, Hugo Villa, Luis Escate & Gonzalo Cervantes, "Niveles de plomo sanguíneo en recién nacidos de La Oroya 2004-2005" (2008) 25:4 Rev. Peru Med. Exp. Salud Pública 355.

⁴⁵ School of Public Health, Saint Louis University, Missouri. *Estudio sobre la contaminación ambiental en los hogares de La Oroya y Concepción y sus efectos en la salud de sus residentes* (Lima: Universidad de San Luis y Arzobispado de Huancayo, 2005).

⁴⁶ Anna Cederstav & Alberto Barandiaran, *La Oroya Cannot Wait* (Lima: Interamerican Association for Environmental Defense (AIDA) and Peruvian Society for Environmental Law (SPDA), 2002).

reports submitted by Doe Run to the Peruvian Ministry of Energy and Mines from 1996-2000,⁴⁷ the study concluded:

[I]t is clear that the levels of SO₂ [sulphur dioxide] contamination existing in La Oroya today are much worse than those considered during the development of the 1996 Environmental Management and Mitigation Program adopted for the complex [The La Oroya PAMA] ... [A]lthough DRP [Doe Run] has indicated that the company has implemented changes in operations to avoid formation of extremely high concentrations of SO₂ in the city, the data show that the problem during the peak periods did not improve during the years 1998-2000, but instead became even more critical than in previous years.⁴⁸

In light of such uncontested evidence, a cooperation agreement (Convenio MINSA-Doe Run) was signed between Doe Run, the Regional Government of Junín, and the Ministry of Health's Environmental Health Directorate aimed at progressively ameliorating the problem of lead poisoning in La Oroya.⁴⁹ For that purpose, in 2005 a targeted operational plan was implemented for part of the population of La Oroya Antigua. The targeted populations included children between 6 months and 6 years old with BLL above 45ug/dl, and pregnant women reporting BLL greater than 20ug/dl.⁵⁰ Rather than targeting the main source of pollution, actions aimed at reducing lead poisoning focused on implementing a "health promotion" plan to educate citizens on personal hygiene (i.e. promoting hand washing in children and making available public

⁴⁷ The reports referred to are based on data collected from the five official air monitoring stations located within 10 kilometres from the smelter: Hotel Inca (2 km), Cushurupampa (3 km), Sindicato de Obreros (0.8 km), Huanchan (2 km), and Casaracra (8.7 km).

⁴⁸ Cederstav & Barandiaran, *supra* note 46 at 41, 44.

⁴⁹ Ministry of Health – Doe Run Peru, *Convenio de Cooperación entre el Ministerio de Salud y la empresa Doe Run Peru S.R.L.*, Convenio No. 008-2003-MINSA.

⁵⁰ Ministry of Health, *Plan Operativo – 2005, para el control de los niveles de plomo en sangre en la población infantil y gestantes de La Oroya Antigua*. According to this plan, the selection of the target population for the study was based on a 2004 haematic census conducted by the Ministry of Health. Nevertheless, the plan did not provide either the results of the census or a reasonable explanation for the focus on such a narrow geographic location and population scope. This is a serious concern given that, according to the 1999 governmental BLL study, virtually all children in La Oroya Antigua—including those older than 10 years old—are at risk. Furthermore, children from other neighbourhoods, such as Marcavalle and La Oroya Nueva, were known to be at risk; yet, they were unreasonably excluded from the benefits of the plan.

showers for pregnant women and their families). In addition, citizens were recruited to participate in cleaning streets, school floors, and house interiors, where metal particles settled and were ingested through hand contact.⁵¹

Although hygiene and the cleaning of streets are, undeniably, important steps in dealing with the consequences of pollution, they are insufficient to protect people from serious health risks. Indeed, this was the conclusion of a 2005 study in La Oroya conducted by the Center for Disease Control and Prevention (USA). The aim of this study—requested by the United States Agency for International Development, Peru Mission (USAID)—was the eventual development of an integrated plan to reduce exposure to lead and other contaminants.⁵² This study corroborated the widely shared opinion that control of toxic emissions and adequate soil remediation are the two most crucial steps in addressing the problem of environmental health in La Oroya. In the absence of such measures, a hygiene and nutrition campaign would have *minimal effects* on reducing lead poisoning.

1.3.1 The Defence of Health

The failure of the state to adequately deal with the public health crisis in La Oroya and to force Doe Run to comply with national air pollution standards prompted the emergence of a civil society movement. This movement, in partnership with a technical

⁵¹ In principle, the plan acknowledged that efforts to reduce BLL in the selected populations should include four components: health promotion, control of air quality, monitoring of lead levels and health care, and finally, a multi-sectoral management plan to ensure the continuation of the program. In practice, only the health promotion component was fully implemented. Monitoring of lead levels through haematic census reporting continued until 2008, the year before Doe Run suspended its smelting operations. Only those children reporting BLL higher than 45ug/dl received any medical treatment, which consisted of vitamins and temporary removal from La Oroya Antigua to detoxify them from the contaminated air. To be sure, children with high BLL were daily sent to a kindergarten located in Casaracra a supposedly “pollution-free” town outside La Oroya.

⁵² Sharunda Buchanan, *et al.*, *Development of an Integrated Intervention Plan to Reduce Exposure to Lead and Other Contaminants in the Mining Center of La Oroya, Peru* (Atlanta: U.S Centers for Disease Control and Prevention, 2005).

group integrated by human rights activists, put the La Oroya public health crisis on the public agenda. The Movement for the Health of La Oroya (MOSAO) gained notoriety for the La Oroya health crisis at the international level,⁵³ prompting US media outlets to disclose the identity and business reputation of the owner of Doe Run, Ira Rennert. Most notably, an article published by Michael Shnayerson in *Vanity Fair* exposed Rennert's record of non-compliance with environmental regulations and described him as "the country's [USA's] biggest private polluter."⁵⁴ Shnayerson reported that Rennert's business strategy was to find "companies troubled enough to sell at the value of their assets, usually after a failed auction. Then the bank would pay nearly the whole cost, leaving Rennert to put in a pittance."⁵⁵ This strongly resonates with the circumstances of the La Oroya smelter's privatization, which will be discussed in next chapter.

At the local level, MOSAO sought to engage political authorities to bring about solutions to the public health crisis in La Oroya, but had relatively little success.⁵⁶ In addition, the movement organized several local public forums in La Oroya to inform people about the potential consequences of lead poisoning. The MOSAO was particularly vigilant about Doe Run's implementation of the PAMA obligations and the Ministry of Energy and Mines' supervision of such implementation. For the MOSAO, it was clear

⁵³ As part of the international campaign, MOSAO established contact for the first time with community members from Herculaneum, Missouri, who faced a similar problem with lead poisoning in children as a consequence of Doe Run's smelting activities in the US. They sought information on how this community dealt with the problem and what kind of remedial actions were taken so they could be replicated in La Oroya.

⁵⁴ Michael Shnayerson, "Devastating Luxury" *Vanity Fair* 515 (July 2003) 128. Also see Nathan Vardi, "Man with Many Enemies" *Forbes*. (22 July 2002), online: Forbes <<http://www.forbes.com/forbes/2002/0722/044.html>>.

⁵⁵ Shnayerson, *ibid.* at 2.

⁵⁶ For instance, in 2003, two initiatives to pass legislation declaring the situation in La Oroya an ecological emergency did not succeed. See Martin Scurreh, Janet Lingan & Rosa Pizarro, "Case Study: Jobs and Health in Peru" in Jeff Atkinson & Martin Scurreh, eds., *Globalizing Social Justice: The Role of Non-Government Organizations in Bringing about Change* (New York: Palgrave Macmillan, 2009) 166.

that in order to address the problem of air contamination in La Oroya once and for all, the PAMA projects needed to be finalized.

This outcome was frustrated, however, when Doe Run, alleging economic hardship, requested an extension to the PAMA deadline. At the same time, the company spread word that a denial of the extension would make it impossible to continue smelting operations—jeopardizing the jobs and subsistence of almost 4,000 workers and their families.⁵⁷ At this stage, what had begun as a conflict between the community, the state, and the smelter operator over the protection of the health of the community became a conflict among residents of La Oroya, many of whom went into the streets to support the company in defence of their jobs.

1.3.2 The Defence of Work⁵⁸

In a community where the majority of the population depends directly or indirectly on the smelting company, it was not hard for Doe Run to gain the support of union leaders, municipal authorities, and especially smelter workers and their families. Based on people's need and economic dependency, the company developed its own

⁵⁷ *Ibid.* at 175.

⁵⁸ In a broad sense, the term “work” encompasses two dimensions. On the one hand, a commodified human element (i.e. human labour via employment) that assumes the engagement of individuals in a wage-earning activity mediated by the rules of the capitalist market economy. On the other hand, work also suggests a non-commodified human element when it refers to activities that externalize individuals’ capabilities, creativity and/or the provision of care outside the wage-labour framework. See: Isabella Bakker, “Social Reproduction and the Constitution of a Gendered Political Economy” (2007) 12:4 *New Pol. Econ.* 541; Guy Mundlak, “The Right to Work-The Value of Work” in Daphne Barak-Erez & Aeyal Gross, eds., *Exploring Social Rights: Between Theory and Practice* (Oxford: Hart, 2007) 341. Although the defence of work in La Oroya best illustrates the commodified dimension of work in that it refers to demands of *employment stability* to secure wages for subsistence, in this dissertation I have opted to label the conflict in La Oroya as one of health versus work rather than employment. My reasons are as follows. First, in the human rights literature the convention is to talk about the “right to work” that includes, but is not exclusively composed of, safeguards for employment opportunities. Second and foremost, as will be discussed in chapters 5 and 6, in essentializing the demands of work in La Oroya in terms of the *employment needs* of smelter workers, we risk obscuring the value of the non-commodified dimension of work represented by women’s unpaid work within the household, the volunteer work of activists as well as claims for developing work capabilities as an element of self-expression and income generation in the case of youth and women in La Oroya.

social network to counteract the MOSAO's pro-health campaign. Smelter workers and their families participated in riots and protests, pressing governmental authorities to develop a legal strategy to facilitate the PAMA extension. This counter-campaign successfully led to the approval of Supreme Decree No. 046-2004-EM, which allowed for the possibility of an extension of three years for mining investors to finish their PAMA projects. Approval of such an extension was contingent upon an evaluation of both the technical and economic viability of the petition, and an assessment of the environmental and health risks posed by the extension.⁵⁹ For many, the most questionable aspect of this controversial decree was that it appeared to be specially tailored to Doe Run's needs.⁶⁰

In accordance with Supreme Decree No. 046-2004-EM and Ministerial Resolution No. 257-2006-MEM/DM, Doe Run was granted a three-year extension to complete the sulphuric acid plant projects for processing zinc, lead, and copper with an environmentally friendly technology. This meant that PAMA completion was pushed forward to October 2009. In practical terms, such an extension implied more years of exposure to air pollution and health risks.

The Peruvian media strongly criticized the PAMA extension decision. Journalistic investigations suggested that Doe Run's financial difficulties, under which the PAMA extension was requested, were largely caused by suspicious loan repayments to its own financial matrix under the concept of "marketing commissions"—which were in fact

⁵⁹ Indeed, Supreme Decree No. 046-2004-EM (29 December 2004) contemplated a series of requirements and conditions to be fulfilled prior to the approval of a petition. These included human health risk assessment studies, financial and economic risk evaluations, the submission of audited financial statements, workshops to inform the community about economic and environmental matters, the provision of letters of guarantee, and a bank trust account; in addition, penalties were set for noncompliance.

⁶⁰ Doe Run was the only company that requested a PAMA deadline extension. See Scurrah, Lingan & Pizarro, *supra* note 56.

illegal remissions of dividends.⁶¹ This led mining and conflict analyst Juan Aste to suggest that the economic strategy of Doe Run was always to maximize its short-term benefits and invest the lowest amount possible towards improving the smelter complex infrastructure.⁶²

The PAMA's extension profoundly affected the sentiments of the community members who had tirelessly campaigned to advance health justice for La Oroya. A sense of disappointment was also widespread among human rights activists at the national level, and eyebrows were raised in the international community, which saw the decision as an "award to pollution." However, many families celebrated the decision with enormous relief, as their "threatened" employment stability and source of livelihood was finally guaranteed. The PAMA's extension thus turned into an instrument that consolidated an unfair trade-off between the protection of environment/health and employment stability in La Oroya.

1.3.3 Trumping Economic Interests over Health Needs through the Legal and Institutional Spheres

The apparent relegation of health problems in La Oroya prompted the MOSAO to undertake legal action. Shortly after the PAMA's deadline was extended, the Constitutional Tribunal of Perú released a judgment demanding the Peruvian Ministry of

⁶¹ Luis Corvera & Cecilia Niezen, "Ambiente turbio" *Diario el Comercio*, Suplemento Día 1 (30 January 2006) 16. In this article, investigations revealed that during the first three years of operation, almost US \$70 million were transferred to the US parent company. When company managers were consulted regarding this transfer, they argued that remittances were sustained in fulfilling obligations to the matrix, without providing further details. Authors suggest that rather than investing in its future operations, Doe Run Peru made a suspicious transfer of US \$125 million to its US matrix on account of a loan just six days after the smelter's purchase. Authors questioned this transfer, as the amount was the same as the smelter's sale price. It appeared to investigators that the Doe Run matrix was transferring to Doe Run Peru the cost of its own purchase.

⁶² Juan Aste, *El futuro del complejo metalurgico de La Oroya* (Lima: Grupo Andes, 2005). According to Aste, Doe Run rapidly recovered its investment in the purchase of the La Oroya smelter by an aggressive plan of remittances to its matrix Doe Run/Renco group, investing in the less expensive PAMA's projects and failing to pay taxes to the Peruvian state. This tactic would have been carried out at the expense of the health of the population of La Oroya.

Health assume its responsibility to protect the right to health for La Oroya.⁶³ The Tribunal found it deeply regrettable and unreasonable that since the first governmental BLL study in 1999, the Ministry of Health had not yet implemented an emergency program to protect the health of La Oroya's residents. The judgment compelled the Ministry of Health's Environmental Health Directorate to implement a health emergency plan within 30 days. Additionally, the new air quality standards established by Supreme Decree No. 74-2001-PCM, required the Ministry of Health to declare "states of alert" every time smelting operations exceeded such standards.

In response to the Tribunal's judgment, the Ministry of Health implemented an "action plan to enhance the quality of air in La Oroya" and a "contingency plan to declare states of alert." However, the success of these plans was contingent upon Doe Run's submission of air monitoring reports, which the company did not provide in a timely fashion.⁶⁴ Furthermore, the level of technicalities and complexities involved in the case limited the Tribunal's ability to push the Ministry of Health's response further and ensure appropriate compliance with the judgment. Thus, although an important victory in terms of recognizing the persistence of health problems in La Oroya, the judgment remained ineffective in advancing positive changes because the main source of lead contamination was still operating with inadequate smelting technology.

The Ministry of Health's inadequate compliance with the Constitutional Tribunal's judgment was also recognized by the Inter-American Commission of Human

⁶³ *Pablo Miguel Fabian Martinez, et al. v. The Peruvian Ministry of Health* (2006), Exp. 2002-2006-PC/TC, online: Constitutional Tribunal of Perú <<http://www.tc.gob.pe/jurisprudencia/2006/02002-2006-AC.html>>. It is worth noting that this demand encompassed almost four years of litigation—despite the urgent nature of the petition—before a decision was reached by the Constitutional Tribunal. Constitutional cases of this kind are expected to be resolved in no more than six months.

⁶⁴ Jose De Echave, *Diez años de minería en el Perú* (Lima: CooperAcción, 2008) at 357.

Rights when it noted that a petition was presented by 65 citizens from La Oroya against the Peruvian state.⁶⁵ The Commission recognized that the Peruvian state did not fulfill its obligations to protect the human rights to life and personal integrity, freedom of expression, and judicial protection in dealing with the problem of contamination in La Oroya. The case has been ongoing since August 2009, and, as of the date of this dissertation' submission, a final decision has yet to be handed down.

In the meantime, Doe Run's compliance with environmental standards—in particular, in terms of air quality improvements—was again called into question. A study conducted by the civil association Labor demonstrated that in 2006 “only 5 days could have been considered as breathable or clean according to the WHO standards,” and in January 2007 “only one day could have been considered a clean day using the same standards. If using the weaker Peruvian standards, still only 7 days could be deemed as breathable.”⁶⁶ Similarly, a supervisory visit conducted by the Ministry of Health's Environmental Health Directorate from October 16 to 20, 2006, concluded that the

⁶⁵ The Peruvian state is a signatory of the Inter-American Convention of Human Rights, and has accepted the jurisdiction of the Inter-American Commission and Inter-American Court of Human Rights, respectively. Both groups evaluate petitions and demands related to human rights violations that fall under the protection of the Convention and subsequent treaties and covenants. For a petition or demand to be admitted to the Inter-American human rights legal system, plaintiffs must exhaust all domestic legal avenues. In the Peruvian context, a judgement from the Constitutional Tribunal represents the last instance in terms of constitutional procedures regarding human rights violations, after which plaintiffs have the option to continue litigating in the Inter-American legal system. In December 2006, the Inter-American Association for the Defense of the Environment (AIDA), the Centre for Human Rights and the Environment (CEDHA) and Earthjustice presented a petition before the Inter-American Commission of Human Rights on behalf of 65 citizens from La Oroya (Petition No. 1473-06), which was finally admitted in August 2009. Prior to this petition, on August 31, 2007, the commission requested that the State of Perú implement precautionary measures to prevent irreversible harm to the health, integrity, and lives of the people of La Oroya. For further information, see online: Aida-Americas <http://www.aida-americas.org/en/project/laoroya_en>.

⁶⁶ Carlos Abanto Kcomt, “La Oroya – El día siguiente: Evolución de la calidad de aire en La Oroya” Asociación Civil Labor (2007), online: Wordpress <<http://elecochasqui.files.wordpress.com/2009/06/condiciones-de-la-calidad-de-aire-en-la-oroya-so2.pdf>> at 1. The author also discusses the distinction between the Peruvian standards and the World Health Organization (WHO) standards for air quality. Of the two, the WHO standards are more rigorous and subject to constant evaluation to keep pace with scientific and medical studies on the matter.

reported levels of sulphur dioxide (1786.24 ug/m³) greatly exceeded the national permissible standard for 24 hours of exposure (365 ug/m³).⁶⁷ Such results lead the Parliamentary Commission of Andean, Amazonian, and Afro-Peruvian Communities to demand a thorough evaluation of the consistency of Doe Run's reports by competent authorities and it recommended increased regularity in the monitoring of air quality by the Ministry of Health, which, at the time, only occurred sporadically.⁶⁸

In the midst of these controversies, Doe Run finished the sulphuric acid plant projects for the processing of zinc (December 2006) and lead (September 2008). Halfway through the construction phase of the sulphuric acid plant for the processing of copper, the company ceased work. The 2008 world economic crisis, coupled with a refusal by the company's bank financiers to provide additional funding due to an unpaid debt to Doe Run's creditors, put the completion of the last stage of the PAMA at risk.⁶⁹ Among the reasons given for the interruption of financing was the fact that "the company's financial statements neither meet liquidity ratios nor the operating performance of the contract."⁷⁰ As a result, Doe Run asked for an additional PAMA deadline extension. The idea of a new deadline extension outraged a great number of community members, namely those who saw pollution as the cause of their health ailments and, in some cases, the loss of

⁶⁷ Peruvian Congress. *Parliamentary Report: The Problem of Environmental Public Health in La Oroya*, Working Group on the Environment and Ecology of the Commission of Andean, Amazonian and Afro-Peruvian Communities (2007) at 19.

⁶⁸ *Ibid.*

⁶⁹ The financial problems of Doe Run were aggravated when a group of banks composed of the Peruvian Bank of Credit, BNP Paribas, and Standard Chartered suspended its revolving credit of \$75 million for the purchase of concentrates of zinc, copper and lead for their refining in the metallurgical complex. As the company did not have sufficient liquidity to buy concentrates or to pay the \$100 million the company owed to the concentrate's providers (the majority of which were Peruvian mining companies), Doe Run had to temporarily suspend smelting operations. As a consequence, the PAMA's completion was also suspended.

⁷⁰ See "La Oroya al limite" *Revista Caretas* (26 March 2009), online: <http://www.caretas.com.pe/Main.asp?T=3082&idE=820&idS=251> at para. 15, translation by author.

family members. However, as with the first deadline extension, smelter workers and their families organized strikes and highway blockages in support of Doe Run's second deadline extension.

In the case of health protection, neither the political nor the judicial spheres were able to promote positive changes for the La Oroya community. However, the story was quite different when it came to guaranteeing Doe Run's business stability. The difference in treatment is clearly illustrated by mapping the reactions of the ministries: the Minister of Environment declared "a deadline extension was necessary," whereas the Minister of Production affirmed that such an extension "would help to avoid a systemic harm to the mining sector."⁷¹ Moreover, in a speech given to a group of Latin-American bankers, the former President of Perú, Alan Garcia (2006-2011), affirmed, "If some irresponsible people let Doe Run—the most important refinery in Central Perú—go down, then we will have between 10,000 and 12,000 unemployed inhabitants blocking important highways."⁷² Indeed, the level of paranoia over the possibility of a smelter closure made some governmental officials compare the La Oroya smelter with the "Lehman Brothers" case of the global economic crisis in 2008.⁷³ Based on such a misleading assumption, executive officials even considered the possibility of an "economic rescue" of Doe Run, an option that was deeply criticized and opposed by some members of the Peruvian

⁷¹ Ricardo Uceda, "El ministerio de plomo: La derrota del Estado ante Doe Run desde la desencantada experiencia de tres funcionarios públicos" *Revista Poder 360* (19 October 2009), online: Poder 360 <http://www.poder360.com/article_detail.php?id_article=2816> at para. 61, translation by author.

⁷² Garcia's assertion was heard all over the news. See, for example, "Minera Doe Run anuncia paralización del 95% de sus operaciones" *Diario el Comercio* (25 March 2009), online: El Comercio <<http://elcomercio.pe/economia/264280/noticia-minera-doe-rum-anuncia-paralizacion-95-sus-operaciones>> at para. 9, translation by author.

⁷³ See, for example, "La Oroya al limite", *supra* note 70.

Congress.⁷⁴ This option, which would have compromised US\$75 million of public funding in favour of the private company, was ultimately discouraged.⁷⁵ Instead, a “Technical Commission for La Oroya” was created to define the necessary time to complete the remaining portion of the PAMA project.⁷⁶ This commission was composed of a union leader, representatives of the Regional Government of Junín, representatives of the Ministry of Energy and Mines, and OSINERGMIN. Based on a study conducted by the Official Peruvian Engineering Association, the commission proposed a 20-month extension beginning in October 2009. Because the issue was considered of “public necessity,” Law No. 29410 officially granted the 20-month extension to secure financial support (by July 2010) and to finish the remaining portion of the PAMA (by April 2011).⁷⁷

As many had anticipated, the company failed to ensure a financial credit for the PAMA completion by July 2010, which was a condition to finishing the project. Again Doe Run threatened a potential socio-economic collapse in La Oroya should the smelter be forced to close and attempted to re-negotiate its obligations. The support of unions and smelter workers was once again unconditional. Furthermore, the company asked for a

⁷⁴ See, for example, “El Gobierno salvaría a Doe Run de insolvencia” *Diario el Comercio* (12 March 2009), online <http://elcomercio.pe/economia/257929/noticia-gobierno-salvaria-doe-run-insolvencia_1> and “El Congreso rechaza el posible salvataje a Doe Run” *Diario Perú 21* (01 April 2009), online: Perú 21 <<http://peru21.pe/noticia/267318/congreso-rechaza-posible-salvataje-doe-run>>.

⁷⁵ The rejection of such an option was based on the irrationality of using public funds to rescue a private business that had systematically failed to fulfill its environmental obligations. It was argued that metal concentrate providers—such as the Peruvian mining companies Volcan, El Brocal and Cormin or the principal shareholder, Ira Rennert—should be responsible for the future of the company, not the Peruvian state. For instance, it was suggested that Peruvian mining companies should capitalize on the debt of US\$ 100 million that Doe Run owed them and take possession.

⁷⁶ The Commission was created by Supreme Resolution No. 209-2009-PCM [19 August 2009].

⁷⁷ In addition, Supreme Decree No. 075-2009-EM [28 October 2009] established procedures and modalities such as bank trusts and letters of guarantee to secure the enforcement of the economic obligations assumed by Doe Run.

modification of the privatization contract to shield the company from lawsuits for pollution in the USA.⁷⁸ Doe Run's conditions were deemed unacceptable by Peruvian authorities.

Since June 2009, the company has temporarily suspended its smelting activities, claiming ongoing financial problems. Nonetheless, under a special union-Doe Run agreement, smelting workers have continued to receive 70% of their salaries. For the first time, the tone of the political discourse has dramatically changed. President Garcia declared, “[W]e cannot be placed against the wall by a company that failed to comply with the terms and committed investments”; at the same time, he appealed to smelter workers to avoid being blackmailed by the company.⁷⁹ Shortly afterwards, Peruvian mining company Cormin, one of Doe Run's metal concentrate providers and principal creditors, filed a local bankruptcy proceeding against Doe Run before the Peruvian National Institute for the Defence of Competence and Intellectual Property (“INDECOPI” in Spanish). Under this bankruptcy procedure, Doe Run recently received a favourable ruling for restructuring the company, but it was subject to creditors approval. However, the plan was not approved by the creditors of which the state is a

⁷⁸ In particular, the company requested that indemnities granted to Doe Run Peru by the 1997 privatization contract be extended to the US matrix. In this manner, the Renco group and affiliates would escape liability from lawsuits filed in the Circuit Court of the State of Missouri, 22nd Judicial Circuit, for the health damages experienced by 107 children from La Oroya.

⁷⁹ See “Alan García le pidió a trabajadores no caer en el chantaje de Doe Run al Gobierno” *Diario el Comercio* (14 June 2010), online: El Comercio <<http://elcomercio.pe/planeta/494847/noticia-alan-garcia-le-pidio-trabajadores-no-caer-chantaj-doe-run-al-gobierno>> at para. 1, translation by author]. The controversy about Doe Run was even mentioned in the 2010 annual presidential speech commemorating Perú's Independence Day. President Garcia affirmed “the deadline has expired as it corresponds to the law so Doe Run's license to operate the complex will be cancelled.” See “García: Retiraremos licencia a Doe Run” *Diario Perú 21* (28 July 2010), online: Perú 21 <<http://peru21.pe/noticia/615171/garcia-retiraremos-licencia-doe-run>>.

principle actor, due to the fact that the plan was deemed not viable.⁸⁰ The rejection of the restructuring plan led to the liquidation of the company.⁸¹ In response smelter workers, their families and sympathisers – who blame environmental groups for influencing the decision - are now threatening the state with strikes and highway blockades.⁸²

The problems related to the La Oroya smelter are far from over. The La Oroya case has passed across different levels of institutional and judicial spheres at both the national and international levels. While some decisions are still pending, the PAMA has been left unfinished and the implementation of a soil remediation plan has been delayed. In addition, new controversies have arisen exposing the extent to which power is maneuvered from above. As an editorial in the national newspaper *Diario el Comercio* puts it, the Peruvian State has gone “from victim to victimizer,” since the Renco Group (Doe Run matrix) has filed a claim against the Peruvian state before the International Centre for Settlement of Investment Disputes (ICSID).⁸³ The company is demanding financial compensation of US\$800 million, arguing unjust and unequal treatment in relation to the enforcement of the PAMA obligations.⁸⁴ In addition, as reported by the

⁸⁰ See “Doe Run no solo pone condiciones al Estado sino tambien a los acreedores”, *Diario el Comercio* (18 April 2012), online: El Comercio <http://elcomercio.pe/economia/1398033/noticia-doe-run-no-solo-pone-condiciones-al-estado-sino-tambien-acreedores_1>.

⁸¹ See “Doe Run Peru sera liquidada tras no recibir respaldo de acreedores”, *Diario el Comercio* (18 April 2012), online: El Comercio <<http://elcomercio.pe/economia/1400676/noticia-doe-run-peru-liquidada-no-recibir-respaldo-acreedores>>.

⁸² See “Trabajadores de Doe Run “en pie de lucha” tras anuncio de liquidacion de la empresa”. *Diario el Comercio* (18 April 2012), online: El Comercio <<http://elcomercio.pe/economia/1401039/noticia-trabajadores-doe-run-peru-pie-lucha-anuncio-liquidacion-empresa>>.

⁸³ See “Otra vez Doe Run contra el Perú” Editorial, *Diario el Comercio* (10 January 2011), online: El Comercio <<http://elcomercio.pe/opinion/696371/noticia-editorial-otra-vez-doe-run-contra-peru>>.

⁸⁴ Doe Run argues they were subject to responsibilities beyond what was stipulated in the PAMA. In addition, the company maintains that the Peruvian state was stricter with Doe Run in terms of the PAMA compliance than in its requirements for soil remediation. This would suggest discriminatory treatment. Accordingly, Doe Run argues it is the Peruvian government and *activos mineros* who should hold responsibility for the lawsuits filed by La Oroya residents in a Missouri court, demanding economic redress for children’s health afflictions.

Peruvian Ambassador in Washington, the company is developing an impressive lobby in the US Congress “aimed at pressuring the White House to require the Peruvian government to resolve the Doe Run controversy in accordance with bilateral free trade agreements [between Perú and USA].”⁸⁵

It is estimated that Doe Run has a pending debt in Perú greater than US\$500 million, which encompasses the PAMA completion, administrative fines, unpaid taxes, and creditors’ debt. Given this, the Renco Group’s claim for economic redress is more than controversial.

1.4 A New Research Agenda: Contexts of Systemic Unfreedom Affecting Human Capabilities and Human Rights Realization

Without intending to provide a one-size-fits-all understanding of socio-environmental conflicts related to the extractive industry in Perú, my scrutiny of the La Oroya reality seeks to contribute to the assessment of other cases by framing new questions and stimulating new critical insights, rather than providing definitive answers. More concretely, the contribution of this research project rests on the conceptual lenses designed to analyze the case. While the literature on mining conflicts recurrently calls to advance an “alternative vision of development” with social justice, and while the discourse of human rights has been used to provide a glimpse of such social justice commitments, there is still a dearth of studies that effectively combine both proposals. To be sure, there is a lack of scholarship articulating an analytical framework capable of diagnosing the unjust structures sustaining present conflicts and at the same time

⁸⁵ See “Perú y Doe Run aun evalúan marco para controversia” *Diario Gestión* (11 July 2011), online: <http://gestion.pe/noticia/852174/peru-doe-run-aun-evaluan-sobre-que-marco-resolveran-controversia> at para. 5, translation by author].

promoting an alternative vision of development. To overcome this gap, this study advances an integrated analytical framework called “a capability-oriented model of human rights.” This dissertation’s *integrative framework* draws on insights from structural approaches to human rights. It also adopts Séverine Deneuline’s relational-political interpretation of the capability approach pioneered by Amartya Sen. The integrative framework thus assesses the socio-historical roots and politico-economic dimensions that, on the one hand, allowed Doe Run to continually commit human rights abuses in La Oroya and, on the other hand, explain the alarming inaction of the Peruvian state regarding such abuses. In advancing such an analysis—in which narratives and voices of members of the community of La Oroya play a significant role—this framework ultimately reveals how such a socio-historically formed and politico-economically reproduced context of abuses not only reduces individual and community wellbeing but, in doing so, diminishes people’s ability to challenge such abuses. I describe this context as one of “systemic unfreedom.” A context of systemic unfreedom is sustained by the interconnection of converging historical, environmental, institutional, social, and personal factors that trap residents from La Oroya in a vicious cycle of disadvantage.

The richness of a capability-oriented model of human rights lies in the interdisciplinary orientation of its implementation. This framework demands a break with disciplinary orthodoxies—a break that produces multiple advantages but admittedly also leads to the shortcomings and challenges in using this framework.

1.5 The Interdisciplinary Nature of the Study⁸⁶

This research project is located within the tradition of socio-legal studies. Working at the intersection of the law and disciplines from the social sciences and humanities, socio-legal studies expand understanding of the practice and impact of the law in society. The interdisciplinary interplay inherent in socio-legal studies problematizes assumptions and traditional understandings of legal concepts, processes, and institutions that would otherwise remain unchallenged from an orthodox legal perspective. Socio-legal scholars are thus capable of navigating a broad scholarship repertoire that alerts them to existing and persistent blind spots within the legal discipline.

Guided by such an interdisciplinary perspective, I began the process of designing the analytical framework for assessing the La Oroya case. Throughout this process, I became aware of the multiple limitations of the legal discipline in assessing the complex conflict exposed in the La Oroya case. And, further than this, I fundamentally came to terms with the fact that such an assessment—and, in turn, my contribution to the socio-legal literature—could only be strategically implemented by de-centering the legal dimension of this research project. While a significant portion of socio-legal research projects use an interdisciplinary strategy to formulate sound criticism about the perils inherent in the instrumentality of the law, my project seeks to advance such a reflection in a different way. Rather than scrutinizing a concrete legal instrument or legal institution, this project puts together the diverse dimensions of analysis that are frequently missed

⁸⁶ I am especially grateful to one of my supervisors, Professor Laura Parisi, who on more than one occasion prompted me to seriously reflect on the interdisciplinary nature of my project and, moreover, on the extent to which such an interdisciplinary nature was blurring the legal dimension of my research. As I am a legal scholar, it may seem odd that this research project does not mainly focus on legal institutions or the social consequences of law. In fact, any legal assessment advanced in this research project not only provides a critical perspective of the law, but scrutinizes law as one of a multiplicity of factors affecting the lives of individuals and communities. My scepticism of the legal route and my reasons for not making it central in my assessment of human rights in La Oroya are explained in this section.

when a legal assessment is undertaken to clarify the notion of human rights and, foremost, to explain the perpetuation of human rights abuses. By doing so, my goal is to disclose what the law often conceals in this kind of assessment: the extent to which the legal discipline becomes divorced from complex realities when looking for rhetorical neutrality and formulating interpretative legal techniques. From the very outset, I must admit that my current critical stance is the product of a long period of reflection about my experience working as a jurisdictional advisor at the Constitutional Tribunal of Perú and how this compared to my fieldwork experience in La Oroya. My contact with the everyday experiences of human rights abuses in La Oroya and the work of human rights activists on the ground has greatly challenged what I assumed to be the most authoritative understanding of human rights. Not only did this experience expand my critical thinking and awareness of the multiple meanings giving content to the idea of human rights in practice, it also made me realize the profound rift between the rigid rights rhetoric advanced by constitutional lawyers and the more dynamic and timely agenda advanced by social science researchers when dealing with human rights issues in Perú.

In advancing this critique I do not intend to demonize the legal discipline or ignore its necessary role in social organization in all its possible scenarios and contexts; rather, my goal is to challenge the commonly held assumption that “more law” or “better law” is needed to address human rights violations and to suggest that any (top-down) technical legal understanding about human rights abuses should be articulated with a (bottom-up) analysis of the complexities inherent in such abuses. By advancing this latter analysis, we will better understand why even progressive judicial decisions—such as the

one in the case of La Oroya—have little if any impact in transforming unjust socio-economic structures.

To further clarify my point, let me discuss the type of reasoning the legal discipline would offer in analyzing the situation of “human rights trade-offs” in La Oroya and why we should look to an interdisciplinary analysis to overcome the legal discipline’s shortcomings. In La Oroya, the protection of the “right to health” has been problematized and countered by simultaneous demands for employment stability. Smelter workers, their families, and those who indirectly benefit from the smelter activity in La Oroya saw demands for justice in health and environmental protection as a threat to their main source of employment and, hence, a threat to their “right to work.” This is why the conflict became known as a problem of *human rights trade-offs* between health and work.⁸⁷

The La Oroya predicament became deeply puzzling given that the general doctrine of human rights assigns the same social value to the protection of health, work, and the environment and, therefore, in principle, these are not or should not be negotiable goods. In practice, however, the La Oroya community was being forced to choose between these two essential components of human wellbeing. Under such circumstances, those intrigued by the La Oroya case often frame the problem as one in which we have to deliberate “*What is more important in life: to have health or to secure a job?*” This question, although mirroring the crude reality of La Oroya, is both dangerously simplistic and ethically deceptive. It fundamentally throws the responsibility for this decision onto

⁸⁷ Corey LaPlante, *La Oroya: Human Rights in Conflict* (draft report) [unpublished, cited with permission of author].

members of the community without recognizing that it is just as important to consider how and why this community was forced to face such a dilemma in the first place. To essentialize the La Oroya predicament as one in which community members have to reason together to choose between the relevance of “health” or, by contrast, “work” is to conform to the very injustices inherent in such a situation; moreover, it is to convert community members, regardless of what they choose, into the villains and victims of their own story.

The situation in La Oroya is deeply complex. At first glance, the dilemma of this community speaks to what Martha Nussbaum describes as “tragic choices” resulting from a “tragic question.”⁸⁸ This refers to a question for which all the alternative solutions are morally unacceptable. There are simply no good or right answers to such a question. Tragic dilemmas leading to tragic questions are, as Nussbaum posits, “blots on a decent society ... [and] we should do everything in our power to arrange things so that we are not confronted with such choices.”⁸⁹

In the case of La Oroya, struggling to choose between defending “health” (and sacrificing access to work) or defending “work” (and sacrificing community health) is therefore wrong, as both alternatives drive us to equally unfair solutions. Hence, our inquiry about the La Oroya case should avoid reinforcing the tragedy of the situation by implicitly assuming that the dilemma of trade-offs is inevitable or was unavoidable. To be fair to the tragic situation of La Oroya, then, our inquiry should move us in a different direction. For instance, rather than uncritically judging community members for their

⁸⁸ Martha C. Nussbaum, “The Cost of Tragedy: Some Moral Limits of Cost-Benefit Analysis” (2000) 29:S2 J. Legal Stud. 1005.

⁸⁹ *Ibid.* at 1025.

choices to defend either “health” or “work,” we should instead ask why—in light of the prospect of social mobilization to defend health—smelter workers, their families, and other supporters refrained from supporting such actions aimed at overcoming health deprivation as a whole in the community. Why did these individuals blindly accept their subordination to the smelter company when their own children were at risk from smelter pollution? And, most importantly, how and why did the community *as a whole* have to deal with the tragic dilemma of accepting the trade-offs between these two essential components of their individual and community wellbeing?

Pushing forward this type of inquiry upholds several theoretical and methodological implications. It suffices for now to elaborate whether the legal discipline alone is capable of illuminating sound responses to the aforementioned questions. My short answer is “not sufficiently.” I concur here with the view of Iris Van Domselaar, for whom the legal discipline suffers a structural denial in trying to fully understand the complexities behind “tragic choices.”⁹⁰ Under the reasoning of the legal discipline, legal actors tend to detach themselves from any assessment of emotions, feelings, and personal circumstances that place individuals, households, and communities in such tragic situations. Such an analysis of subjectivities and moral dilemmas is often seen as an obstruction to arriving at the “right” legal solution. To arrive at that decision, the legal interpreter (e.g. judges and jurisdictional advisors in the Peruvian judicial system) looks for guidance in the form of a de-contextualized “logical framework” or “standardized

⁹⁰ Iris Van Domselaar, “Tragic Choice as a Legal Concept” (2009) A.R.S.P., online: SSRN <<http://ssrn.com/abstract=1792725>>. The foundation for an arithmetic type of legal reasoning is located in the work of German scholar Robert Alexy. Alexy’s work is deeply influential in the court system of European countries and, I would add, in Latin-American countries such as Perú that follow the Eurocentric law tradition. See Robert Alexy, “On Balancing and Subsumption: A Structural Comparison” (2003)16:4 Ratio Juris 433.

legal rules.” Good examples of this assertion are predominant theories guiding the legal reasoning in courts about how to understand the clash between fundamental rights or how to determine whether state intervention in the exercise of individual rights is good or disproportionate. In this regard, Van Domselaar refers to two of the most dominant conceptions of legal reasoning, balancing and subsumption, which basically propose that “[f]or all legal cases there is a commensurans available, a final normative source from which [correct] legal answer(s) can be inferred.”⁹¹ This means that within such legal reasoning the “tragedy” of a given situation tends to be bypassed and replaced by the “objectivity” of a legal solution that will ultimately give sanctity to one of the (tragic) alternatives in place. But perhaps the major incongruence of this so-called rational solution is that the “objective” logical framework is permeated with the subjective appreciation of the legal interpreter, who, by and large, remains blind to the complex social reality underpinning a tragic situation.

Again, I should make the point that it is neither my intention to generalize nor my assumption that all legal interpreters around the planet suffer from the same “contextual myopia.” In fact, many of the core ideas and arguments I will develop in this dissertation resonate with the “contextual method” to assess inclusive equality advanced by Canadian constitutional scholar Colleen Sheppard.⁹² Interestingly enough, Sheppard’s proposal draws inspiration from the work of Madame Justice Wilson’s judgment in *Edmonton Journal v. Alberta (Attorney General)*, in which Justice Wilson elaborates on

⁹¹ Van Domselaar, *ibid.* at 2.

⁹² Colleen Sheppard, *Inclusive Equality: The Relational Dimension of Systemic Discrimination in Canada* (Montréal: McGill-Queen’s University Press, 2010).

“contextualism” as a constitutional methodological approach.⁹³ The approach was not exempt from criticism, a criticism that was the product of the common anxiety of legal scholars claiming moulds through which they can fit and resolve a diverse range of cases. In bringing forward and defining the contours of a contextual approach, Sheppard indeed probes the idea that Courts have a limited capacity to provide multilevel transformative remedies to address the micro, meso, and macro structural dimensions involved in complex cases. Yet, what I observe from the Canadian context is a rich dynamic dialogue between the reasoning of courts and the academy. This dynamic conveys a responsive agenda that moves forward the progressive creative thinking of judges, which otherwise remains trapped in the institutional limitations of courts.

Such rich dialogue is absent in the Peruvian context. Judges and constitutional lawyers, to a great extent, move forward the same de-contextualized research agenda over the years, which revolves around the discussion of how to best interpret the Peruvian constitution, constitutional rights, and the establishment of legal precedents. In these efforts, they follow the work of German, Italian, and Spanish constitutional scholars, whose legal reasoning was clearly not inspired by the Peruvian reality. While this, almost unaltered, borrowed theoretical agenda operates in constitutional forums, peasants and indigenous communities in collaboration with a human rights activism network are giving life to one of the most lively and rich movements of resistance in recent Peruvian history. Such movements convey a multiplicity of political messages and meanings to the idea of human rights. Yet, constitutional scholars tend to remain uninterested in fully

⁹³ *Edmonton Journal v. Alberta (Attorney General)* [1989] 2 S.C.R. 1326, cited to Sheppard, *ibid.* at X.

exploring such reality. In other words, they remain blind to the need to understand rights claims in terms of their own local reality.

Now, while, as suggested, an interdisciplinary approach allows us to overcome narrow legal reasoning and advance a more demanding inquiry about the “human rights trade-offs” in La Oroya, the richness of this endeavour is not exempt from uncomfortable challenges and limitations. The interdisciplinary challenge, as I would call it, that scholars frequently confront leads scholars to a series of dilemmas: What is the target audience of the project? How can the theoretical and methodological expectations of scholars from the disciplines we are borrowing from be met? And, moreover, how can interdisciplinary research identify an academic community to belong to?⁹⁴ Throughout the process of designing and implementing this research project, I constantly confronted such dilemmas, which on more than one occasion forced me to reformulate my thoughts and processes until I gained a certain degree of confidence. This research project, along with contributing to a better understanding of the La Oroya case, also became a process that destabilized my own legal orthodox roots, allowing me to reconstruct my own academic identity as a socio-legal scholar.

More than three years ago, thanks to the orientation of one of my supervisors, Professor Cecilia Benoit, I began to explore the interdisciplinary route by reviewing the literature on the social determinants of health, which initially influenced my evaluation of the La Oroya case.⁹⁵ My fascination and enthusiasm for the “discovery” of new

⁹⁴ To reflect on such dilemmas, see for instance, Laura Parisi, “The Numbers Do(n’t) Always Add Up: Dilemmas in Using Quantitative Research Methods in Feminist IP Scholarship” (2009) 5:3 Pol. & Gender 410.

⁹⁵ As more attention was paid towards the La Oroya case, I was disturbed by the limited state action taken to address the problem of environmental pollution and child lead poisoning in La Oroya. To a great extent, “health” acted as an entry point for researchers, journalists and practitioners to become more familiar with La

knowledge prompted me to write a very humble article proposing a new understanding of the right to health in Perú in light of evidence from the social determinants of health.⁹⁶ The immediate response from my former legal “orthodox” colleagues was to accuse me of being “too social” in my reasoning.⁹⁷ I decided to persist and further develop the argument put forth in the article, which months later I turned into a paper I presented at the 2008 Law and Society Conference in Montréal.⁹⁸ The response from my audience was quite different; I received positive feedback and encouragement to publish the paper in the future, which I did.⁹⁹ At that point, it was clear to me not only that socio-legal scholars were more eager (and able) to produce, debate, and value interdisciplinary work, but that they (particularly those working in the area of “health equity”) were well aware of the richness of bridging the legal approach with the social determinants of health literature.¹⁰⁰ In fact, it was my exploration of the academic debates around the social

Oroya and also to publically denounce the situation of health deprivation in the community. While the majority of research produced about La Oroya remains restricted to the area of health and environmental pollution, I decided to incorporate another facet of the problem of this community, which is the community’s demands for employment opportunities at the Smelter. This latter facet deeply problematizes health demands and exacerbates the social conflict in La Oroya.

⁹⁶ Areli Valencia, “El concepto de equidad en salud y su aplicación en el discurso de los derechos fundamentales” (2007) 8 Gaceta del Tribunal Constitucional [Perú] 1.

⁹⁷ They were not making reference to any left-wing political orientation but rather to the fact that my argumentation was clearly “more” influenced by social science literature than by the legal mainstream authors they are used to (over) citing.

⁹⁸ Areli Valencia, “More than Just Health Care: An Assessment of the Theoretical Foundations for a Concept of Equality in Health” (Paper presented at the 2008 Annual Meeting of the Law and Society Association, Montréal, Canada, 27 May 2008) [unpublished].

⁹⁹ Areli Valencia, “Salud e igualdad sustantiva: Repensando el derecho a la salud desde el enfoque de capacidades humanas” in Pedro Grandez, ed., *El Derecho frente a la pobreza: Los desafíos éticos del constitucionalismo de los derechos* (Lima: Palestra, 2011).

¹⁰⁰ In 2008, the WHO launched the results of five years of investigating the “social determinants of health” (SDH). See World Health Organization. *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health*, Commission on Social Determinants of Health – Final Report (Geneva: World Health Organization, 2008). Since then, literature in the area of public health and human rights began paying more attention to new questions and challenges the evidence of the SDH would bring to the theoretical understanding and practical implementation of the “right to health” around the world. For

determinant of health literature in the Canadian context¹⁰¹ (namely, the identification of different layers of mid-level and macro-level determinants that *all together* influence people's health) that inspired the design of a similar multilayer model to assess human rights abuses and capability deprivation in the Peruvian context.

My purpose in narrating these past experiences is to indicate that this research project targets both a legal and a non-legal interdisciplinary oriented audience. However, I am aware that my enthusiasm and curiosity will neither suffice to provoke the interest of orthodox legal scholars nor respond to the possible expectations and disciplinary rigor of scholars from the disciplines I borrow from. I do not expect to appraise the world in the same manner as those who have devoted their entire careers to a particular disciplinary training. Yet, the richness of this research project should initiate an interdisciplinary conversation that expands our understanding about the La Oroya case, in particular, and the shaping of context of systemic unfreedom, in general. Without such initiative, bringing together disciplines such as sociology, law, political science, and history, I could not have fully identified the research problem, posed the adequate research questions, or designed the tools to respond them.

1.6 Research Questions

This dissertation is designed to address the following main research question and sub-questions:

instance, the Health and Human Rights: International Journal dedicates an entire issue (Vol. 12.2, 2010) to the topic of the "Social Determinants of Health: Converges and Disjunctures".

¹⁰¹ Dennis Raphael, "Social Determinants of Health: Present Status, Unanswered Questions, and Future Directions" (2006) 36:4 Int'l J. Health Services 651. Bruce Link & Jo Phelan, "Social Conditions as Fundamental Causes of Disease" (1995) 35 (Supp.) J. Health & Soc. Behavior 80.

1. What are the components of the context of systemic unfreedom in La Oroya; and how does such a context relate to the trade-offs of health for work by La Oroya residents?

Sub-questions:

2. To what extent has the diminishing of human capabilities, as a product of the context of systemic unfreedom in La Oroya, also undermined people's ability to exercise and defend their human rights to challenge such a context?
3. From an assessment of a context of systemic unfreedom in La Oroya, what kind of connections can be drawn between the notions of human rights and human capabilities in practice?

1.7 Dissertation Overview

My assessment of the La Oroya case consists of two phases. First, an *exploratory* phase investigates the origins and contours of a context of systemic unfreedom in La Oroya, namely, the factors sustaining and reproducing such a context. This exploratory phase focuses on the knowledge and living experiences of residents of La Oroya, human rights activists, and selected public servants who participated in decision-making pertaining to the La Oroya case. Following this exploratory phase is the *explanatory* phase, in which I integrate the findings of fieldwork study with additional sources of data. Here, I discuss the negative impacts of a context of systemic unfreedom on the expansion of human capabilities and fulfillment of human rights in La Oroya.

In Chapter 2, I begin my exploratory journey, which is aimed at assessing the origins and unfolding of a context of systemic unfreedom in La Oroya. The chapter discusses how La Oroya was transformed from a group of villages with a relatively self-sustaining agricultural economy into a smelter town as a result of the establishment of large-scale capitalist mining development in the central Andes, Perú. I identify the most dramatic consequences this transformation has triggered in the lives of community members, most notably in terms of the long-lasting history of pollution, the rise and fall of the proletarian class, and the beginning of the cycle of economic dependency. While these facts point to transformations at the micro and meso levels, the historical appraisal of La Oroya also sheds light on the strategic importance the mining industry has gained in Perú at the macro politico-economic level. As noted in the La Oroya case, a state-servile attitude towards foreign investment, which has become more prominent in the recent context of neoliberalism, largely determines the state's responses to socio-environmental conflicts in this sector.

In Chapter 3, I introduce the main components of my integrated conceptual framework, described as a “capability-oriented model of human rights.” The framework draws on structural approaches to human rights and—for strategic, pragmatic, and contextual reasons—is “concretized” or anchored in the idea of human capabilities. The idea of human capabilities rests on a relational-political interpretation of the capability approach. The framework is designed to provide two forms of guidance: first, by looking at the role of “conversion factors,” it seeks to identify the contours of a context of systemic unfreedom in La Oroya; and second, once these factors are identified, it seeks to assess how a context of systemic unfreedom affects both the development of human

capabilities and the realization of human rights. This evaluation provides the grounds for responding to the main questions of this dissertation.

In Chapter 4, I introduce the methodology for this study. The development of this methodology rests on the following principles: self-reflexivity, the voices of people, the fostering of historical and political awareness, and the scrutiny of individuals and their social “embeddedness.” These are the principles that guide my analysis of the information collected to identify the contours of a context of systemic unfreedom in La Oroya. Seeking to remain loyal to the people-centred commitments of my proposed integrated framework, this study gives centrality to the “voice” of residents of the community of La Oroya in producing knowledge about how a context of unfreedom operates in this community and affects their lives. For this purpose, my method includes a set of qualitative interviews with selected residents from the community of La Oroya, as well as interviews with human rights activists and public servants.

Chapter 5 introduces a second step in the *exploratory* phase of my study by reporting on my findings from three months of qualitative interviews with community members from La Oroya, human rights activists, and governmental officials. Drawing on such findings, this chapter identifies the constellation of environmental, institutional, social, and personal conversion factors that sustain a context of systemic unfreedom in La Oroya. I argue that such factors are deeply interconnected, tending to spread out in waves, reinforcing or creating new conditions of disadvantage in La Oroya.

Chapter 6 deals with the *explanatory* phase of this study. This chapter provides an in depth analysis of the trade-off between “health” and “work,” and in doing so responds to the main question of this study. I argue that a context of systemic unfreedom resulting

in capability deprivation in La Oroya not only made people more susceptible to accepting human rights trade-offs between health and work, it also weakened their ability to resist accepting such trade-offs in the first place. In light of the La Oroya case, this chapter also elaborates on the ideas of human capabilities and human rights in an integrative manner, advocating a “capability-oriented model of human rights” from below. In this view, human rights discourse arises as a freedom-enabling discourse that mirrors the idea of “conversion factors”: it makes explicit—through collective demands and social mobilization—what constrains people from leading the lives they value.

In Chapter 7, I present the conclusions and recommendations of this dissertation. In doing so, I discuss the most salient advantages and disadvantages of using a capability-oriented model of human rights. Recommendations for addressing the problem of unfreedom in La Oroya are primarily listed in terms of short-term measures; however, I stress the fact that counteracting unfreedom in this community requires broader structural changes that necessitate dismantling current patterns of power, domination and economic dependency.

1.8 Conclusions

For a country such as Perú—whose population has been historically affected by the negative consequences of colonialism, intense poverty, internal terrorism and armed conflicts, governmental corruption, and a fragile democracy—it is somewhat understandable that social value is placed on sustained economic growth, to which the mining/extractive industry is one of the most significant contributors. A growing economy is providing the means to dream, perhaps for the first time, of the prospect of a more progressive society. Yet, legitimate aspirations for a better life do not justify

persistent social blindness to the significant human well-being costs of achieving such economic growth. Evidence from the case study in this dissertation clearly shows that the negative cost and societal harm of such economic growth is distributed unevenly among members of the Peruvian society.

Moreover, as the assessment of the La Oroya case will demonstrate, unequal distribution of societal harm due to the extractive industry remains a structural problem. This is a problem reproduced from the past to the present, and it will likely affect future generations unless radical changes ensue. Some may argue that modernizing the extractive industry, combined with more legislative and regulatory developments (most notably in terms of environmental protection and taxing regulation), will create new scenarios to be evaluated through the lens of present circumstances. However, the La Oroya case unveils the existence of recurrent historical patterns. Certainly, the mining industry has historically developed a strategic role in Perú's economy grounded on a state-private investor partnership of mutual politico-economic benefits. This suggests that the dominant role of the mining industry in Perú's economic growth model does not provide a promising scenario for those wishing to break dependency ties or those resistant to engaging in new ones at present.

Are we, as a society, condemned to depend upon the extractive industry for the stability of our economy? Does such a tragic reality of dependency inevitably mean that the gains of some are wholly dependent on the losses of many others? And, most importantly, is this the kind of societal progress or "development" we want to continue building our history upon? These are just some of the ethical considerations Peruvian

citizens need to confront when celebrating the country's current economic growth. This dissertation seeks to provide a humble contribution to prompt such reflection.

Chapter 2

Systemic Unfreedom in La Oroya: The Socio-Historical Roots and the Political-Economic Background

2.1 Introduction

In his seminal work, *Pathologies of Power*, Paul Farmer borrows the term “structural violence” to refer to diverse forms of violence such as relative poverty, social inequality, and racism, which represent complex processes of human rights abuses.¹ These forms of abuses are by and large the product of historically given and economically driven conditions.² In this dissertation, I build upon and move forward Farmer’s notion of structural violence in order to provide a more detailed account of the broader context in which such violence takes place—which I call “systemic unfreedom.” This is a socio-historically shaped and politico-economically reproduced context of abuses, a context that not only affects the overall wellbeing of individuals and communities, but also diminishes their ability to challenge such abuses and transform their realities of unfreedom.

In this chapter, I begin the *exploratory phase* of this dissertation, investigating how a context of systemic unfreedom originated and unfolded in La Oroya. To this end, this chapter traces the socio-historical roots and politico-economic background of the La Oroya community. The chapter will proceed in two sections. Section one will deal with

¹ Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Berkeley: University of California Press, 2003). The term “structural violence” was originally coined by Johan Galtung in “Violence, Peace, and Peace Research” (1969) 6:3 *J. Peace Research* 167.

² *Ibid.*

the socio-historical shaping of the La Oroya community as a smelter town. The hegemonic presence of the US-based Cerro de Pasco Copper Corporation at the beginning of the last century marked the central Andes region and, more specifically, La Oroya. The profound socio-economic transformations of that time resulted in the inhabitants of La Oroya being trapped in economic dependency and an imbalance of power. To illustrate the significance of this period, I will discuss two of its more visible consequences: the formation of a proletarian class (as peasants became miners), and the controversy over smoke damage. I argue that these events planted the seeds of a context of systemic unfreedom in La Oroya.

The second section of this chapter explores the politico-economic dimension that reproduced unfreedom in La Oroya. This section complements the analysis advanced in the previous section by illustrating how the mining industry's strategic importance in Perú has been historically facilitated by a servile state attitude towards foreign investment. In advancing this argument, this section shows how such a servile attitude manifested by the state has maintained legal frameworks favouring the industry which has neutralized any actions that reveal and oppose systems of oppression and deprivation that the industry gave rise to. In such a context, the neoliberal reforms of the 1990s, under which the La Oroya smelter was privatized to Doe Run Company, came to reinforce the mutually benefiting partnership between the state and the mining industry. The section concludes by suggesting that the dominant role of this industry in Perú's economic growth model does not provide a promising scenario for those wishing to break dependency ties or who are resistant to engaging in new ones.

This chapter is thus a prelude to the more in-depth investigation into the exact contours and components of systemic unfreedom in today's La Oroya that will follow. The deeper investigation that unfolds in the next chapters will provide a more nuanced understanding of the human rights trade-offs between health and work in La Oroya.

2.2 The Socio-Historical Roots of Unfreedom in La Oroya

The major outcome of the changes occurring in La Oroya has been the creation of a modern industrial location, characterized by desolation and exploitation, in place of an agricultural milieu of villages, communities and haciendas.³

In the above quote, Juan Laite eloquently summarizes one of the most poignant consequences of an intense period of socio-economic changes fostered by the infusion of capitalist development and the beginning of large-scale mining investments in the central Andes, Perú, at the beginning of the last century. This process resulted in the transformation of La Oroya from a traditional village into an urban smelter town.

The capitalist transformation of the central Andes represents a crucial chapter in the history of economic development in Perú and in Perú's integration into the world economy. During the 1970s and 1980s, dependency theorists and their critics devoted extensive research to this economic phenomenon in Perú.⁴ For dependency theorists, the

³ Juan Laite, "Process of Industrial and Social Change in Highland Peru" in Norman Long & Bryan R. Robert, eds., *Peasant Cooperation and Capitalist Expansion in Central Peru* (Austin: University of Texas Press, 1978) at 73 [Laite, "Industrial and Social Change"].

⁴ From these two bodies of literature I will mainly rely on: Dirk Kruijt & Menno Vellinga, *Labor Relations and Multinational Corporations: The Cerro de Pasco Corporation in Peru (1902-1974)* (Assen, Netherlands: Van Gorcum, 1979); Long & Robert, *ibid.* [Long & Robert, *Capitalist Expansion in Central Peru*]; Norman Long & Bryan R. Robert eds., *Miners, Peasants and Entrepreneurs: Regional Development in the Central Highlands of Peru* (Cambridge: Cambridge University Press, 1984) [Long & Robert, *Miners and Peasants*]; Rosemary Thorp & Geoffrey Bertram, *Peru 1890-1977: Growth and Policy in an Open Economy* (London: Macmillan Press, 1978); Florencia Mallon, *The Defense of Community in Peru's Central Highlands: Peasant Struggle and Capitalist Transition, 1860-1940* (Princeton, NJ: Princeton University Press, 1983); Adrian DeWind, "From Peasants to Miners: The Background to Strikes in the Mines of Peru" (1975) 39 *Sci. & Soc'y* 44; John Weeks, *Limits to Capitalist Development: The Industrialization of Peru, 1950-1980* (London: Westview Press, 1985); David G. Becker, *The New Bourgeoisie and the Limits of Dependency: Mining, Class and Power in "Revolutionary" Peru* (Princeton, NJ: Princeton University Press, 1983); Elizabeth Dore, *The Peruvian Mining Industry: Growth, Stagnation, and Crisis* (London: Westview Press, 1988).

socio-economic transformation of the central Andes during the last century, most notably, of the territories containing the Mantaro River basin, is best explained by the concept of “economic enclaves,” which stems from the idea of dependent development.⁵ An enclave structure represents an economic unit of production that responds to monopolist characteristics. These units emerged not as a response to local necessity, but rather were established to serve the interests of foreign companies from Western economies.⁶ Resembling a form of neo-colonialism, the aim of such economic enclaves was to produce large-scale raw materials to directly benefit Western industrialized countries. In doing so, the enclaves’ ability to promote self-sustaining economies was diminished or, arguably, negated. As a result, the host countries of enclave structures were trapped into dependency ties that created and perpetuated the unjust circumstances sustaining their underdevelopment.⁷ Dependency theorists often cite the monopolist control of the rich ore deposits of central Andean Peru by the US-based Cerro de Pasco Corporation as an example of such a hypothesis.

Critics of dependency theorists claim that external factors alone cannot fully explain the real causes for the unjust structures of underdevelopment in Perú. Elizabeth Dore rightly indicates that barriers to economic growth are varied and incorporate a multitude of factors pertaining to Perú’s economy and society, such as social structures in mining regions and the nature of production processes.⁸ In a similar vein, David Becker

⁵ Krujit & Vellinga, *ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Dore, *supra* note 4. In her analysis of the history of the Peruvian mining industry since the beginning of the last century until the 1980s, Elizabeth Dore challenges the widely held assumption that patterns of growth and stagnation in this industry are the direct result of trends in world market prices and international demand. Particularly, during the period of 1945-1970, the author sustains, statistical analysis reveals that such patterns

suggests that the analysis of “underdevelopment” in Perú also needs to focus “on the *national* basis of elitism and domination,” which can sustain and reinforce such unjust structures.⁹

The insights drawn from both dependency theorists and their critics will inform my analysis of the origins of the context of unfreedom in La Oroya. Although this body of literature was inspired by circumstances and ideological influences of the past, the insights of these studies still resonate with problems today. I believe that the heft of history will clarify our understanding that the abuses suffered in the recent socio-environmental conflict of La Oroya are part of a sequence of more complex structural injustices.

While my intention is not to provide an exhaustive historical appraisal, I will for explanatory purposes, focus on two of the most significant consequences of the socio-economic transformation of the central Andes in the last century: the formation of a proletarian class and the smoke damage controversy.

2.2.1 The Formation of a Proletarian Class in the Central Andes

At the beginning of the twentieth century, a convergence of factors facilitated the beginning of a capitalist transformation in the central Andes, Perú. These factors ranged from the capitalist development in Europe and the USA, an increasing demand for raw materials from an expanding international market, the emergence of a Peruvian regional elite who sought to increase their socio-economic power in alliance with foreign capital, and a promising climate for mining investments along with the recovery of prices in the

of growth were different from that of the world industry; thus, additional *internal* factors must be evaluated to adequately understand such long-term trends.

⁹ Becker, *supra* note 4.

international metal market.¹⁰ This period was marked by the presence of US-based company Cerro de Pasco Copper Corporation—later Cerro de Pasco Corporation (CPC). CPC gradually consolidated a dominant presence in central Andes by developing an interconnected system of production that initiated the era of large-scale mining exploitation in the country (*gran minería*). The penetration of foreign capital into this region was made legally possible through a laissez-faire oriented *Mining Code* (1901), coupled with little resistance from local mine owners. Facing the aftermath of the Pacific war and having difficulty accessing bank credit, many of these entrepreneurs saw in CPC a convenient opportunity to boost a fragile local economy in order to help themselves maintain their elite power. By offering a relatively good valuation for their properties, CPC purchased almost 80% of the mines in Cerro de Pasco in just three months.¹¹ Many of these local entrepreneurs then opted to retire “[t]o a comfortable life in Lima or on *haciendas* purchased with their new wealth.”¹² Within just 10 years of investments and the continuation of an aggressive land-purchasing plan, CPC operations expanded and

¹⁰ Although beyond the scope of this section, it is worth noting that the strategic importance of mining activities in Perú can be traced back to ancient times. Countless stories and documentation exist on the abuses suffered by Aboriginal Peruvians forced to work in the mines of Potosí under inhuman conditions during the colonization period. See Matthew Smith. “Laboring to Choose, Choosing to Labor: Coercion and Choice in the Potosi Mita” (2004) 10 *Past Imperfect* 21. Even after colonial times, owners of mines located in Central Andes owned by entrepreneurs used abusive mechanisms of indebtedness and exploitation to recruit their workforces. Peasant resistance against falling into a regime of wages led them to being removed from their lands and the communities where they produced their livelihoods. This acted as the “Achilles heel” for the expansion of the mining industry on a large scale. This situation changed with the arrival of the Cerro de Pasco Corporation.

¹¹ Dore, *supra* note 4 at 88.

¹² Thorp & Bertram, *supra* note 4 at 80. For authors like Florencia Mallon, such little resistance from local mining entrepreneurs corresponds to their realization that in order to modernize the activity and succeed in overcoming peasant resistance to proletarianization, an alliance with foreign capital was required. For a historical background to the arrival of the Cerro de Pasco Corporation, see Mallon, *supra* note 4 (in particular, Chapter 4).

enjoyed hegemonic control of all mining deposits in the central Andes.¹³ Crucial to ensuring the sustainability of such expansion was the need to guarantee adequate means of production through the recruitment of mining workers. The process of labour recruitment, however, presented significant challenges given the idiosyncrasies of the “*comuneros*” in the central highlands. These *comuneros* were not necessarily landless inhabitants but members of communities with relative economic independence and a strong appreciation for their traditional ways of living.¹⁴

As expected, an extensive supply of labour force through the recruiting of peasants did not happen smoothly. It came at significant human cost, expressed in the progressive dismantling of peasants’ relatively self-sustaining community-based agricultural economy and the formation of a proletarian class. Dirk Kruijt and Menno Vellinga identify three stages in this process: “de-ruralization and proletarian formation” (1902-1925); “transitional proletariat” (1925-1945); and finally, “largely industrial proletariat” (1945-1973).¹⁵ A common feature intersecting these stages is the verification of one of the most salient features in a scenario of structural violence: the unequal distribution of harm among members of society (see Chapter 3). As Florencia Mallon rightly affirms, during the capitalist transformation of the central Andes, “[i]t was the poorer peasant, with fewer options to fall back on, who suffered more severely.”¹⁶ And

¹³ Kruijt & Vellinga, *supra* note 4.

¹⁴ Alberto Flores Galindo, *Obras Completas* (Lima: Fundación Andina, 1993) at 29, 193-195. The author draws on the studies of Peruvian novelist and anthropologist Jose Maria Arguedas.

¹⁵ Kruijt & Vellinga, *supra* note 4 at 62-66.

¹⁶ Mallon, *supra* note 4 at 229.

within a poor peasant household, women suffered a double burden of harm, as will be discussed later.

Building upon the Kruijt and Villenga proposal, I next describe the process of proletarian formation in the central Andes. The first stage in peasant proletarianization was an early period of operations in which CPC relied on pre-existing local methods of ore extraction and mechanisms of labour recruitment, such as the abusive system of “*enganche*.” The contract of *enganche* represented a semi-forced mechanism of labour recruitment by which workers were attracted to the mines in exchange for advances of remuneration or goods.¹⁷ In many instances, illiterate youth and the poorest peasants from diverse villages of the Mantaro Valley were forcibly recruited by “*enganchadores*” (labour recruiters) to sign *enganche* contracts and then periodically migrated to work on the mines during the off-harvest season.¹⁸ The result was that most of the peasants working under the *enganche* system ended up trapped in a vicious circle of indebtedness that forced them to continue working in the mines in order to service their debts. Some members of the *Asociación Pro-Indígena* based in Lima complained about the *enganche* system and other abuses, such as poor safety conditions in the mines, inadequate medical care, no schools, lack of compensation for workers, etc.¹⁹ But the reality was that *enganche* contracts were often made possible with “[t]he cooperation of local authorities

¹⁷ Galindo, *supra* note 14 at 41.

¹⁸ Mallon, *supra* note 4. The *enganche* system became a rentable business for local merchants or *enganchadores*, who received double benefits. On one hand, they benefitted from a percentage of the peasant salary; on the other hand, they also charged the CPC a commission in advance to ensure the provision of the labour force and to keep some extra money in case peasants ran away.

¹⁹ Mallon indicates that protests against the Cerro de Pasco Corporation from some progressive politicians and members of the *Asociación Pro-Indígena* were motivated by two explosions at the Gollarisquisca Mine in 1910 in which many people perished. See Mallon, *supra* note 4 at 205.

or judicial clerks.”²⁰ For instance, as Mallon indicates, rather than passing laws to abolish the institution of *enganche*, in 1903 the government passed the *Regulation of Location Services to the Mining Industry*—thus allowing local political authorities to chase runaway *enganche* labourers.²¹ A lack of appreciation for human dignity and community values was clearly at the bottom of the *enganche* system, the ultimate goal of which was to progressively “[s]ubtract indigenous population from their fixation to the land, from their traditional social structures, [and] from their community or semi-feudal relationships.”²² By progressively detaching peasants from their roots and reducing them to instrumental commodities, such systems carved out the grounds for the development of a proletarian class.

A rapidly expanding system of production and subsequent urgency for a more stable, specialized labour force led to the second stage in the formation of a proletarian class. By the 1920s, the *enganche* system became so costly and deeply unpopular that the CPC began hiring workers directly by offering higher salaries. Yet, as Mallon suggests, it was not until the construction of the La Oroya smelter in November 1922 that the *enganche* system was finally eliminated as the principle hiring mechanism.²³ The La Oroya smelter and the modernization of a railway system connecting the refinery with the CPC network of mines symbolized a turning point in the operations of CPC.²⁴ These two changes not only represented a period of territorial expansion and intensification of CPC

²⁰ Kruijt & Vellinga, *supra* note 4 at 63.

²¹ Mallon, *supra* note 4 at 188.

²² Galindo, citing Dennis Sulmont, “El movimiento obrero sindical Peruano”, *supra* note 14 at 41.

²³ Mallon, *supra* note 4 at 225.

²⁴ Laite, “Industrial and Social Change”, *supra* note 3.

production (albeit with significant environmental damages), they also marked the beginning of a new phase in labour relations. During the first stage, *enganche* peasants were typically unskilled, seasonal migrants who returned to their communities for the planting and harvesting season; second stage migrant workers, on the other hand, often opted to stay for longer periods of time. This was largely due to a series of benefits—such as housing, schools, and hospitals—put in place by the CPC to encourage workers to voluntarily migrate and consider permanent settlement in mining camps.²⁵ The economic depression of the 1930s also stands out as a contributory factor in transforming seasonal workers into a more stable, ever-present labour force. The negative effects of the world economic crisis on the metal market—and thus CPC production—resulted in CPC downsizing its workforce to less than half. It was estimated that between 1929 and 1932, the CPC labour force was reduced from close to 13,000 workers to only 4,300.²⁶ The remaining workers became a permanent professional workforce.²⁷ Meanwhile, peasants who returned to the agricultural sectors in their home villages found their communities weakened, and after the economic recovery from the depression most of the impoverished came back to seek re-employment in the Cerro de Pasco mines and the La Oroya smelter.

Mallon explains that communities underwent disruption on a progressively grander scale as a result of a continuous process of migration to the mines, the intensification of socio-economic differentiations between poor and wealthy peasants, and the land lost by smoke damage. Together, these factors came to erode the traditional

²⁵ Kruijt & Vellinga, *supra* note 4.

²⁶ Mallon, *supra* note 4 at 241.

²⁷ Kruijt & Vellinga, *supra* note 4.

values of unity and solidarity in the community.²⁸ Migration, in this sense, functioned as a catalyst for the subsequent formation of a proletarian class-consciousness. However, it should be noted that this process of “circulatory migration” was, according to Juan Laite, a complex one. As the product of contextual pre-capitalist circumstances, it would be misleading to equate the formation of a proletarian-class in the central Andes to similar processes unfolding at other latitudes at the same time. As Laite recalls, “unlike the stable industrial proletariats labouring in the refineries of Europe and the United States, over 80 % of the contemporary La Oroya workers [were] migrants.”²⁹ In practical terms, migration represented a tension between upholding a proletarian identity and retaining a communal identity.³⁰ In this sense, “migration” came to play a contradictory role in slowing down and, at the same time, accelerating the processes of proletarianization.³¹

Around 1950, the formation of a proletarian working class finally began to consolidate.³² The CPC became the second largest employer next to the state, greatly

²⁸ Mallon, *supra* note 4 at 242, 250. As Mallon indicates, the experiences of migrants varied depending on the history of the community and socio-economic status of the peasants within the community. Wealthier migrant peasants with a better educational background typically got higher paying jobs, saved more, and had the ability to choose if they wanted to stay or leave the mines, whereas poor peasants with less specialized training were able to save only modestly and were more prone to becoming ill, as they worked in the harshest conditions. These realities led Mallon to suggest that the migration experience was also significant in broadening the distance between the rich and poor. In a comparative study about how the process of migration affected two villages differently in the Mantaro Valley, Laite has pointed to socio-economic differentiations among rich and poor peasants to suggest that the communities integrating the Mantaro Valley did not exist in “socio-economic equilibrium.” He then distinguishes between rich peasants, subsistence peasants, and poor peasants, within which he includes *comuneros*. These latter are peasants who have usufructuary rights to the community land. See Juan Laite, “Migration and Social Differentiation amongst Mantaro Valley Peasants” in Long & Robert, *Miners and Peasants*, *supra* note 4 [Laite, “Mantaro Valley Peasants”].

²⁹ Laite, “Industrial and Social Change”, *supra* note 3 at 94.

³⁰ It should be noted that workers were initially attracted to the mines or smelter to accumulate wages to preserve community land and sustain households within an agricultural-based economy.

³¹ Mallon, *supra* note 4 at 243.

³² Kruijt & Vellinga, *supra* note 4. According to the authors, almost 70% of all CPC workers had an uninterrupted service record by 1972.

contributing to the economic boom of the region.³³ The Mantaro Valley became an important focus of industrial development, second only to that of the capital of Lima. Salaries and wages remained among the highest in Perú, which turned the central Andes into an attractive area for income opportunities.³⁴ However, access to income opportunities in the mines came at a very high cost, as it subsumed workers into a dependent relationship with the company in practically all spheres of life.³⁵ Housing, medical care, access to education for children, and life insurance were provided by the company. While the quality of many of these services was extremely poor—such as housing, particularly in La Oroya³⁶—education and medical services tended to be of a more acceptable quality.³⁷

As workers became full-time employees, governmental authorities increasingly scrutinized the reinforcement of employment legislation in regulation of labour recruitment, insurance for occupational disease, retirement funds, etc.³⁸ Yet, legal regulation was just a formal safeguard and proved insufficient to improve existent poor living conditions.

Kruijt and Vellinga indicate that CPC exerted a system of “all-embracing authority” manifested in the domination over camp life, ownership of land, and even over

³³ *Ibid.* at 48.

³⁴ Long & Robert, *Capitalist Expansion in Central Peru*, *supra* note 4 at 31. It should be noted that the capitalist expansion in the mining sector also accelerated the expansion of economic activities such as commerce, transport and services.

³⁵ *Ibid.* at 68-77.

³⁶ *Ibid.*

³⁷ *Ibid.* The company operated several first-aid posts and two hospitals, including the Chulec Hospital, the largest in the region, located in La Oroya.

³⁸ *Ibid.*

local authorities. Given the harsh living conditions and the isolation of the life in camps, mining centres were particularly prone to conflicts. CPC was sufficiently conscious of this reality. This is why, as the authors suggest, the company strategically adopted such a well-known system of control—applied in mines of the American West during the 19th century—to ensure the acquiescence and continuity of their labour force.³⁹ A system of absolute control was aimed at preventing, repressing, or eliminating any attempt to countervail power. Among the actions encompassing the repressive *modus operandi* of mining companies in those years was hiring spies and informants among workers; keeping a “black list” of workers; restricting the right to free speech, freedom of assembly, and freedom of the press; establishing a company police force; and sanctioning problematic workers from company housing.⁴⁰ In the central Andes, the dominating system of control encompassed not only these measures of repression, but also full possession of extensive areas of land and cooptation of local authorities. Domination was also aimed at the re-shaping of traditional values and ways of thinking. DeWind provides an illustrative account of CPC social workers “educating” rural working families about how to better appreciate urban “middle class” values; it was hoped that this would help to accelerate the process of adapting to their new lifestyle.⁴¹ Women were targeted as the most effective vehicle for shaping these new values. As DeWind maintains, “[b]ecause the men were away at work, the main burden of a family’s adaptation to camp life was placed in the women, for whom the most important problem was to make ends meet on a

³⁹ *Ibid.* at 80-81.

⁴⁰ *Ibid.* According to the authors, the system of absolute control, in term of physical isolation and complete possession of the surrounding land, was fully operative in all mine sites but less clearly present in the cases of Cerro de Pasco and La Oroya.

⁴¹ DeWind, *supra* note 4 at 64.

miners' wages."⁴² Indeed, wives of mining and smelter workers were educated about how to spend their husbands' wages wisely, and how to dress properly and maintain "presentable" homes.⁴³ This practice created a great deal of distress and frustration, for it devalued and minimized customs and traditional values.⁴⁴

Economic domination and cultural assimilation, however, did not fully neutralize counteractions to the negative effects of proletarian formation. For instance, women's frustration prompted the formation of the "*Comite de Damas*" (Women's Committee), an organization that actively and fearlessly participated in strikes and protests organized by the resurgent union organizations.⁴⁵ Indeed, the consolidation of the proletarian class simultaneously stimulated the formation of a labour movement among the miners. By 1945, the first union was granted legal recognition, inspiring the forming of a further 38 unions plus regional and national federations in the following years.⁴⁶ The presence of Marxist-leaning political parties significantly contributed to the ideological development

⁴² *Ibid.* at 65.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* It should be noted that by 1930, some embryonic forms of unions had emerged in the context of the first general mining congress of the central Andes, held in La Oroya. Greatly influenced by the anti-imperialist ideals of the Peruvian Communist Party, the Union of Smelter Workers of La Oroya arose to advocate for improvements in their living and working conditions, a solution for the pollution problems, and also to complain about workers laid off due to the effects of the economic depression. For authors like Flores Galindo, the influence of communist ideals failed to assist in maintaining a more robust, long-lasting class movement that was responsive to the particular circumstances of the central highlands. As mentioned earlier in this chapter, such a failure can also be explained by the fact that, during the primary stage of a proletarian class formation, workers were "seasonal" migrants deeply rooted in community values. As such, the endorsement of a class ideology or self-identity with a condition of domination and exploitation was still premature. The politics of reprisal of CPC in alliance with the Peruvian state played a significant role in the subsequent neutralization of unions at this stage. The mobilizing power of unions remained dormant until 1945, when they were granted legal recognition. See Galindo, *supra* note 14 at 139-166. In a similar vein, Kruijt and Vellinga, *supra* note 4 at 102, point out that during the 1920s and 1930s, workers were more fatalistic and melancholic about their condition than rebellious. Such a reality was clearly manifested in their traditional songs ("*huaynos*"), which emphasized primarily "the suffering of the mine worker" rather than their impetus to counteract the "Yankees" power.

⁴⁶ DeWind, *supra* note 4 at 63.

the miners' labour movement;⁴⁷ however, the embrace of a collective psychology of a class system that could lead to a “revolutionary class struggle” took more time to mature. From 1945 onwards, unions played a significant role in the collective bargaining for better wages and improved working and living conditions, but it was not until the 1960s that their demands became a revolutionary/anti-imperialist call for the nationalization of the company.⁴⁸ At this point an emphasis on “class identity”—expressed in workers' self-definition as “victims of the exploiting class”—became apparent.⁴⁹ The cry for “unity” was a core manifestation in this new phase of struggle. Interestingly enough, although this call was predominantly about fighting for higher wages, demands in some instances encompassed the purification of the Mantaro River.⁵⁰ This demonstrated a sense of solidarity of smelter workers with the peasant communities that lost land due to smelter pollution.

The Peruvian state, to a significant extent, acted in collaboration with CPC in attempting to control and repress unions. This partnership can be explained by the political influence of CPC and its strategic importance to Perú's economy.⁵¹ It was not until the 1968 *coup d'état* that the new revolutionary government “adopted a more friendly attitude toward miners” as part of a set of socially progressive reforms.⁵² Yet,

⁴⁷ See: Kruijt & Vellinga, *supra* note 4 (in particular, Chapter 7). Most notable was the presence of the Communist Party and the American Popular Revolutionary Alliance (APRA). In search of a potential electorate, emergent political parties such as “Acción Popular” and “Democracia Cristiana” were greatly interested in connecting with the labour movement.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.* at 119.

⁵⁰ *Ibid.* at 116, 130.

⁵¹ DeWind, *supra* note 4.

⁵² *Ibid.* at 45.

protests continued and intensified from 1969 to 1971 as negotiations with the company did not reach fruitful agreements. Protests included “*marchas de sacrificio*” (sacrificial marches) to Lima in which thousands of workers and their families pressured the Peruvian government to nationalize the company.

By January 1, 1974, the company was finally nationalized and workers were rehired by the new administration. While workers’ strikes contributed to this result, this “class revolution from below” was not the exclusive factor for the expropriation of CPC. The military “*junta revolucionaria*” came to power in 1968 under a nationalist program of reforms aimed at advancing a structural transformation that “would clearly not leave the mining sector unchanged.”⁵³ As part of this program, the 1969 agrarian reform forced the expropriation of diverse CPC “*haciendas*.” In this climate of imminent expropriation of all CPC facilities, the agrarian reform, coupled with the absence of workers due to strikes, were sufficient reasons for CPC to begin negotiations leading to its own expropriation.⁵⁴

In spite of this more promising political and ideological scenario, the hope for structural transformation led by a revolutionary government and a mineworkers’ movement was not realized, for a number of reasons. First, the mineworkers’ movement had difficulty gaining political strength independently. The movement generally acted under the guidance and support of leftist political actors. When such actors were discredited by the effects of an internal war on terrorism, so was the movement.⁵⁵

⁵³ Kruijt & Vellinga, *supra* note 4 at 4.

⁵⁴ *Ibid.*

⁵⁵ See Gerardo H. Damonte, *The Constitution of Political Actors: Peasant Communities, Mining and Mobilization in Bolivian and Peruvian Andes* (Saarbrücken, Germany: VDM Verlag Dr. Müller, 2008).

Second, by the time the revolutionary government came to power, *gran minería* (large-scale mining) had already gained strategic importance in Perú's economy. In such a context, reforms in the mining sector simply implied a change from private to public ownership—a change that was carried out according to the same capitalist apparatus within which the mining industry was already largely organized. These changes did not alter the ties of dependency and multiple loci of power imbalances in La Oroya; and more significantly, the problem of smelter pollution—the detrimental health effects of which would not be realized until decades later—remained a foundational issue that was impossible to overcome.

2.2.2 The Smoke Damage Controversy

The rapid expansion of CPC productivity created the need for a technologically adequate smelting facility to effectively connect the system of mineral extraction and production for export.⁵⁶ Because of its strategic location at the crossroads of the three most important geographical regions in Perú and its proximity to the Cerro de Pasco network of mines, the town of La Oroya appeared the perfect spot to build the smelter. Additional reasons included the existence of a railway facility, which would allow commercialization of products, and proximity to the Mantaro River, which would ensure access to water for the production process and an outlet for industrial waste.

At the beginning of the 20th century, La Oroya was composed of five *haciendas* and three “*comunidades*.” The latter included San Jerónimo de La Oroya, Huaynacancha, and Saco, which occupied a territory of 1,000, 2,000 and 7,000 hectares respectively. The

⁵⁶ Existing smelting facilities such as “Tiyanhuarco” proved inappropriate in terms of location and technology, resulting in the productive process being more costly.

major economic activities in these communities were agriculture and the raising of cattle and sheep.⁵⁷

The process of constructing the La Oroya smelter began in 1920. The construction coincided with a sudden drop in the price of copper, which made CPC owners rush the construction of the smelter without a proper fume control and monitoring system.⁵⁸ As a result, between 100 and 125 tons of arsenic, sulphur dioxide, lead, bismuth, and other poisons began to fall each day on neighbouring villages.⁵⁹ The “cataclysmic” effects of pollution, as Juan Laite describes it, led to the perishing of 278 cattle, 3,874 sheep and nearly 200 mules and horses, as well as the destruction of many hectares of land.⁶⁰ Some residents also claimed to suffer from skin irritation and hair loss.⁶¹ In the long term, such effects had far-reaching consequences: most notably, as discussed above, the dismantling of a community-based agricultural economy, the acceleration of a process of proletarian formation, the reshaping of values and identities, and the reinforcement of inequalities (see Chapter 5).

By 1924, about 28 “*hacendados*” and 30 *comunidades* from La Oroya and the surrounding areas were undertaking legal actions against CPC for damages due to pollution.⁶² In addition, wealthy families that had been affected pressured the government to establish a “smoke commission” to investigate the degree of damage and to mediate negotiations for redress. A total number of five smoke commissions were set up between

⁵⁷ See Laite, “Industrial and Social Change”, *supra* note 3 at 75. It is estimated that the land shared was between 0.5 to 2.5 hectares per *comunero*.

⁵⁸ Mallon, *supra* note 4 at 225.

⁵⁹ *Ibid.* at 226.

⁶⁰ Laite, “Industrial and Social Change”, *supra* note 3 at 84.

⁶¹ *Ibid.*

⁶² Mallon, *supra* note 4 at 227.

1923 and 1966.⁶³ In response, the company bought 13 *haciendas* between 1924 and 1928, which represented approximately 200,000 damaged hectares.⁶⁴ As result of a lengthy process of negotiations, *haciendas* located near Tarma and La Oroya were donated to communities in addition to the compensation for damages paid yearly for 20 years.⁶⁵ However, economic compensation was never sufficient to fairly respond to the amount of loss in terms of land, traditions, and sustainable livelihoods.

The smoke controversy was such a key causal force in dismantling the traditional socio-economic organization of La Oroya and, in turn, in transforming peasants into full-time smelter workers that researchers from the Peruvian *Centro de Investigación Agrícola* suggest that such an episode was effectively planned from the beginning.⁶⁶ This hypothesis is grounded on the assumption that CPC, given similar experiences with North American smelters, was not oblivious to the potential effects of pollution. Whether true or not, the reality is that by purchasing or economically compensating for the damaged land instead of installing a proper smoke screen system, “[t]he company was making a good long-term investment.”⁶⁷ Indeed, after CPC installed the Cotrell system to reduce toxic emissions in 1945, the once-polluted land became relatively productive again. On this “revived” land, CPC put into motion another profitable business: the “*Ganadera Division del Centro*” (Central Livestock Division), where it created a new breed of sheep

⁶³ Laite, “Industrial and Social Change”, *supra* note 3.

⁶⁴ Mallon, *supra* note 4 at 229.

⁶⁵ Laite, “Industrial and Social Change”, *supra* note 3 at 85.

⁶⁶ *Ibid.* at 94.

⁶⁷ DeWind, *supra* note 4 at 58.

(*la raza Junín*).⁶⁸ The high productivity from this livestock division allowed CPC “[t]o provide meat to its labour force at below the market price, helping to keep wages low and profits high.”⁶⁹

Between the nationalization of the CPC in 1974 to Centromin Perú and the new privatization of the smelter to Doe Run in 1996, scant literature reporting on the issue of smelter pollution can be found.⁷⁰ To my knowledge, the only exception is the 1995 study entitled *Catástrofe ecológica en los andes centrales* [Ecological Catastrophe in the Central Highlands], which argues that environmental contamination continued when the national company Centromin Perú operated the smelter.⁷¹ It was not until the privatization era of the 1990s that environmental discourse on the issue became more prominent and contributed to the mainstreaming of environmental health problems in La Oroya. It was also in the aftermath of the privatization of the La Oroya smelter that a new stage—a fourth stage—in the forming of smelter workers identity was revealed: the ostensible replacement of class identity for a sense of loyalty to the smelter company (see Chapters 5 and 6).

In short, since the beginning of the capitalist transformation of the central Andes, a series of politico-ideological discourses have mobilized the masses to counteract the persistent reality of structural violence and unfreedom in La Oroya. Whether these were

⁶⁸ Mallon, *supra* note 4 at 228.

⁶⁹ *Ibid.*

⁷⁰ It might be the case that once the Cerro de Pasco Corporation was nationalized in 1974, the central Andes stopped being an attractive area of research for dependency theorists. Critics of dependency theory turned their focus to class and the nature of mining production; yet, the issue of pollution—beyond a mere reference—remained greatly absent from any analysis of La Oroya or other central Andean towns. As noted in Chapter 1, it was not until the 1990s that “environmental concerns” became more explicit.

⁷¹ Carlos Alarcon, *Catástrofe ecológica en la Sierra Central: Incidencia de la actividad minero-metalúrgica en el medio ambiente* (Lima: IPEMIN-Arteida Editores, 1995).

indigenous intellectuals based in Lima complaining about the *enganche* system, political parties fostering an ideology of proletarian class during the 1960s, or the environmental human rights transnational movement of the 1990s, all have periodically made visible the distinctive temporal dimensions in the forming and reproduction of a context of unfreedom in La Oroya. While all these discourses have targeted different phases in the history of La Oroya, they have essentially confronted the same challenge: the consequences of a political-economic discourse that places large-scale mining at the center of economic development in Perú. The next section expands on this assertion.

2.3 The Political-Economic Background of Unfreedom in La Oroya

To a great extent, the strategic importance of the mining industry in Perú has been historically facilitated by the state's servile attitude towards foreign investment, its strong institutional support (e.g. pro-investment laws and favourable tax systems), and, foremost, its neutralization of actions of those wanting to expose and oppose the systems of oppression and deprivation that this industry promotes. I posit that these elements of the mining industry in general, and particularly in the context of smelter activities in La Oroya, create an unpromising scenario for those wanting to break dependency ties or resist being submerged into new ones.

2.3.1 Setting the Foundations for a Supportive State-Private Investment Partnership

A laissez-faire oriented legal framework set the tone for enduring supportive partnerships between the Peruvian state and private investors in the mining industry. The formation of this relationship began under the influence of the *Mining Code* of 1901, which promoted the entrance of large-scale investments. Mining property rights became

perpetual and irrevocable upon the payment of annual taxes.⁷² As mentioned earlier, it was under this liberal-oriented legal framework that CPC began operations in Perú. Since then, a marked imbalance—favouring legislation for private interests in the mining sector over the political protection of those suffering the negative externalities of mining activities—has remained a constant pattern in Perú. This was readily apparent, for example, in the treatment of the smoke controversy under the government of Augusto B. Leguia (1919-1930). Accused of exerting political influence in favour of the CPC in many of the legal actions against the company,⁷³ Leguia was also blamed for the absence of any regulation against the abusive contractual system of *enganche* and insufficient labour regulations to ensure safe working conditions in the mines. A tragic accident in 1910 in the Goyllarisquisga Mine that resulted in the death of many workers brought this problem to the fore. In this case, as Mallon notes, Peruvian governmental authorities “[w]ere so partial to the North American corporation that it was impossible to enforce compliance.”⁷⁴

The Peruvian *Constitution* of 1920 (promulgated January 18, 1920) reinforced the state’s supportive role of private actors participating in the capitalist socio-economic transformation taking place in the country. It did so by promoting equal governmental treatment of both national and foreign investments, and by establishing the state’s role as mediator in labour conflicts and in indigenous conflicts over property rights. In light of such a constitutional framework, an embryonic attempt to form unions as collective

⁷² Dore, *supra* note 4 at 90.

⁷³ Mallon, *supra* note 4 at 228.

⁷⁴ *Ibid.* at 206.

spaces through which to counteract the power imbalance of this new state-company partnership was also repressed.⁷⁵

Revenues collected from the extractive industry primarily served to pay Perú's foreign debt, expand governmental bureaucracy, and build the infrastructure and services necessary to facilitate the continual expansion of extractive activities in the central Andes.⁷⁶ After overcoming a world mining crisis, the new and deeply controversial *Mining Code* of 1950 (approved by Law Decree 11357), introduced more favourable conditions that prompted the expansion and consolidation of the mining industry as a strategic actor in Perú's national economy. Among these benefits, a renewed tax structure and a convenient depletion allowance played a determining role in intensifying foreign economic domination in Perú.⁷⁷ In such a favourable investment climate, new waves of foreign capital flooded into the country. Most notably, the US-based Marcona Mining Company started the first large-scale open-pit mining project, and the US-based Southern Peru Copper Corporation decentralized the territorial concentration of extractive activities towards the southern region of Perú. The transition from underground to open-pit mining technology that characterized this period of investments doubled the production of minerals between 1950 and 1959.⁷⁸ This trend continued for many years following this initial boom in production. However, the consistent high productivity and prosperity of the extractive industry began declining around the mid-1970s. A drop in the

⁷⁵ See *supra*, note 45.

⁷⁶ Mallon, *supra* note 4 at 231-32.

⁷⁷ Dore, *supra* note 4 at 141-142. The renewed tax structure of exports shifted the calculation of taxes based on international metal prices to that of profits. Meanwhile, depletion allowances facilitated almost one-half of the company's profits being tax-free.

⁷⁸ *Ibid.* at 144-145.

world market prices, coupled with a quick rise in wages from the 1950s onwards—due to labour movement protests—were key factors explaining the crisis in the 1970s.⁷⁹

The anti-imperialist rhetoric of the Velasco Alvarado military coup of 1968 brought some hope of breaking from foreign economic and political domination, and, in turn, of dismantling the unjust socio-economic structures operating in Perú. However, the nationalist project rapidly proved to be more symbolic than truly revolutionary, at least in the case of the extractive industry.⁸⁰ As Elizabeth Dore eloquently affirms,

The Velasco regime was not fundamentally anti-imperialist. Rather it sought to establish a new alliance with imperialism, which would be characterized by a larger role for the Peruvian industrial bourgeoisie and for the state. The Velasco project envisioned that the state would develop economic plans that identified priority sectors and seek foreign capital to participate in the fulfillment of these projections. Only in those branches of the economy unable to attract private capital would the state participate directly in production. This was a capitalist, not a socialist, project.⁸¹

Such was the value placed upon the mining industry that the Minister of Energy and Mines under the Velasco government claimed, “The entire success of the Peruvian revolution depends upon the performance of his sector of the economy.”⁸² Under this logic, the CPC was nationalized in 1974 and became the state company Centromin Perú. During its last years of operations, CPC did little to invest in new technology to modernize its system of production, and made no effort to improve housing conditions for the labour force, the consequences of which were later paid for by the state. Indeed, as Dore notes, Centromin Perú and other nationalized companies, while ostensibly

⁷⁹ *Ibid.* at 155-156.

⁸⁰ Perhaps the most drastic measure, for which the Velasco government is mainly remembered, is the agrarian reform. The reform was aimed to dismantle the structures of power of landed elites and, in turn, the unequal distribution of land between *hacendados* and peasants. Up until today, the assessment of the real benefits, if any, of such reform remains a controversial topic.

⁸¹ *Ibid.* at 174.

⁸² DeWind *supra* note 4 at 71.

investments that would see future returns, “[b]urdened the state with large deteriorating industrial complexes that governments since Velasco’s have been struggling to revitalize.”⁸³ For instance, to continue expanding the sector and boost the productivity of old complexes such as Centromin Perú, the Velasco government took out large foreign loans, which they expected to pay off with the resulting thriving industry. However, the industry did not flourish as anticipated, and the nationalist experiment left the country with a legacy of indebtedness that was passed to subsequent governments.⁸⁴ In the second phase of the military regime, under general Morales Bermudez, the revolutionary rhetoric and union power were minimized.

A democratically elected government was reinstated in 1980, coinciding with a drop in the price of metals that severely affected the industry and caused the closure of numerous mines. Nationalized companies continued operating at loss, however, to enable the government to secure foreign exchange to cover the national budget.⁸⁵ This situation continued until it became unsustainable, ultimately leading to the emergence of a new politico-economic scenario in the 1990s.

2.3.2 The Neoliberal Turn and the Privatization of the La Oroya Smelter

Dependency on an export-lead development model as the primary engine for growth instead of seeking a more autonomous and diversified economy did not facilitate successful development in Perú.⁸⁶ Reflecting on this reality prompted Thorp and Bertram, as far back as 1978, to maintain that “Peru has been the prisoner not only of external

⁸³ Dore, *supra* note 4 at 185.

⁸⁴ *Ibid.*

⁸⁵ Manuel Glave & Juana Kuramoto, “La Minería Peruana: Lo que sabemos y lo que aun nos falta por saber” in GRADE, *Investigación, políticas y desarrollo en el Perú* (Lima: Grupo de Análisis para el Desarrollo-GRADE, 2007) 135.

⁸⁶ Thorp & Bertram *supra* note 4.

economic trends, but also of its own history, with the collapse of radical policies at time of crisis reinforcing the conservatism of policy during the subsequent boom.”⁸⁷ After a painful decade of internal civil war and terrorism, catastrophic hyperinflation during the first government of Alan Garcia (1985-1990), and the inability to service their foreign debt, the Thorp and Bertram prediction re-emerged in the 1990s. Framed by the neoliberal-oriented discourse of development promoted by institutions such as the World Bank and the International Monetary Fund, the extractive industry regained momentum conducive to advancing economic growth while reducing poverty.⁸⁸ During the neoliberal government of Alberto Fujimori (1990-1995/1995-2000), a strategy to attract new waves of foreign capital to Perú included a massive lay-off of workers, the disappearance of much of the labour movement, an attractive constitutional and legal framework for mining investments,⁸⁹ and a restructuring of the once nationalized mining companies. Such a plan effectively fertilized the terrain for a subsequent “mining boom.” From 1995 to 2004, the contribution of the mining industry to Perú’s GDP increased from 4.5% to 8.6% in 2004.⁹⁰ In the same period, exports in the mining sector increased 166%,

⁸⁷ *Ibid.* at 325.

⁸⁸ Known as the “Washington Consensus” prescriptions, these institutions dictated the necessity of privatization and deregulation resulting in trade liberalization, among other measures, as the most efficient pathway for advancing economic growth and poverty reduction in the developing world. See Joseph E. Stiglitz & Narcis Serra, *The Washington Consensus Reconsidered: Towards a New Global Governance* (New York: Oxford University Press, 2008).

⁸⁹ Legislative Decrees No. 757 (13 November 1991) and No. 662 (2 September 1991) were, together, the cornerstone that provided legal stability to foreign private investment. Among the benefits were the speed of administrative procedures for the approval of investments, availability and free transfer of foreign monetary exchange, equal treatment under the law of national and foreign investment, and, most importantly, the signing of tax stability agreements. The latter were aimed to guarantee 10 years of tax stability, meaning that any rise in income-tax rates or the creation of new taxes would not be applicable to signatory investors of those agreements. In addition, the *Constitution* of 1993 came to consolidate the idea of minimal state intervention in the economy under the “subsidiary principle” (article 38). According to this principle, the Peruvian state is forbidden to develop any entrepreneurial activity, such as the direct exploitation of natural resources, unless authorized by Peruvian law in cases of manifest national interest.

⁹⁰ Glave & Kuramoto, *supra* note 85.

accounting for more than half of Peruvian national exports.⁹¹ Today, mining exports stand out as the undeniable main source of foreign exchange and a crucial contributor to the sustainable economic growth the country has enjoyed since the beginning of 2000. Moreover, such a model of economic development has recently put the country at the top of the Latin American region in terms of sustained growth.⁹² By the end of 2010, there were already more than 21 million hectares of new mining concessions expected to be exploited in the incoming years, representing 16.73% of the total national territory.⁹³

Yet, sustaining this unprecedented economic growth is an embarrassing past. Indeed, the Parliamentary Commission that investigated economic and financial crimes during the Fujimori regime (1990-2001) has produced evidence that the privatization process leading to current economic growth has been plagued by irregularities and corruption.⁹⁴ According to the commission, the design of contracts on future investment commitments contained a systematic undervaluation of assets, embezzlement of privatization revenues, and irregularities. In the case of mining investments in particular, the commission found that the crucial issue of pollution and environmental protection did not receive due attention.⁹⁵ The privatization of the La Oroya smelter is an example of such findings.

⁹¹ *Ibid.*

⁹² See “Perú liderara el crecimiento económico en Latinoamérica hasta el 2015” *Diario el Comercio* (30 May 2010), online: El Comercio <<http://elcomercio.pe/economia/487533/noticia-fmi-liderara-crecimiento-economico-latinoamerica-hasta-2015>>.

⁹³ See CooperAcción, “*Informe cartográfico sobre concesiones mineras en el Perú*” (Lima: CooperAcción, 2010).

⁹⁴ For access to preliminary and final reports on the Investigating Commission on the Economic and Financial Crimes Committed during the Government of Alberto Fujimori (1990-2001), see Government of Perú <<http://www.congreso.gob.pe/comisiones/2002/CIDEF/inicio.html>>.

⁹⁵ Peruvian Congress. *Parliamentary Report to Implement the Recommendations of the Committees Investigating Acts of Corruption Perpetrated during the Government of Former President Alberto Fujimori*

The privatization of La Oroya smelter—then administered by Centromin Peru—was expected to be a complex process due to the history of pollution and the economic burden of provision of worker services (e.g. schools, housing units, health care facilities, water supply). Two attempts were made to privatize Centromin Peru.⁹⁶ The first took place on May 10, 1994. Despite a great deal of international publicity and the implementation of a company restructuring plan to make the investment more attractive to potential buyers,⁹⁷ the public auction was declared void due to a failure in any attempt for an “outright sale” of the company. Following a market survey, a new privatization strategy of “fragmented sales” was implemented, by which mine units, the La Oroya smelter, and hydroelectric facilities, among others, were made independent entities for alternative sale options.⁹⁸ In 1997, this second attempt to privatize the smelter succeeded: it was sold to the consortium Doe Run Resources Corporation/The Renco Group Inc.⁹⁹

(1990-2001), online: Government of Perú.
 <http://www.congreso.gob.pe/historico/ciccor/infofinal/priv_centromin.pdf>.

⁹⁶ The legal framework under which the privatization of Centromin was authorized encompassed the following norms: Legislative Decree No. 647, which declared the privatization of this company as being in the national interest; and Supreme Resolution No. 102-92-PCM, which incorporated Centromin within the framework of action of the general committee created to implement privatizations (COPRI). Such resolutions also approved the constitution of a special committee (CEPRI) to carry on the process of the privatization of Centromin. A plan to promote an outright sale of Centromin was approved by Supreme Resolution No. 482-93-PCM. After adjustments to this initial strategy of privatization, Supreme Resolution No. 016-96-PCM approved a new process of privatization in the mode of a fragmented sale.

⁹⁷ A restructuring plan emphasized resolving the issue of overstaffing and the company’s external debts. It should be noted that by 1990, Centromin Perú had a labour force of 19,720 workers, including permanent and contract workers, who were subject to the rationalization plan that encompassed retirement incentives and workers’ reconversion plans. In terms of the financial strategy, the Peruvian State remedied the company’s financial obligations as a capital contribution. Urgent Decree No. 02-94 (February 1994) and Supreme Decree No. 33-94-EF (April 1994) approved such a transaction.

⁹⁸ A fragmented sale was not uncontroversial. While supporters of this new strategy sustained that there were no technical and economic reasons to justify an outright sale encompassing the smelter, the mine units, and the hydroelectric facilities, opponents argued that an outright sale would allow more precise financial management and ensure the supply of mineral concentrates.

⁹⁹ The bid was initially granted to the Mexican Company Peñoles. Suddenly and unexpectedly, the Mexican company withdrew its offer just before signing the contract, and was replaced by Doe Run Company.

The transfer was executed through its Peruvian branch, Doe Run Peru (hereinafter “Doe Run”).¹⁰⁰ As noted in Chapter 1, the responsibilities to address the problem of smelter pollution were divided between the state and the company. On the one hand, as part of the privatization contract, Doe Run was responsible for implementing the “Environmental Mitigation and Management Plan for La Oroya” for the La Oroya smelter (hereinafter “La Oroya PAMA”); on the other hand, in accordance with Directorial Resolution No. 334-97-EM/DGM, the Peruvian state was responsible for soil remediation of the area affected by historical contamination.

The PAMA of Doe Run consisted of a set of projects expected to be completed within a time span of *ten non-renewable years* expiring on January 13, 2007. Broadly speaking, these projects were aimed at implementing the following: (a) water effluent treatments and management, and proper storage of solid waste; (b) control of gas emissions and the application of technologies for concentrating sulphur dioxide; and (c) construction and completion of two new sulphuric acid plants.¹⁰¹

In the years following the beginning of Doe Run’s smelting activities, the technical design, implementation, and state monitoring system for effective compliance of PAMA were questioned. To begin with, according to a seminal study in 2002 called *La Oroya Cannot Wait*, Cerderstav and Barandiaran put forward a myriad of technical reasons to sustain their view that the La Oroya PAMA was in fact insufficient to protect

¹⁰⁰ Privatization of the smelter was concretized by means of a contract of stock transfer and capital increasing in the following terms: Doe Run agreed to pay 49% of the company’s social capital corresponding to US\$ 121.4 million in addition to a payment of US\$ 126.5 million as a capital increment which is equivalent to 51% of the company shares. The contract signed on October 23, 1997, was registered by the Public Notary “Anibal Corvetto Romero.” It is worth noting that, along with the La Oroya smelter, Doe Run also acquired the property of the Cobriza mine unit; however, for the purpose of this study, I will focus only to the La Oroya smelter transaction.

¹⁰¹ Ramon Pajuelo, *Medio ambiente y salud en La Oroya* (Lima: CooperAcción, 2005).

environmental and health issues in this community.¹⁰² In a similar vein, a 2003 report by an independent party, SENES Consultants, found that only two of the almost 15 projects mandated in the La Oroya PAMA would have any real impact on reducing air pollution: that is, the construction of two sulfuric acid plants and the elimination of fugitive gas emissions.¹⁰³ Despite these findings, the Environmental Affairs Directorate for the Ministry of Energy and Mines, in response to a request by Doe Run, authorized the construction of the sulfuric acid plants as the last of all projects to be completed.¹⁰⁴

The role of the Peruvian Ministry of Energy and Mines was overtly problematic: the ministry was in charge *both* of ensuring favourable conditions for investors and of inspecting the PAMA compliance. This seemingly contradictory role engendered serious doubts about its independence and transparency in the supervision of the PAMA completion.¹⁰⁵ Such incompatibilities became readily apparent later in the PAMA monitoring process. A first external audit conducted in 2003 to measure the PAMA implementation progress indicated that contamination levels increased in La Oroya from 1995-2002 in direct response to increased increments in smelting production; not only this, but the audit flagged a worrisome delay in La Oroya PAMA investments, indicating

¹⁰² Anna Cederstav & Alberto Barandarian, *La Oroya Cannot Wait* (Lima: Inter-American Association for Environmental Defense (AIDA) and the Peruvian Society for Environmental Law (SPDA), 2002).

¹⁰³ SENES Consultants Limited, *Análisis crítico del Programa de Adecuación y Manejo Ambiental (PAMA) de la fundición Doe Run en La Oroya, Peru* (November 2003). Cited in Pajuelo, *supra* note 101 at 112. A plan to reduced “fugitive gas emissions” was not contemplated in the original PAMA plan, but in the “modernization plan” annexed to it.

¹⁰⁴ Approval was granted based on the following Resolutions: Directorial Report No. 009-2002 EM/DGAA/LS (17 January 2002) and Directorial Resolution No. 28-2002-EM/DGAA (25 January 2002). See Juan Aste, *El futuro del complejo metalúrgico de La Oroya* (Lima: Grupo Andes, 2005) at 9.

¹⁰⁵ In fact, such criticism forced the institutional bodies in charge of the supervision of extractive activities to implement changes. In 2007, the supervision of mining activities was designated to the Peruvian Supervisory Board for the Investment in Energy and Mining Projects (“OSINERGMIN” in Spanish). In 2009, Law No. 29325 (4 March 2009) transferred such functions to the Supervisory Board for Environmental Monitoring, a branch of the Peruvian Ministry of the Environment.

that its timely completion was at risk.¹⁰⁶ These results gave rise to further criticism of the Ministry of Energy and Mines' supervisory role for PAMA compliance in accordance with a legally stipulated investment schedule. What came next were two controversial PAMA deadline extensions that prompted the beginning and exacerbation of a social conflict in La Oroya—a conflict that, as discussed in the previous chapter, consolidated an unjust human rights trade-off between health and work in La Oroya.

2.3.3 New Conflicts, New Discourses, Same Institutional Response

Despite the emergence and intensification of socio-environmental conflicts like the one in La Oroya, “*Perú: País Minero*” (“Perú: A Mining Country”) has become the favourite slogan of governmental officials and private investors alike to underscore the importance of the extractive industry to the national economy in the aftermath of the privatization era. The slogan not only reveals the new governmental economic growth-dependency mentality but also speaks to the prevalent social valuation of economic growth as the most effective path to promote national well-being. This poses serious challenges to those individuals and communities that value ways of living that are alternatives to mining activity.¹⁰⁷

¹⁰⁶ Golden Associated Brasil Ltd. conducted the first external audit of Doe Run at the request of the Director of Mining Affairs, Maria Chappuis, which is said to have marked a turning point in the treatment the Ministry of Energy and Mines gave to the company. As soon as she was appointed to that position, Chappuis identified significant problems in the supervision of Doe Run. A series of PAMA amendments without technical justification and the non-existence of reports on the compliance of intermediate goals prompted her to require the intervention of an independent body. Chappuis' firmness in making Doe Run accountable for the environmental obligations agreed to and, in particular, her opposition to a PAMA deadline extension in 2006, resulted in her removal from the ministry. See Ricardo Uceda, “El ministerio de plomo: La derrota del Estado ante Doe Run desde la desencantada experiencia de tres funcionarios publicos” *Revista Poder 360* (19 October 2009), online: Poder 360 <http://www.poder360.com/article_detail.php?id_article=2816>.

¹⁰⁷ José De Echave, Raphael Hoetmer, & Mario Palacios, eds., *Minería y territorio en el Perú: Conflictos, resistencias y propuestas en tiempos de globalización* (Lima: Conacami, CooperAcción and Fondo Editorial UNMSM, 2009); José De Echave, *et al.*, *Minería y conflicto social* (Lima: IEP, CIPCA, CIES and CBC, 2009).

As in the past, socio-environmental conflicts are also stimulating the emergence of new political actors and the construction of new collective identities.¹⁰⁸ Examples of these are the Interethnic Association for the Development of the Peruvian Jungle (“AIDSESP” in Spanish)¹⁰⁹ and the National Confederation of Communities Affected by the Mining Industry (“CONACAMI” in Spanish),¹¹⁰ among other local organizations. For Gerardo Damonte, the existence of these organizations demonstrates that peasant communities are re-emerging as the new protagonists in mining conflicts in the context of neoliberalism.¹¹¹ Articulated under the sentiments of an indigenous movement of resistance and the environmental discourse introduced by a transnational human rights network system, these examples depict collective efforts to unite voices in consolidating a renewed and more inclusive political agenda. To some extent, the movement for the health of La Oroya (MOSAO) speaks about this new reality (see Chapters 1 and 5).

If the economic, political, and ideological context of the last century placed the labour movement as the main actor of mining struggles, the new political discourse coupled with a modernized system of production requiring a minimized labour force,

¹⁰⁸ Damonte, *supra* note 55.

¹⁰⁹ AIDSESP was constituted in 1980 to represent the historical interests of indigenous people from the Amazon. It acquired visibility during the infamous “*Bagua*” conflict in the Peruvian Amazon. The *Bagua* case is by far one of the most unfortunate episodes in the history of conflicts in the extractive industry. It originated via the executive passing 101 legislative decrees facilitating private investment in areas occupied by peasant and indigenous communities. No prior consultation process was undertaken. In June 2009, this resulted in a series of riots and protests in the city of Bagua, which culminated in dozens of fatalities and hundreds of injuries (among both police and citizens). The *Bagua* case raised consciousness about the urgent need to approve an indigenous peoples’ consultation law; however, this was not passed until August 2011.

¹¹⁰ CONACAMI emerged in 1999 as a catalyst of diverse community efforts to put “mining problems” on the national agenda. They define themselves as the representation of ancestral communities who build socio-economic and environmental justice and exercise their collective rights against abuses of transnational corporations and national-global policies favouring extractive activities.

¹¹¹ Damonte, *supra* note 55.

“[n]arrowed the space for mineworkers’ cultural and political reproduction.”¹¹² Unions that survived the privatization process of 1990s, such as those of the La Oroya smelter, also suffered the consequences of such changes. The weakening of class identity made them more susceptible to co-option and acquiescence (see Chapters 5 and 6).

The history of transformation of discourses and protagonists in mining conflicts suggests that tension in the mining industry will likely not disappear but will instead be manifest themselves under new circumstances. This is particularly likely in a context in which the historical partnership of state-private investment remains alive at the same time as the historical mechanism of neutralizing collective actions that challenge such partnerships. It can be argued that the second government of Alan Garcia (2006-2011) implemented this neutralizing *modus operandi* to its maximum extent through his “dog in the manger syndrome.”¹¹³ Under this policy doctrine, any political actors or organized communities resisting the brutal imposition of extractive activities were equated to obstructionist “dogs” who rejected progress both for themselves and for the whole country. In the logic of this framework, being critical of or opposing the negative effects of mining activities manifested a syndrome of backwardness. The result of this doctrine was a high level of intolerance to local demands, the incapacity to understand the cultural and historical dimensions behind mining conflicts, the absolute neglect of any prior

¹¹² *Ibid.* at 82.

¹¹³ Alan García. “El síndrome del perro del hortelano” *Diario El Comercio* (28 October 2007), online: El Comercio <http://elcomercio.pe/edicionimpresa/html/2007-10-28/el_sindrome_del_perro_del_hort.html>. Under such a doctrine, García attempted to raise concerns about the abundance and richness of the country that, for ideological and bureaucratic reasons, was left underexploited. The message was intended for those who opposed the indiscriminate privatization of natural resources.

process of local consultation, the delegitimization of new political actors, and a systematic criminalization of public protest.

The recent electoral campaign that led to the presidential election of nationalist candidate Ollanta Humala prompted a more serious treatment of the issue of mining and socio-environmental conflicts in Perú. The campaign at the same time demonstrated the considerable power of the enduring alliance between foreign mining companies, national mining entrepreneurs, and political authorities that functions to sustain the whole industry. This alliance significantly contributed to the development of a campaign aimed to discredit Humala by spreading fear that Humala's critical position on the mining industry represented a threat to the rule of law and the continuation of Perú's healthy economy. As a result, Humala moderated the tone of his campaign and, under the slogan "*crecimiento con inclusión*" ("economic growth with inclusion")—avowing that any prospective reform would not significantly alter the Peruvian model of economic development—he finally succeeded to power.

After just a few months in power, the nationalist government effectively accomplished two of its most precious electoral promises. The first was the passing of a long-awaited indigenous people's consultation law that recognizes the need for a prior process of consultation before authorizing any legislative or administrative measure that may jeopardize indigenous peoples' territories, cultures, and collective rights.¹¹⁴ The second was to increase the voluntary economic contributions of the mining companies and restructure the tax regime for the mining industry, which will allow increased revenues to fulfill the "*crecimiento con inclusión*" promise. Although some political

¹¹⁴ *Indigenous Consultation Law, Law 29785* (07 September 2011), was passed under the framework of International Labour Organization's Convention No. 169, the *Indigenous and Tribal Peoples Convention*, which Perú ratified in 1983. This law is still in the process of being implemented.

analysts have optimistically proclaimed the end of the “the dog in the manger syndrome” doctrine, this is still too early to predict. In post-neoliberal times, the mining industry has become a geopolitical tool in the competition for hegemonic economic growth within the Latin American region. Even those countries whose governments won elections based on an overtly anti-mining discourse, most notably Ecuador and Bolivia, are moderating their discourses and ending up, to some extent, being co-opted by the powerful forces of the industry.¹¹⁵

2.4 Conclusions

In this chapter, I have introduced the socio-historical roots and the politico-economic background leading to the emergence of a context of systemic unfreedom in La Oroya. My goal was to illustrate the extent to which the La Oroya community has been trapped in a vicious cycle of injustices since its constitution as a smelter town. In this way, I wanted to make apparent that human rights abuses revealed in the recent socio-environmental conflict in La Oroya—discussed in the previous chapter—represent only the “tip of the iceberg” of more complex structural problems.

It is indisputable that Doe Run and the Peruvian state have joint responsibility for the public health crisis suffered in La Oroya, and that actions and omissions of both actors forced inhabitants of La Oroya to trade off between health and work. Nonetheless, this reality only exposes one level of explanation for the La Oroya conundrum. I argue that to fully understand how and why the community of La Oroya came to face the tragic dilemma of accepting trade-offs between the two essential components of human

¹¹⁵ See Anthony Bebbington & Denis Humphreys Bebbington, “An Andean Avatar: Post-Neoliberal and Neoliberal Strategies for Securing the Unobtainable” (2011) 16:11 *New Pol. Econ’y* 131.

wellbeing in the first place—and furthermore to understand why individuals blindly accepted subordination to the smelter company when the health of their own children and families were at risk—we must analyze the “causes of causes.” By this I mean we must dig *deeper and wider* to expose the precise contours of and components sustaining the context of systemic unfreedom in today’s La Oroya. This analysis will lead us to better understand how living in a context of unfreedom reinforces inequalities, reconstructs identities, shapes values and life aspirations, and, overall, determines the possibilities for achieving wellbeing. The next chapter will set up the conceptual lens necessary for such an investigation.

Chapter 3

Conceptual Framework: A Capability-Oriented Model of Human Rights

3.1 Introduction

Those familiar or even unfamiliar with the discourse of human rights often use it to signify a concrete visible act of harm perpetuated by an identifiable actor, the unjust outcome of which deserves immediate redress. This type of reasoning refers to the *perpetuator-victim-remedy model*, according to which the production of human rights abuses is predominantly understood. Nonetheless, the underlying causes of human rights abuses are often more complex—and sometimes not visible through such lenses. As the La Oroya case suggests, human rights abuses respond to complex historical processes of domination and oppression with undeniable politic-economic roots. Such abuses lead to the formation of what I have defined in the previous chapter as a context of “systemic unfreedom.”

The aim of this chapter is to design an analytical framework to identify the contours and components of contexts of systemic unfreedom and the human rights abuses such a context often triggers. I have labelled such a framework a *capability-oriented model of human rights*. This model not only problematizes and broadens our understanding of how human rights abuses ensue, but in doing so reveals that we need to go beyond immediate redress in addressing the injustices embedded in such abuses—we must also foster long-term structural transformations. In the case of La Oroya, a perpetrator-victim-remedy model was useful in pointing to the failure of Doe Run Company and the Peruvian state to comply with human rights obligations, thus harming

the well-being of the La Oroya inhabitants. Yet, such a model is insufficient in explaining why formal recognition of human rights discourse in Perú¹ has not precluded the systematic unfolding of human rights abuses in La Oroya. Or why this recognition has not facilitated transnational-oriented social mobilization or inspired judicial intervention to effectively change such a scenario of injustice. Moreover, a perpetrator-victim-remedy model provides us with little guidance to fully understand why some inhabitants of La Oroya acquiesce to the violation of their own rights. My claim is that a capability-oriented model of human rights better orients us in addressing these inquiries, for it goes “deeper and wider” in investigating the broader causes sustaining human rights abuses. As such, it is a necessary complement to the perpetrator-victim-remedy model.

Before elaborating on the components of my proposed model, however, I need to specify how this conceptual framework embraces the human rights approach. Here, I draw on Tony Evans, who maintains that there are “two opposing interpretations of the status of human rights within the current world order, one optimistic and one pessimistic.”² Optimistic interpretations are those that see human rights discourse as a promising instrument to enhance human well-being for all. Some of the reasons sustaining this way of thinking are the ubiquity of social networks, the advocacy of transnational human rights facilitated by globalization, and the framing of an international human rights law. Pessimistic interpretations, by contrast, see the political

¹ The Peruvian *Constitution* of 1993 recognizes a vast array of fundamental rights, which by virtue of a constitutional mandate, should be interpreted in accordance with the human rights treaties and covenants the Peruvian state has subscribed.

² Tony Evans, *The Politics of Human Rights: A Global Perspective* (New York: Pluto Press, 2005); see also Tony Evans, “International Human Rights Law as Power/Knowledge” (2005) 27 *Hum. Rts. Q.* 1046 [Tony Evans, “Power/Knowledge”].

realm as ultimately dominated by the values associated with market discipline in its wide range of expression (economic growth, economic development, privatization, deregulation, a minimalized state), determining a line of governmental actions that are often incompatible with human rights goals.³ In such an unpromising context, human rights discourse is reduced to “much ado about nothing,” metaphorically speaking.

My proposal takes an intermediate position. My vision of human rights adopts neither an extreme optimistic nor a pessimistic stand; rather, I view human rights through a *critical-optimistic* lens. It remains *optimistic* because I do not reject the discourse completely but desire to recover it from its dominant and comfortable headquarters and challenge its uncritical rhetoric. I believe it is possible to use the discourse for something more than an instrument of denouncement alone: human rights discourse can also serve as an analytical instrument to unveil and explain how injustices, expressed in terms of human rights violations, are historically produced and systemically reproduced. My proposal is also *critical* because it is committed to a process of constant self-reflection on the usage of human rights language itself.⁴ This requires recognizing the dominant ways knowledge about human rights realization (or lack thereof) is developed and what interests—consciously or unconsciously—it serves. Moreover, a transformative perspective, in the sense used by Nancy Fraser, fundamentally inspires the proposed

³ Tony Evans, “Power/Knowledge”, *ibid.*

⁴ Tony Evans makes a useful distinction between *criticisms* and the idea of *critique*. For him, criticism is confined to arguments about particular theories, philosophies, beliefs, ideologies, and regimes; by contrast, critique is more concerned with an investigation into the ways in which these claims to truth are achieved, legitimated, and presented as an authoritative guide for action. Furthermore, a critique is concerned with exposing the interests served by the production and maintenance of particular truths, and the processes that enable some forms of knowledge to be accepted as complete and legitimate while other forms are labelled partial and suspect. *Ibid.* at 1049.

critical-optimistic lenses.⁵ By producing evidence on the socio-historical roots and politico-economic dimensions of human rights abuses in La Oroya, this framework will advance actions aimed at transforming unjust structures rather than designing strategies that blindly support continuing the current state of affairs.

Described in these terms, the critical-optimistic lens underpinning the design of my analytical framework shows more affinity with and builds upon the body of literature I call structural approaches to human rights. Within this line of thought, I utilize the works of authors such as Gary Teeple, Paul Farmer, Mark Goodale, and Tony Evans. Yet, my investigation is not only about unveiling the unjust structures that sustain contexts of unfreedom; it is also about making explicit the effects of these unjust structures on people's well-being.⁶ To this end, human rights discourse needs clarity regarding its unit of analysis, which I suggest can be obtained by anchoring it in the concept of human capabilities.⁷ The notion of human capabilities is taken from the capability approach to development, originally elaborated by 1998 Nobel Prize winner Amartya Sen. My inclination to join these two concepts, human rights and human

⁵ Nancy Fraser distinguishes between affirmative and transformative remedies to injustice. According to Fraser, affirmative strategies for redressing injustices aim to correct inequitable outcomes of social arrangements without disturbing the underlying social structures that generate them. By contrast, transformative strategies aim to correct unjust outcomes by restructuring the underlying generative framework. See Nancy Fraser & Alex Honneth *Redistribution or Recognition? A Political-Philosophical Exchange* (New York: Verso, 2003). In her most recent account of the idea of social justice, Fraser proposes to also incorporate "participation" as a remedy to injustices. See Nancy Fraser, "Re-Framing Injustice in a Globalized World" in Terry Lovell, ed., *(Mis)recognition, Social Inequality and Social Justice* (New York: Routledge, 2007).

⁶ This is not to say that these authors overlook such effects; particularly remarkable is the seminal work of Paul Farmer who, in *Pathologies of Power*, *infra* note 34, presents a collection of case studies showing "who" are suffering the perils of structural violence.

⁷ Human rights discourse is often criticized for its broad, normative, and vague language that makes the process of achieving consensus on corresponding duties and responsibilities daunting. Accordingly, some authors argue that rights are not the appropriate starting point for discussing, for instance, what we owe each other. See, for example, Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008) at 15. My answer to such criticism is to posit that the notion of "human capabilities to well-being" should be central in the discourse of human rights.

capabilities, responds primarily to a strategic and pragmatic rationale inspired in the context of mining and conflicts in Perú (see Chapter 1). Accordingly, a capability-oriented model of human rights stands out as an analytical framework that not only diagnoses the diverse factors sustaining a context of systemic unfreedom and reveals the myriad ways this context reduces human well-being and affects human rights realization in La Oroya, but, at the same time, promotes an alternative vision of development for the Peruvian context. This is a vision that calls for re-examining the widely held belief that development is a matter of economic growth alone. An idea of development compatible with social justice aspirations should rather seek to remove the constraints that keep people from leading the lives they value.

This chapter will unfold in three sections. In the first, I will map the main arguments of what I describe as structural approaches to human rights. This body of literature is suitable and pertinent to the task of unveiling historical injustices in La Oroya. Having noted the omissions as well as the strengths in this literature, I will in the second section of the chapter explain the enriching and complementary role of the capability approach in the design of a “capability-oriented model of human rights.” Here, I will discuss the capability approach’s main tenets, as well as its promises, limitations, and common critiques. In the third section, I proceed to review the emergent body of literature that explores the relationship between human rights and human capabilities. I advance the argument that the richness of the current academic conversation at the conceptual level somehow dissolves at the methodological level, where specific disciplinary perspectives tend to be privileged. As a result, the understanding of the relationship between human capabilities and human rights loses its potential as a critical

and transformative instrument. By reflecting on such shortcomings, I propose to recast the integration between human capabilities and human rights in a more dynamic and ambitious manner. Accordingly, my capability-oriented model of human rights gives a more prominent role to identifying the historical, institutional, and social factors that constrain people's freedom. It is my hope that a thorough investigation of such factors will clarify how the notions of human capabilities and human rights operate and interact in practice. Furthermore, I envision that such an investigation will help to disclose the underlying causes that put inhabitants of La Oroya in the difficult position of prioritizing employment in the smelter by sacrificing the protection of their health.

3.2 Structural Approaches to Human Rights

The international human rights approach—which has emerged since the drafting of the 1948 *Universal Declaration of Human Rights* (UDHR)⁸ and subsequent treaties, conventions, and covenants—constitutes one of the most powerful rhetorics of present times.⁹ Underpinning the appeal of this rhetoric is the aspiration that human rights are capable of establishing equality, freedom, and human dignity as global values and

⁸ *Universal Declaration of Human Rights*, GA Res. 217(III) UN GAOR, 3d Sess., Supp. No. 13, UN No. 13, UN Doc. A/810 (1948). In this chapter, I will make reference mainly to the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR) 19 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976) and the *International Covenant on Social Economic and Cultural Rights* (ICESCR), 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976). However, it should be kept in mind that the international framework of human rights extends beyond these three documents.

⁹ It is worth noting that the history of the idea of rights can be traced back to ancient Greek philosophers and Roman views of natural law. However, the term “human rights” as such was first coined in the French Declaration of the Rights of Man and of the Citizen (1789): “*les droits de l’homme*.” A historical account of the evolution of this terminology exceeds the purpose of this chapter. Thus, my analysis concentrates only on the international human rights discourse that emerged in the context of the *Universal Declaration of Human Rights*. For a historical account of the idea of human rights, see James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008).

essential elements for the constitution of a good society.¹⁰ Sixty years after the development of the UDHR, the human rights approach is embedded in normative ideals, legal doctrine, institutional reality, and widespread social practices.¹¹ Human rights discourse has become an umbrella under which numerous claims are sheltered and multiple meanings are produced locally and at the global level.¹² While the explosion in the use of human rights language has prompted some authors to call for more modest or minimalistic approaches,¹³ others have begun challenging such a restrained understanding of human rights, arguing that widespread social activism rejuvenates a contemporary understanding of human rights.¹⁴

Yet, the human rights discourse remains deeply contested. While usually resonating with the idea of justice, this discourse lacks a clear theoretical core to elaborate what justice is about in a strict sense.¹⁵ Because human rights discourse primarily builds upon denouncing injustices, it advances “thematic” justice at best. Notable examples can be found in the environmental justice movement and in the justice in health proposals

¹⁰ Richard A. Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (New York: Routledge, 2000).

¹¹ Margaret Somers & Christopher Roberts, “Toward a New Sociology of Rights: A Genealogy of ‘Buried Bodies’ of Citizenship and Human Rights” (2008) 4:1 *Ann. Rev. of L. & Soc. Sci.* 385.

¹² Anthony Langlois, “Human Rights: The Globalisation and Fragmentation of Moral Discourse” (2002) 28 *Rev. Int’l Stud.* 479.

¹³ Michael Ignatieff & Amy Gutmann, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001).

¹⁴ Mark Goodale & Sally Merry, eds., *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge: Cambridge University Press, 2007).

¹⁵ Authors such as John Rawls and Michael Sandel have responded to transcendental inquiries about “what is a just society.” See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); Michael Sandel, *Justice: What’s the Right Thing to Do?* (London: Allen Lane, 2009); most recently, Amartya Sen has proposed a comparative approach to justice that replaces the question of what is a just society with that of “What can be done to reduce injustices?”. See Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009) [Sen, *The Idea of Justice*].

(which integrate aspirations of public health and human rights).¹⁶ Although authors such as Mark Goodale rightly claim that the practical utilization of the human rights exposes—from below—that ethical principles should guide the constitution of a good/just society,¹⁷ the process remains daunting.¹⁸ The lack of a clear commitment to a particular political vision of a “good society” allows for a wide range of discursive maneuvering. Human rights advocates, for example, are often criticized for reinforcing the “colonization of knowledge” by spreading the Western-based liberal vision of the world said to be inherent in human rights ideals.¹⁹ Simultaneously, they are also accused of being obstructionist towards economic growth and modernization in the so-called developing world.²⁰ The debate about the ambivalent role of Perú’s extractive industry—as a motor both for economic growth and for rights abuses—captures the latter tension (see Chapter 1).

In short, undertaking an analytical study based on the idea of human rights demands an awareness of its shortcomings and complexities. This is because, as Gary Teeple astutely puts it, “to embark on an analysis of human rights is to confront the inconsistencies, contradictions, and truths and untruths that they contain; it is to explore

¹⁶ David E. Camacho, ed., *Environmental Injustices, Political Struggles: Race, Class, and the Environment* (Durham, NC: Duke University Press, 1998); David Schlosberg *Defining Environmental Justice: Theories, Movements, and Nature* (New York: Oxford University Press, 2007); Jennifer Prah Ruger, “Health and Social Justice” (2004) 364 *Lancet* 1075.

¹⁷ Goodale & Merry, *supra* note 15.

¹⁸ Some innovative proposals exist on developing models to assess “justice from below.” See Fuyuki Kurasawa, *The Work of Global Justice: Human Rights as Practices* (Cambridge: Cambridge University Press, 2007).

¹⁹ See Boaventura de Sousa Santos, *Another Knowledge is Possible: Beyond Northern Epistemologies* (New York: Verso, 2008).

²⁰ See for example, Hernando De Soto, “The Peruvian Amazon is Not Avatar”, online: CIPE <<http://www.cipe.org/regional/lac/pdf/The%20Peruvian%20Amazon%20is%20not%20Avatar.pdf>>.

what can be described as abstract statements that epitomize the modern conditions in the form of a riddle.”²¹ Being aware of such complexities and contradictions, with a purpose other than to solve them all, allows me to situate this study within a body of literature that I refer to as structural approaches to human rights.²² By this I refer broadly to work that is characterized by its defence of a historical-constructionist notion of human rights; its aim to unveil the structure of human rights abuses and, in turn, make explicit the unequal distribution of harm; and, finally, its challenge to the dominant international human rights legal approach’s neglect of the problematic politico-economic context that produces unjust structures.

3.2.1 The Historical-Constructionist Notion of Human Rights

The most commonly held understanding of human rights embraces an “essentialist perspective,” for it assumes human rights to be “characteristics human beings hold by simple virtue of their own humanity.”²³ This dominant view, which is largely influenced by a modern Eurocentric epistemology, is fundamentally challenged by an account of context and history.²⁴ For instance, in the Latin American context, most

²¹ Gary Teeple, *The Riddle of Human Rights* (Aurora, ON: Garamond Press, 2004) at 5.

²² It should be noted that authors cited in this section do not label themselves as structuralists or their approaches as “structural-oriented.” My interpretation is based on my own reading of the emphasis they put on unveiling unjust structures behind human rights abuses.

²³ The idea of human rights envisions different philosophical conceptions and justifications, which can be broadly located between the extremes of the essentialist and anti-essentialist approaches, as elaborated by Serena Parekh. Broadly speaking, essentialists base their justification on some core feature of human nature or morality. Thus, human rights are pre-institutional categories that exist without the need for, and outside of, legal recognition. Conversely, the anti-essentialists avoid taking for granted assumptions of human nature, God and morality and, by contrast, proclaim the idea that human rights are grounded in political instruments or social institutions. Supporters of this latter vision claim human rights are not self-evident but dependent upon our membership in a community or upon the circumstances of human history. Serena Parekh, “Resisting ‘Dull and Torpid’ Assent: Returning to the Debate over the Foundations of Human Rights”(2007) 29 Hum. Rts. Q. 754.

²⁴ I draw on Arturo Escobar for whom “modernity” refers to the dominant type of Eurocentric modern mentality grounded in a dichotomized vision of the world. This is a way of knowing and thinking in which certain practices and ideas are given primacy and major authority over others (human vs. non-human, modern

notably in Ecuador and Bolivia, not only humans but also nature and land (*La Pachamama*, a.k.a “mother earth”) are constitutionally endowed with rights, which would be unthinkable from an essentialist modern view of rights.²⁵

Context not only reveals the distinctive cultures and different visions of the world giving rise to alternative understandings of human rights; it also reminds us that human rights are not necessarily an ontologically given entity, but are, fundamentally, the product of history. This claim is evidenced in, but not restricted to, the historical antecedents of the American and French revolutions of the 18th century; the struggles against economic exploitation of the working class in Europe of the 19th century, the claims for equal recognition promoted by feminist and Afro-American activists of the 20th century;²⁶ and most recently, the environmental and indigenous movements in the Andes region of South-America protesting the imposition of mining activities in their territories.²⁷

An account of historic processes and the scrutiny of their surrounding social context, Neil Stammers argues, illustrates that human rights are the product of specific circumstances throughout time and that they emerge primarily to oppose specific forms of power.²⁸ In a similar vein, Teeple maintains that “Rights are the compromised and evolving outcome of conflict and struggles between classes, strata, gender, and people

vs. backwards, individual vs. community). In modern thinking, authoritative ideas are equated to fundamental truths grounded in objective knowledge and reason. See Arturo Escobar, “Latin America at a Crossroads: Alternative Modernizations, Post-liberalism, or Post-development?” (2010) 24:1 *Cult. Stud.* 1.

²⁵ *Ibid.* at 39.

²⁶ See Neil Stammers, “Social Movements and the Social Construction of Human Rights” (1999) 21:4 *Hum. Rts. Q.* 980.

²⁷ Anthony Bebbington, *et al.*, “Mining and Social Movements: Struggles over Livelihood and Rural Territorial Development in the Andes”(2008) 36:12 *World Dev.* 2888.

²⁸ Neil Stammers, “Human Rights and Power” (1993) 41:1 *Political Stud.* 70.

over several centuries . . . just as these conflicts evolve so too does the definition of human rights.”²⁹ In that sense, the UDHR and subsequent treaties represent another historical step as the first international expression recognizing an equal status for *all* human beings, although, as Teeple recalls, only as a possessors of rights.³⁰ In short, I posit that far from being God-given categories or inherent in the human condition, human rights are best understood as a dynamic and evolving concept, located in a temporal space, and achieving significance within the social, political, and economic context that inspire their practice.

It is by understanding the significance and nuances of the historical development of human rights that one is able to also realize the collective and relational dimensions inherent in them. To be sure, rights came into being as a result of concrete collective demands with an ethical component. As such, rights are not independent social variables but derived from our relationships in society.³¹ Out of this reality, it becomes readily apparent that “relational individuals” and not only “individuals” are subjects of rights, and that the meaning of human rights often springs from our relationships and activist network systems. Jennifer Nedelsky’s “relational approach to rights” sheds more light on such a claim. She challenges the liberal conception of rights as side-constraints, which assumes that rights only obligate non-interference by the state in the autonomy of individuals. Instead, Nedelsky defines rights as entitlements that structure social

²⁹ Teeple, *supra* note 21 at 19, 71.

³⁰ *Ibid.* at 19.

³¹ *Ibid.*

relationships. For her, “What rights in fact do and have always done is construct relationships—of power, of responsibility, of trust, of obligation.”³²

Ultimately, the manner in which people conceive of their rights and respect those of others is determined by how such relationships foster those beliefs and values—such as sympathy, solidarity, respect for others’ differences, and social commitment—that best nourish valuing human rights goals. Although a complex task, rethinking rights as relationships entails a constant reimagining of the very significance of rights for people. This is an exploratory process that compels us to take into account the weight of history and the relationships embedding individuals in society.

3.2.2 The Structuring of Human Rights Abuses and Uneven Distribution of Harm

If historic processes explain how human rights emerge as the product of social struggles, the same processes unveil the geographical locations and identities of those whose human rights are violated. To be sure, an in-depth scrutiny of such processes makes explicit “who” the ones suffering human rights violations are. Accordingly, a historical analysis invites us to deconstruct the “rights for all” claim, which often standardizes how human rights and humanity are understood. The “rights for all” claim results in promoting an ideal of equality that erases the realities, histories, and identities expressed along the lines of gender, race, socio-economic status, ethnicity, sexual orientation, etc., of those whose rights are hampered. Feminist scholars have contributed greatly to the critique of this erasure and have advanced the distinction between formal equality and substantive equality to generate a fuller, more contextualized and systemic notion of equality harms within the discourse of rights. They argue that a formal idea of

³² Jennifer Nedelsky, “Reconceiving Rights as Relationship” (1993) 1:1 *Rev. Const. Stud.* 1; Also, from the same author, see “Reconceiving Autonomy: Sources, Thoughts and Possibilities” (1989) 1:1 *Yale J.L. & Feminism* 7.

equality is satisfied only by the guarantee of equal treatment or the principle of non-discrimination under the law. By contrast, substantive equality rejects a “sameness of treatment” analysis, which artificially erases our fundamental differences, seeking rather an account of our socio-economic disadvantages and other personal circumstances that play a role in our ability or inability to achieve equality of results.³³

Discussions that turn to substantive equality heavily resonate with Paul Farmer’s stand on structural violence, described in the previous chapter.³⁴ Out of his compelling evidence on the historical structuring of human rights abuses stands the fact that harm is unequally distributed in society.³⁵ As Farmer puts it, “human rights can and should be declared universal, but the risk of having one’s right violated is not universal.”³⁶ Human rights violations, he asserts, evidence “who will be at risk for assaults and who will be shielded from them.”³⁷ The effects of structural violence as referred to by Farmer are clearly illustrated in concrete cases in the literature on public health. Consider, for example, the fact that the AIDS epidemic is still persistent in Southern Africa, attacking mainly women;³⁸ that the highest index of maternal mortality is in Aboriginal women in

³³ Catherine Albertyn, “Substantive Equality and Transformation in South Africa” (2007) 23 S.A.J.H.R. 253; Sandra Fredman, “Providing Equality: Substantive Equality and the Positive Duty to Provide” (2005) 21 S.A.J.H.R. 163; Sandra Fredman, “Redistribution and Recognition: Reconciling Inequalities” (2007) 23 S.A.J.H.R. 214; Gwen Brodsky & Shelagh Day, “Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty” (2002) 14 C.J.W.L. 185; Hester Lessard, “Charter Gridlock: Equality Formalism and Marriage Fundamentalism” in Sheila McIntyre & Sandra Rodgers eds., *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (Toronto: LexisNexis 2006).

³⁴ Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Berkeley: University of California Press, 2003) [Farmer, *Pathologies of Power*].

³⁵ *Ibid.*

³⁶ *Ibid.* at 231.

³⁷ *Ibid.* at 18.

³⁸ Jennifer Prah Ruger, “Combating HIV/AIDS in Developing Countries” (2004) 329:7458 *British Med. J.* 121.

Perú;³⁹ and that greater environmental-health risks are confronted by African-Americans than white Americans in the USA.⁴⁰ The lenses of structural violence and public health make manifest the immorality inherent in the fact that children and the entire smelter community of La Oroya have been affected by lead poisoning. These are just some examples, demonstrating that a legacy of socio-economic factors and power differentials lies beneath the production of human rights abuses, which affect some people more than others.

3.2.3 The Human Rights International Legal Framework and What It Conceals

The reality that human rights violations manifest structural violence challenges the very way evidence about such violations is produced. If human rights are or should be a focus of great concern, so the argument goes, human rights advocates must be explicit about the historical processes and politico-economic contexts sustaining the production of rights abuses in the first place. It is argued that the dominance of the legal approach in understanding human rights obfuscates such a goal. My claim points to conceptual and operational issues alike.

The dominant role and seductive appeal of an international human rights legal framework rests upon two common assumptions: the so-called inherent neutrality of conceptions of law within the legal discipline and the existence of a pragmatic terrain of consensus about the universality of human rights.⁴¹ Both assumptions, as Tony Evans explains, are not only misleading but dangerous, for they embrace a double-edged sword.

³⁹ Alicia Ely Yamin, “Una perspectiva de derechos humanos sobre la reducción de la mortalidad materna” in *Exclusión y derecho a la salud* (Lima: IFHHRO-EDHUCASALUD, 2007).

⁴⁰ Robert D. Bullard, “Dismantling Environmental Racism in the USA” (1999) 4:1 *Local Environment* 5.

⁴¹ For such a discussion, see Charles R. Beitz, “Human Rights as a Common Concern” (2001) 95:2 *Am. Pol. Science Rev.* 269.

For Evans, the human rights discourse comprises three overlapping discourses: the philosophical, the legal, and the political. However, the failure of the philosophical discourse to provide foundations and the marginalization of the political discourse (which advances critical concerns on issues of power and interest) have resulted in the legal discourse playing a hegemonic role⁴²—a role that rests on unstable grounds. Reflecting upon what the international human rights legal framework tends to conceal, Evans introduces some of its problematic aspects, the most significant relating to its limited reasoning about human rights abuses. From a legal perspective, human rights violations (or their lack of realization) are reduced to a matter of poor compliance with treaties and covenants. Because a written document is the primary evaluative device, a contextual analysis of the powerful forces and existing interests behind the lack of compliance are left unexplored. This, in turn, induces us into believing that more legislation or legislative refinements are needed to tackle the non-compliance problem. An example of this is found in the 2008 “protect–respect–remedy” framework developed by John Ruggie, UN special representative on business and human rights.⁴³ The aim of this “optimistic” perspective is to guide the development of local normative frameworks used to delineate the distribution of responsibilities between states and transnational corporations (and other businesses) in terms of human rights compliance. Ruggie’s framework suggests that normative changes should take place within the market regime where the human rights abuses are generated in the first place. Accordingly, his proposal not only reinforces

⁴² Tony Evans, “Power/Knowledge”, *supra* note 2.

⁴³ John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (March 2011), online: OHCHR <http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf>

market values but also misses the opportunity to advance alternative solutions aimed at eradicating enduring structural features of the abuses.

When there is a blind adherence to free-market mechanisms we lose sight of the negative effects it causes such as precarious working conditions, drastic cuts in social provision, environmental degradation, major health risks for those already deprived, dispossession of livelihood, Aboriginal land loss, and undermining of culture. Examples of Ruggie's proposal prompt Evans to suggest that "international law might therefore be seen as a 'mask' that conceals the true causes of many human rights violations," which are largely sustained by the commitments of strict market discipline.⁴⁴ By and large, this happens because a "top down"⁴⁵ understanding of human rights—which the legal discipline promotes—does not enable the understanding of the causes of human rights violations; rather, it provides an area for a debate on "the best means for redressing consequences."⁴⁶ Strategies such as the "naming and shaming" of national governments and "the violation approach"⁴⁷ primarily pursue a reductionist analysis of identifying victims, aggressors, and remedies, and play a significant role in creating an awareness about human rights based on consequences alone. Such strategies are corrective rather

⁴⁴ Tony Evans, "Power/Knowledge", *supra* note 2 at 1067.

⁴⁵ Much of the literature proposes a distinction between a top-down and bottom-up understanding of human rights. For instance, Griffin maintains the former starts with an overarching principle, or principles, of an authoritative decision-making procedure from which human rights can be derived. The latter starts with human rights as employed in everyday social life by politicians, lawyers, social and legal campaigners, and from there, he argues, higher principles are resorted to in order to explain the moral weight of human rights and to resolve conflicts between them. See Griffin, *supra* note 9. On the other hand, for Boaventura de Sousa Santos, this distinction goes beyond the mere construction of philosophical principles and is deeply political. Top-down reinforces a Western hegemonic understanding of human rights; bottom-up illustrates the emergence of a counter-hegemonic movement of resistance. See Boaventura de Sousa Santos & César A. Rodríguez Garavito, eds., *Law and Globalization from Below towards a Cosmopolitan Legality* (New York: Cambridge University Press, 2005).

⁴⁶ Tony Evans, "Power/Knowledge", *supra* note 2 at 1053.

⁴⁷ Audrey R. Chapman, "Conceptualizing the Right to Health: A Violation Approach" (1998) 65 *Tenn. L. Rev.* 389.

than transformative, and while they may provide limited or short-term relief, they do little to address the ongoing reproduction of systemic inequalities over time.⁴⁸

Shedding more light on the cause–consequence debate, Johan Galtung draws a distinction between the actor-oriented perspective and the structure-oriented perspective of the pursuit of human rights goals.⁴⁹ While the first has proven successful at capturing concrete actors (i.e. states and corporations) and establishing responsibilities, the second investigates human rights abuse as a phenomenon that sustains repression (political), exploitation (economic), colonization, and imperialism. Galtung takes the view that the legal paradigm is biased in favour of the actor-oriented perspective and thus it is “structure-blind,” which makes it incapable of advancing comprehensive strategies to address root causes of complex social problems. However, what one perspective lacks, the other compensates for—meaning that the actor-oriented and structure-oriented perspectives should complement each other.

Paul Farmer moves forward with such reasoning by arguing that interdisciplinary proposals are needed. He posits that “contextualizing/resocializing” disciplines—such as anthropology, sociology, history and political economy—can best explain what a purely legal view of human rights obscures. To be sure, an interdisciplinary approach can reveal that pathologies of power are at the roots of human rights violations.⁵⁰ The author suggests that contributions of interdisciplinary proposals can and should be oriented towards two distinctive but interrelated goals: to enhance *analysis* and to improve *strategies*. While the first one is aimed at bringing to the fore evidence about the origin of

⁴⁸ Fraser & Honneth, *supra* note 5.

⁴⁹ Johan Galtung, *Human Rights in Another Key* (Cambridge, MA: Polity Press, 1994).

⁵⁰ Farmer, *Pathologies of Power*, *supra* note 34 at 219.

human rights abuses, the second is concerned with how to reverse or eliminate such a situation.⁵¹ The broad unspecified language of human rights coupled with a predilection to understanding them exclusively within the legal realm and derived strategies, limits one's ability to imagine the design of "integrative" strategies outside such a limited sphere of reasoning and action. Attempts have admittedly been made to overcome the problem; however, these attempts not only evidence the many difficulties inherent in this endeavour, they also expose that the most effective alternative to advancing solutions to human rights abuses is to translate human rights into "metrics" to assess governmental achievements.⁵² As long as measurements or the human rights' metrics remain isolated or disarticulated from the contributions of other methodological approaches, such strategies will result in a simple numeric expression of the widely criticized "naming and shaming" strategy. Perhaps even more problematic is the fact that these corrective strategies continue to distract us from understanding the "structural causes" needed to craft a transformative approach.

It is clear then that the institutionalization of human rights requires more than *mere* legal battles and/or *more* normative legislation. When these two take place uncritically, they advance palliative short-term remedies: such strategies do not extract victims from the circumstances that put them at risk of suffering rights violations in the first place; nor do they attack the circumstances that place the violator in a position of

⁵¹ *Ibid.* at 229.

⁵² See, for example, Judith Welling, "International Indicators and Economic, Social and Cultural Rights" (2008) 30:4 Hum. Rts. Q. 933; Kate Raworth, "Measuring Human Rights" (2001) 15:1 Ethics & Int'l Affairs 111; Clair Apodaca, "Measuring the Progressive Realization of Economic and Social Rights" in Shareen Hertel & Lanse Minkler, eds., *Economic Rights: Conceptual, Measurement, and Policy Issues* (New York: Cambridge University Press, 2007).

dominance over the victim.⁵³ By contrast, a comprehensive analysis of human rights violations should lead us to comprehensive strategies and intersectoral planning aimed at promoting long-term structural transformative goals.

In short, structural approaches to human rights prove to be useful in providing key insights to explore and further explain the complex context of La Oroya. This body of literature challenges the epistemological building blocks by which we produce knowledge about human rights and human rights violations; it broadens our understanding of the idea of “violation” beyond something that happens at a fixed moment in time to encompass structural violence; it enhances our awareness about the unequal distribution of harm; and, in turn, it alerts us to the bias of homogenizing lived experiences. Given that human rights came into being as the product of historical and social struggles, the collective dimension—most notably visualized in “bottom-up approaches” to human rights—deserves special attention. To be sure, a collective dimension acts as a catalyst for human rights to emerge as a manifestation of agency and counter-power. Hence, such a collective sphere should be protected and promoted.

While the strength of structural approaches lies precisely in their challenging our disciplinary assumptions in order to better understand complex social phenomena, they still fall short in fully guiding our reasoning about the other crucial aspect of the idea of rights: that is, “duties and responsibilities.” Paradoxically, the legal approach is stronger

⁵³ Let us think, for instance, of the case of people living in poverty who are infected with tuberculosis or other contagious diseases. Even though the state distributes medicine and medical care in these types of cases, this solution does not change the unsafe conditions and malnutrition that put people at risk of acquiring these diseases. Also, imagine the case of mining communities whose environment is contaminated due to the irresponsible management of an extractive company. Even though, at best, the state penalizes this company with fines, such sanctions do not change the inherent asymmetry of power between communities and mining companies. Furthermore, in many cases, sanctions cannot repair the long-term damage caused by pollution to people’s living standards.

in addressing this responsibilities aspect, although textual declaration of duties is not necessarily a guarantee of their compliance. In many cases, fulfilment of the state duties to protect, provide and respect,⁵⁴ as framed in the international human rights legal framework, must be enforced. The content of duties thus remains as contested, controversial and unsettled as the content of rights.⁵⁵ The artificial dichotomy, typical within legal discourse, of civil/political rights versus social/economic/cultural rights, combined with “progressive realization” clauses for the fulfilment of the latter, further complicate the notion of duties.⁵⁶ Yet, judges, lawyers and legal activists have elaborated and defended their own “truth finding methods” through which they define the content of rights and duties under the constraints imposed by rules of evidence, relevancy, and

⁵⁴ As defined by the UN High Commissioner for Human Rights: “the obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.” See online: OHCHR <<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>>.

⁵⁵ An example is the case of the “right to health.” A broad and often contested definition of “what is health”, and in addition, whether “health determinants” beyond only “health care” should be the focus of State interventions, have dominated the literature on health and human rights over the last few years. See Lawrence O. Gostin, “The Human Right to Health: A Right to the ‘Highest Attainable Standard of Health’” *Hasting Center Report* (March-April 2001) 29; Brigit Toebes, *The Right to Health as a Human Right in International Law* (Amsterdam: Hart/Intersentia, 1998); Virginia Leary, “The Right to Health in International Human Rights Law” (1994) 1:1 *Health & Hum. Rts.* 24; Audrey R. Chapman, “Globalization, Human Rights, and the Social Determinants of Health” (2009) 23:2 *Bioethics* 97.

⁵⁶ The bifurcation between economic, social and cultural rights, and civil and political rights comes from international human rights doctrine, which maintains this distinction in two different legal texts: the *International Covenant on Civil and Political Rights* (1976) and the *International Covenant on Social Economic and Cultural Rights* (1976). This dichotomy is conceptualized as embracing two distinctive values and imposing different obligations. On the one hand, civil and political rights are identified as rooted in a negatively conceived right of *liberty* that places limits on state intervention. On the other hand, the economic, social and cultural rights are related to the principle of *equality*, from which is derived a state’s duty to provide. The efficacy of the latter has been undermined by its programmatic character. Ironically, the ICESCR is employed to argue both sides of the debate regarding this programmatic character. Those who advocate the maximum recognition of social rights argue for the integral application of the ICESCR, with the state taking a preponderant role. Those who resist the recognition of social, economic and cultural rights invoke the lack of budgetary resources and the “progressive” nature of the commitment detailed in article 2.1 of the ICESCR, which declares: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

procedure that filter out much contextual detail.⁵⁷ As a result, a process of legal reasoning and interpretation justifies the “momentary/fictional” closure of a case or a “seemingly” advantageous solution to a problem. Even so, the most proactive judicial systems and activist decisions have proven to have minimal impact on interconnected global and local unjust conditions.⁵⁸ Given the complexity of social and historical conditions, legal reasoning as elaborated in courts cannot be automatically transplanted into the political arena.

It is beyond the scope of this dissertation to discuss whether the judiciary or the political system is more legitimate for resolving rights’ demands,⁵⁹ let alone to analyze the extent to which international binding documents and jurisprudence produced by the Inter-American Commission and Inter-American Court of Human Rights contribute, if at all, to advance structural transformation in the Latin American context.⁶⁰ The argument I

⁵⁷ See in particular, Robert Alexy’s “proportionality test” to assess rights in conflict that constitute the actual cornerstone of constitutional adjudication in the majority of Continental-European legal systems, such as Perú. Robert Alexy, *A Theory of Constitutional Rights* (Oxford: Oxford University Press, 2002). For a critique of the proportionality test, see Stavros Tsakyrakis, “Proportionality: An Assault on Human Rights?” (2009) 7:3 *Int’l J. Const. L.* 468; For a broader critique of the “truth finding methods” inherent in the legal discipline, see Richards Ashby Wilson, “Tyrannosaurus Lex: The Anthropology of Human Rights and Transnational Law” in Goodale & Merry, “*The Practice of Human Rights*” *supra* note 14.

⁵⁸ See Marius Pieterse, “Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited” (2007) 29 *Hum. Rts. Q.* 796; Camila Gianella-Malca, Oscar Parra-Vera, Alicia Ely Yamin & Mauricio Torres-Tovar, “¿Deliberación democrática o mercadeo social? Los dilemas de la definición pública en salud en el contexto del seguimiento de la Sentencia T-760 de 2008”, online: (2009) 11:1 *Health & Hum. Rts. Int’l J.* 1 (Perspectives Archives) <<http://www.hhrjournal.org/index.php/hhr/article/view/231/330>>.

⁵⁹ The debate acquires different dimensions and is nuanced depending upon the political and constitutional system under discussion. For instance, in common-law countries, socio-economic rights remain a matter of politics and civil and political rights can be judicialized. South American countries that use civil law—most notably Peru, Colombia, Ecuador and Bolivia—are more reluctant to make such a distinction. The same applies in the case of South Africa, where socio-economic rights can be judicialized.

⁶⁰ For such an analysis, see James L Cavallaro & Emily J. Schaffer, “Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas” (2004-2005) 56:217 *Hastings L.J.* 217; Tara J. Melish, “Rethinking the ‘Less as More’ Thesis: Supranational Litigation of Economic, Social, and Cultural Rights in the Americas” (2006) 39 *N.Y.U. J. Int’l L. & Pol.* 171; Juan Mendez & Javier Mariezcurrena, “Accountability for Past Human Rights Violations: Contributions of the Inter-American Organs of Protection” (1999) 26:4 *Soc. Justice* 84.

want to make here has a different orientation. It is concerned with the deeply complex and ambitious task of addressing structural violence for analytical and strategic purposes. My point is that for human rights discourse to better contribute to understanding structural causes of abuses and, in turn, to have a better chance of advancing a harmonized agenda for structural reforms and the claiming of responsibilities, human rights need to be “concretized.”⁶¹ That is, the discourse needs to be specific in terms of its *unit of analysis* to make explicit the diverse and insidious way structural injustice affects people—and affects some people more than others. Though this study is more about developing an analytical device than about fully designing strategies for change, I believe these need to be elaborated in tandem. Insights from an analytical account of structural violence should model and guide subsequent strategies for social change. One option, as I propose here, is to use the concept of “human capabilities for well-being,” which I take from the capability approach pioneered by Amartya Sen. At this stage, my proposal is inspired by strategic, pragmatic and contextual considerations. However, my intuition is that a strong “symbiotic relationship” between these two ideas exists, and that by further exploring such a relationship we can advance the understanding of the transformative power of rights and duties/responsibilities. The next section turns to a discussion about what the capability approach is, how the literature views the relationship between human rights and human capabilities, and what the tenets and commitments of my proposed “capability oriented-model of human rights” are.

⁶¹ Redressing structural injustices requires multiple long-term strategies. They need to be articulated and harmonized in a language that creates “pragmatic” consensus among activists, civil society, politicians and policy-makers. So far, strategies to advance social change using human rights as standards are multiple and diverse. While mainstream strategies undertaken within a legal framework are limited in scope, those proposed outside legal boundaries are often characterized by a disconnection between their goals and their analytical and methodological frameworks.

3.3 Why the Capability Approach: Justifying the Conceptual Integration

My analytical framework is greatly influenced by the Latin American context, and more specifically the Peruvian one, where the human rights of specific groups and communities (e.g. indigenous and native communities, non-indigenous communities rich in mineral resources) are put at risk by the national goal of economic growth. It thus builds upon an integration of human rights and human capabilities as a response to pragmatic and strategic concerns. This is a pragmatic proposal because it does not rest on prior abstract philosophical reasoning to defend such conceptual integration; rather, it seeks to respond to a contextual necessity.⁶² As noted in the introduction of this dissertation, the intense privatization process of the 1990s has resulted in an ongoing and increasing number of social conflicts related to the extractive industry. Concrete effects on people's quality of life are seen in terms of the community's health and the territorial amplitude of environmental impacts. These effects call into question the Peruvian model of economic development based on extractive activities. The capability approach is useful

⁶² I need to clarify that the capability approach finds one of its most powerful influences in the Aristotelian philosophical perspective of human well-being. Most notably, such an influence becomes apparent in the integration between the disciplines of ethics and economics, which led Sen to argue that the second is only an instrument for the ultimate end to achieve a good life. In addition, an Aristotelian influence is also visible in the promotion of "human flourishing" in which the capability approach grounds its notion of human capabilities. In stating that my proposal does not rest on prior abstract philosophical reasoning, I am not denying such philosophical influence. Rather, my intention is to be honest about what prompted me to look at the capability approach in the first place. As noted in Chapter 1, in designing my integrative conceptual framework, one of my goals was to promote an alternative vision of development that advanced a forceful critique of an economic-growth based model of development. This is how and why I decided to draw upon the capability approach. While my first look at the capability approach was primarily pragmatic, I later became more aware of the plural intellectual and philosophical roots of the capability approach. For an in-depth account of Amartya Sen's intellectual roots leading to his capability approach, see Pablo Sanchez Garrido, *Raíces intelectuales de Amartya Sen: Aristóteles, Adam Smith y Karl Marx* (Madrid: Centro de Estudios Políticos y Constitucionales, 2008).

for this study in that it shifts the understanding of development from a focus on “economic growth” alone to that of “human development”.⁶³

My proposal also responds to a strategic concern. It responds to the need to better illuminate the process by which unjust structures bring about unjust outcomes in La Oroya. While insights from structural approaches to human rights deal with structural factors and their outcomes, the concept of human capabilities as a “unit of analysis” guides us in understanding how those outcomes are triggered, affecting a personal dimension and its social relationships. For instance, in trying to understand the trade-off between health and work accepted by smelter workers and their families in La Oroya, we might be tempted to frame it as a simple matter of economic need; however, even though this is partially true, additional reasons leading to such trade-offs might also be at play. I posit that these reasons are very likely related to the fact that the contextual conditions of La Oroya allow human capabilities to develop among members of this community in different ways. Such contextual conditions, in turn, will likely have an impact on the

⁶³ There exist alternative proposals that also work at the intersection of the human rights and development discourse. Namely, the “human rights based-approach to development” (HRBA) that stipulates that human rights principles should inform national development choices; and, the “right to development” that acknowledges individuals and societies at large have the right to participate and enjoy development in its social, cultural, economic and political dimensions. These proposals are often criticised for being too broad and vague to effectively transform the realities of underdevelopment. The capability approach, although sharing a similar rhetoric in that it mainstreams the “human” aspect of development, ultimately advances a more concrete and innovative approach to development. This is because, while the above mentioned proposals take as a starting point an idea of “development” understood as a singular top-down model that would equally benefit the whole society; the capability approach -due to its focus on “people’s values”- opens a windows of inquiry to bottom-up alternative notions of development and wellbeing that may clash with national goals of development. Additionally, as I will demonstrate in this dissertation, the capability approach also brings into the discussion the assessment of the context in which human capabilities and agency are nourished or undermined. This in turn, provides a baseline for the design of applied models to assess the role of development in facilitating or hindering the realization of human rights. For comparing and contrasting the use of the capability approach, HRBA and the right to development, see: Brad A. Anderassen and Stephen P. Marks, eds., *Development as a Human Right: Legal, Political and Economic Dimensions* (Mortsel: Intersetia, 2010); Stephen P. Marks, “The Human Rights Framework for Development: Seven Approaches” in Basu, Mushumi, Archana Negi, and Arjun K. Sengupta, eds., *Reflections on the Right to Development* (New Delhi: Sage Publications, 2005) at 23-60.

value that members of this community grant to their human rights and the rights of other members of the community.

3.4 What Is the Capability Approach? Antecedents and Main Tenets

The capability approach is a product of Amartya Sen's academic work, most notably his inquiry into the real causes of poverty and famines.⁶⁴ His analysis of diverse case studies on famines led him to conclude, contrary to assumptions at the time, that the worst famines in the world have taken place with no significant decline in food availability *per capita*. Rather, they are a response to a failure of the system meant to ensure people have the ability to access food. Such an ability is largely conditioned by the legal, political, economic and social characteristics of a given society and the individual's position in it.⁶⁵ Poverty, Sen claims, should be understood as the result of capability deprivation rather than merely of low income. This investigation into the root causes of poverty and famines is said to be the "birthplace" of what soon became the capability approach.⁶⁶ In subsequent work, Sen has further elaborated and defended his idea of "human capabilities" as the central focus for the analysis of inequality⁶⁷ and of the process of development.⁶⁸ Most recently, he has advanced it as a practical method to

⁶⁴ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (New York: Oxford University Press, 1981).

⁶⁵ *Ibid.*

⁶⁶ John M. Alexander, *Capabilities and Social Justice: The Political Philosophy of Amartya Sen and Martha Nussbaum* (Aldershot, UK: Ashgate, 2008).

⁶⁷ Amartya Sen, *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1992) [Sen, *Inequality Reexamined*].

⁶⁸ Amartya Sen, *Development as Freedom*, 1st ed. (New York: Knopf, 1999) [Sen, *Development as Freedom*].

address injustices.⁶⁹ The central claims and insights developed in this literature form the basis of the capability approach.

What is the capability approach? Originally generated in the disciplinary context of development economics, the capability approach constitutes an alternative paradigm to the normative assumptions of mainstream economic theory, which envision quality of life and societal progress as positively correlated to aggregative income *per capita* (GDP), utility maximization, and/or resource distribution alone.⁷⁰ Growth of GDP or individual income does not account for how people are progressing on other non-economic developmental indicators, such as life expectancy, mortality rates, environmental protection, and educational and employment opportunities. As well, the fundamentally utilitarian orientation of economic theory predisposes it to accept dangerous trade-offs in order to maximize subjective well-being, and it remains blind to the extent to which such maximization puts at risk or further entrenches disadvantages of already disenfranchised individuals and communities.⁷¹ Moreover, those who equate subjective well-being with personal satisfaction of preferences often overlook the phenomenon of “adaptive preference.” This refers to situations in which people trapped in severe deprivation adapt their preferences to what is feasible for them—that is, “[t]o make life bearable in adverse situations.”⁷² The resource distribution approach presents a less problematic variant of this economic analysis, as it is concerned with the equal distribution of resources (i.e. basic needs and primary goods) as a matter of social justice. Yet, the approach suffers

⁶⁹ Sen, *The Idea of Justice*, *supra* note 15.

⁷⁰ Séverine Deneulin & Lila Shahani, *An Introduction to the Human Development and Capability Approach: Freedom and Agency* (London: Earthscan 2009).

⁷¹ *Ibid.*

⁷² Sen, *Development as Freedom*, *supra* note 68 at 62.

from human diversity blindness. In effect, a lack of consideration of human heterogeneity and contextual circumstances has driven proponents of this approach to assume that people with the same amount of resources can be equally well-off.⁷³ As capability scholars frequently note, a disabled person, an ill person, a pregnant woman, or a child might have the same basket of goods/resources as an able-bodied individual, a healthy person, a non-pregnant woman, or an adult, and yet they will likely reach substantially different well-being results.⁷⁴ Thus, distribution of goods/resources has to be seen as only the *means* of a more valuable ultimate *end*, which is “human flourishing.”⁷⁵

In searching for an alternative measure for human well-being that will overcome the aforementioned shortcomings, Amartya Sen proposes the capability approach (CA), as it places people at the centre of the evaluation of development and societal progress. In doing so, the CA asks not what people want or have, but whether they are actually able to be and do what they value. This means, as Robeyns recalls, that “[o]ur evaluation and policies should focus on what people are able to do and be, on the quality of their life, and on removing obstacles in their lives so that they have more freedom to live the kind of life that, upon reflection, they have reason to value.”⁷⁶ From this initial focus, the CA has been expanded and interpreted to serve as a framework for investigating a diverse

⁷³ Sen, *Inequality Reexamined*, *supra* note 67.

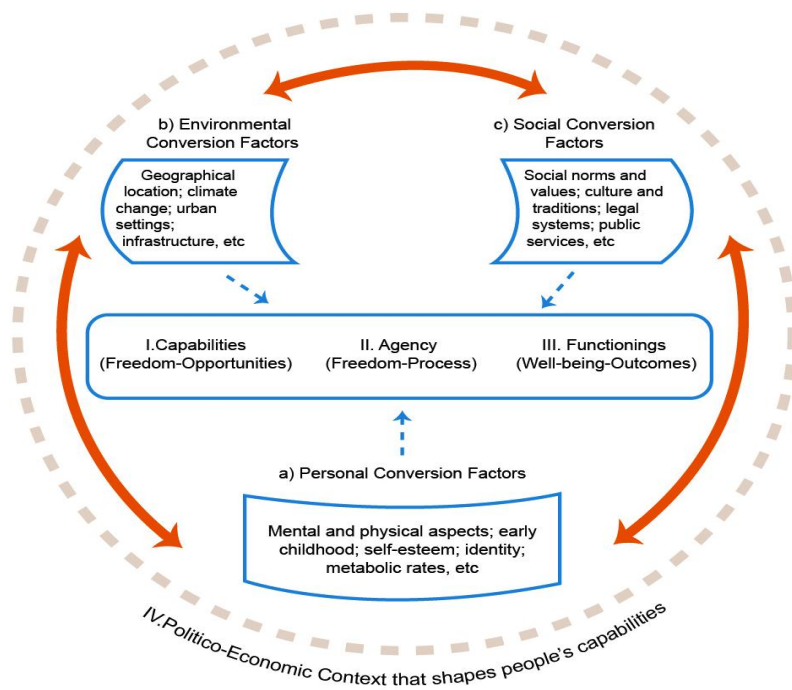
⁷⁴ Sen, *Development as Freedom*, *supra* note 68 at 74; Martha Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000).

⁷⁵ The notion of “human flourishing” is central in the capability approach. Rooted in Aristotelian philosophy, it broadly refers to the corpus of essential properties and virtues necessary for humans to live well or, similarly, to have a flourishing life in dignity. Capabilities to function well are considered essential properties allowing human flourishing.

⁷⁶ Ingrid Robeyns, “The Capability Approach: A Theoretical Survey” (2005) 6:1 *J. Hum. Dev.* at 94.

range of topics, stimulating an enriching cross-disciplinary analysis. The graphic below sets out the key elements of the CA, which I elaborate on in the discussion that follows.

Figure 2: The Capability Approach



The notion of “freedom to lead a life of well-being that people have reason to value” as proposed by the capability approach builds upon three main concepts: capabilities, agency and functioning. “Capabilities” (or freedom opportunity) refers to personal endowments necessary for a person to lead a life of well-being, which should be the result of choosing from diverse ways of living. These endowments are simply potentials that depend upon an enabling context (e.g. institutional support and proper socio-economic conditions) in order to be translated into “functionings” (or well-being outcomes) that convey a series of states of being and doing that make up a person’s overall well-being (e.g. being effectively healthy, being well-nourished, being sheltered, feeling safe, having access to meaningful employment, being able to make your personal

views heard, participating in community decisions, etc.). For instance, we may all be born with the capability to achieve health, but in order to effectively have good health we need to be well-nourished, live in a clean environment, and have access to sanitation and health care services. Likewise, we may all be born with the capability to work, but while some people may have access to conditions that allow them to do the work they desire, others will have to adapt to the choices available to them. As noted earlier, capability scholars refer to this as the “phenomenon of adaptive preferences,” by which people become content with what they can get by ignoring alternatives or resigning themselves to their situation. The capability approach suggests that the expansion of human capabilities enhances people’s alternatives and the possibility of leading a valued life of well-being—allowing them to avoid succumbing to the adaptation of preferences.

The reference to the context leads to an assessment of what the capability approach calls “conversion factors.” In principle, conversion factors convey the enabling (or disabling) conditionings that determine the extent to which a person can “[g]enerate capabilities from goods and services.”⁷⁷ However, the expansion of capabilities cannot be restricted only to converting inputs such as goods, services, and resources into well-being results. The process may be more complex and influenced by other sources that range from institutional arrangements, social practices, social values, and the role of history to the politics of development. These sources determine the distribution of such goods and services in the first place. In this dissertation, I will be open to a broad investigation of this range of factors, an investigation that is crucial to determining the contours and

⁷⁷ Ingrid Robeyns, “Sen’s Capability Approach and Feminist Concerns” in Flavio Comim, Mozaffar Qizilbash & Sabina Alkire, eds., *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008) at 84-85 [Robeyns, “Feminist Concerns”].

components of a context of systemic unfreedom in La Oroya. For now, I will emphasize that the capability approach considers three types of conversion factors: (a) personal conversion factors (e.g. mental and physical aspects, characteristics of our identity such as age, gender); (b) social conversion factors (e.g. social institutions, social norms, discriminatory practices, traditions, and the behaviour of others in society); and (c) environmental conversion factors (e.g. climate change, geographical location, urban settings, infrastructure) (see Figure 1).

It worth noting that the capability approach proposes the expansion of *capabilities*, and not simply functionings, as the centre of evaluation and public policy interventions. Among many reasons, it is argued that a sole focus on expanding functionings (or well-being outcomes) risks overlooking the process and circumstances in which such results are achieved.⁷⁸ Well-being outcomes can be achieved as the by-product of force and within a context of domination and colonialism.⁷⁹ An often cited example refers to the fact that suffering from hunger as a result of fasting based on spiritual reasons is not the same as suffering from hunger as a consequence of famine. In the first case, the person could eat but chooses not to; in the second, the person would eat, if they could.⁸⁰

Another crucial tenet of the capability approach is the notion of “agency” or process of freedom. Individuals—and I would also add communities—should be the designers of their own lives and promoters of social change rather than mere “[p]assive

⁷⁸ Deneulin & Shahani, *supra* note 70 at 36.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.* at 37.

recipients of dispensed benefits.”⁸¹ This is why the state and societies, from the capability approach perspective, are called upon to foster public participation and the empowerment of individuals. The importance of individuals participating as free agents is readily apparent in Sen’s main claims from his 1999 seminal work *Development as Freedom*. A central goal of development, he argues, should be to remove various types of unfreedom in order to expose situations of deprivation, destitution and oppression (i.e. resulting from poverty, famine, hunger, violations of elementary freedoms, neglect of women’s agency, little access to health care and clean water, worsening threats to the environment, and unsustainability of our economics and overall social lives). For Sen, freedom is quintessentially a social product that can be achieved by the *interconnected working of*, on the one hand, social arrangements and public policies oriented towards capability expansion, and, on the other hand, individuals as agents who ensure that such social arrangements are just and effective.⁸²

In short, several claims advanced by the capability approach are of fundamental relevance to my study on La Oroya. First, unlike the homogenization of people that is promoted by the law, the capability approach takes into consideration *human diversity*. This is crucial not only for understanding the “sensitivity to means” approach, which is said to distinguish the CA from human rights discourse,⁸³ but also for recognizing the different (and perhaps uneven) opportunities for capability expansion within La Oroya. Second, the important role of *agents as designers of their own destiny* invites us to rethink human rights, namely socio-economic rights, beyond a mere distribution of goods

⁸¹ Sen, *Development as Freedom*, at xiii.

⁸² *Ibid.* at 17-18.

⁸³ Deneulin & Shahani, *supra* note 70.

to satisfy basic needs. Rather, they are entitlements to command our own well-being and contribute to that of society. This suggests paying particular attention to the spaces in which individuals and groups from La Oroya are able (or unable) to exercise agency to effect social change within the community. Third, the acknowledgement of the direct influence of context and social structure on the enjoyment of capabilities and the exercise of people's agency speaks to the *relational nature* of the approach, which is compatible with structural approaches to human rights. This relational nature drives us to inquire why some people have more advantages than others, which, in turn, illustrates another important feature of the capability approach: its *comparative aspect*. As Nussbaum asserts, "The most illuminating way of thinking about the capability approach is that it is an account of the space within which we make comparisons between individuals and across nations as to how well they are doing."⁸⁴ These four characteristics of the CA are the cornerstone of the design of a "capability-oriented model of human rights" framework.

Still, the CA has not been exempt from debate and critiques, in particular regarding which capabilities matter, how to operationalize the approach, and whether the moral focus of the approach should be restricted only to individuals. The next three subsections deal with these questions before going into a discussion of the integration of human rights and human capabilities.

3.4.1 Selecting Valuable Capabilities: Which Capabilities? Who Decides?

Within the CA there is debate over what type of capabilities we as members of a society should promote. Not all capabilities are considered valuable and conducive to

⁸⁴ Martha C. Nussbaum, "Capabilities and Human Rights" (1997) 66 Fordham L. Rev. 279.

personal and social well-being. This debate substantially distinguishes Amartya Sen's version of the CA from Martha Nussbaum's. The former rejects the idea of defining a list of capabilities, suggesting that we explore a democratic process of "public reasoning"—in which citizens participate to determine the capabilities they will seek to promote, thus making value judgements on what constitutes a good life. By contrast, Martha Nussbaum insists that a list of valuable capabilities should be recognized constitutionally by governments of all nations. Her proposal envisions the CA's more ambitious role as a philosophical underpinning for establishing a universal social minimum threshold—that is, through her capability list—in order for humans to flourish with dignity.⁸⁵ In seeking a third way, Polly Vizard has suggested building upon the international human rights legal framework as a "pragmatic terrain of consensus" for identifying valuable capabilities deserving political and social recognition.⁸⁶

It goes beyond the goal of my dissertation to fully discuss the benefits and limitations of these proposals. Rather than relying on Nussbaum's predetermined set of basic capabilities (which seems to give little room for community self-determination) or taking for granted the adequacy of Sen's process of "public reasoning" (which may be impractical in the context of social conflict), I will instead elaborate a context-specific set of capabilities that, as far as possible, reflects the particularities of the history and experiences of the people of La Oroya. Drawing on a set of qualitative interviews, I will

⁸⁵ Nussbaum's most recent account of 10 central human capabilities that must be secured for all people on earth includes: life, bodily health, bodily integrity, sense, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment. See Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: The Belknap Press of Harvard University Press, 2011) [Nussbaum, *Creating Capabilities*].

⁸⁶ Polly Vizard, "Specifying and Justifying a Basic Capability Set: Should the International Human Rights Framework be Given a More Direct Role?" (2007) 35:3 *Oxford Dev. Stud.* 225.

investigate how and why community members of La Oroya weigh and counter-weigh diverse capabilities, and present the results in Chapter 5. By reflecting on the La Oroya experience, I will come back to the Nussbaum-Sen debate in Chapter 6. My intention is not to be deterministic or to take a stand between these two positions; rather, I seek to shed more light on this debate through my findings from the La Oroya case.

3.4.2 The Operationalization of the CA: A Feasible Enterprise?

Another pressing issue among CA scholars is making the approach operational. To the extent that the CA emerges as a new paradigm to assess human development and poverty reduction, the critics urge appraising the extent to which, if at all, the approach can advance the goals of capability expansion or the reduction of capability deprivation.

Sabina Alkire addresses the problem by mapping the limitations and promises inherent in two different visions advanced by the CA.⁸⁷ A narrow vision employs CA primarily as an *evaluative-normative* framework through which various social arrangements or states of affairs are compared and evaluated in terms of the freedom they provide for people to lead flourishing lives. Here, as Alkire argues, “the primarily evaluative focus is *whether* capabilities have expanded, rather than *how* and *why* such expansion occurred.”⁸⁸ By contrast, Alkire’s second vision of the CA presents a broader and more demanding perspective that promotes its use for a *prospective analysis*. Such an analysis, according to Alkire, is more responsive to issues of causality, probability and assumptions. It provides a better interdisciplinary platform to advance courses of actions that will foster capability expansion or the reduction of capability deprivation. This is

⁸⁷ Sabina Alkire, “Using the Capability Approach: Prospective and Evaluative Analyses” in Flavio Comim, Mozaffar Qizilbash & Sabina Alkire, eds., *The Capability Approach: Concept, Measures and Applications* (Cambridge, UK: Cambridge University Press, 2008) at 26.

⁸⁸ *Ibid.*

evident through the approach's concerns about "what incremental changes to existing institutional, social, cultural, political and economic structures would expand certain capabilities and how durable, equitable, and sustainable such expansions would be."⁸⁹ By advancing a prospective analysis, the capability approach is more likely to venture into analysis of the role that history, structures, and transnational political processes play in fostering the development of human capabilities. Described in these terms, the concerns inspiring my design of a "capability-oriented model of human rights framework" better fit within a prospective vision of the capability approach.

Yet, the issue remains complex. Although a prospective CA seems to be a promising enterprise, the reality is that such enthusiasm diminishes when its operationalization is considered. Although there is a growing diversity of cross-disciplinary academic work framed by the CA, the truth is that prospective analyses are "inherently heterogeneous, and the capability approach thus far has not explicitly specified a methodology for them."⁹⁰

This is very likely the reason behind an overt predilection for capability scholars to employ and promote mainly quantitative multidimensional indicators, the most notable being the Human Development Index (HDI). The HDI is used to rank countries based on their achievement in enhancing human development.⁹¹ Beyond the quantitative and qualitative methods debate,⁹² the problem with such an indicator lies in its focus on

⁸⁹ *Ibid.*

⁹⁰ *Ibid.* at 41.

⁹¹ For information about the Human Development Reports and the components of the Human Development Index, see online: UNDP <<http://hdr.undp.org/en/statistics/hdi/>>; see also Jeni Klugman, Francisco Rodríguez & Hyung-Jin Choi, "The HDI 2010: New Controversies, Old Critiques" (2011) 9 J. Economic Inequality 249.

⁹² Eithne McLaughlin, "Oppositional Poverty: The Quantitative/Qualitative Divide and Other Dichotomies", (1991) 39 Sociological Rev. at 292.

measuring well-being outcomes (functionings) rather than well-being freedoms (capabilities). Capability scholars recognize the limitations of relying exclusively on quantitative measures. For instance, Alkire and Santos claim that complementary methods are needed both of research and action.⁹³ In particular, in order to advance more coherent and sound interpretations and explanations of the social phenomena that directly affect the development of human capabilities and poverty reduction, such authors cite Green and Hulme:

The technical measurement of poverty can seem to disassociate it from the social processes of the accumulation and distribution of wealth. Then, the profoundly political task of counting the poor is made to seem scientific and the value judgments, which Sen argues should guide poverty measurement, are not explicitly faced. The political aspects need direct attention.⁹⁴

In fact, participatory action research methods have been used effectively to identify valuable capabilities to be promoted in the context of funding allocation for development projects⁹⁵ and various self-help initiatives.⁹⁶ However, although such instances, which lead to the enhancement of participatory capabilities, represent the most adequate approach to identifying and making valuable capabilities attainable,⁹⁷ they are still insufficient to fully interrogate the reasons why people value certain choices or ways of living over others.⁹⁸

⁹³ Sabina Alkire & Maria Emma Santos, "Poverty and Inequality Measurement" in Deneulin & Shahani, *supra* note 70, at 124.

⁹⁴ Maia Green & David Hulme, "From Correlates and Characteristics to Causes: Thinking about Poverty from a Chronic Poverty Perspective" (2005) 33:6 *World Development* 867, cited in Alkire & Santos, *ibid.* at 123.

⁹⁵ Sabina Alkire, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (New Delhi: Oxford University Press, 2003) at 10 [Alkire, *Valuing Freedoms*].

⁹⁶ Solava S. Ibrahim, "From Individual to Collective Capabilities: The Capability Approach as a Conceptual Framework for Self-help" (2006) 7:3 *J. Hum. Dev.* 397.

⁹⁷ Alkire, *Valuing Freedoms*, *supra* note 93.

⁹⁸ Séverine Deneulin, "Advancing Human Development: Values, Group, Power and Conflict" in Rosemary

In short, we still have a long way to go to accomplish a more ambitious implementation of a *prospective vision* of the CA in methodological terms. Designing such a methodology is a goal that arguably will provide more clarity and confidence in the use of the approach. But, given the cross-disciplinary orientation of the approach and the diversity of contexts in which the approach is used, some questions arise: What are the key features of a methodology aimed at advancing a prospective analysis of capability deprivation or capability expansion? What are the principles and commitments that such a methodology should endorse to make it contextually appropriate and reflective of the CA's philosophical underpinnings? More specifically, would it be possible to develop a uniform methodology as a one-size-fits-all formula or, by contrast, should our project be more humble and context-based?

While it is not my intention to respond to all these questions, I do seek to reflect on them in the specific case of bridging human rights and human capabilities as a framework. My argument is that a “capability-oriented model of human rights” analytical framework needs to act *in tandem* with a methodology that is reflective and sensitive to the above-mentioned concerns. I will elaborate on that methodology in the next chapter.

3.4.3 Ethical Individualism and the Reality of “Structures of Living Together”

Critics of the CA often call it a “‘thin’ [approach] to offer guidelines for actions which could transform the unjust structures that impede many people from exercising the capabilities they have reason to choose and value.”⁹⁹ The primary reason for this criticism

Thorp, *et al.*, eds., *Overcoming Poverty and Inequality* (London: Palgrave Macmillan, 2009).

⁹⁹ Séverine Deneulin, *et al.*, *Transforming Unjust Structures: The Capability Approach* (Dordrecht, Netherlands: Springer, 2006).

is the CA's individualistic informational focus, which, framed by Amartya Sen's liberal commitments, limits the approach's possibilities with respect to understanding the role of the global economic context and social structures in the expansion or limitation of human capabilities.¹⁰⁰

With respect to the CA's individualistic focus, Robeyns maintains, we must specify what kind of individualism the CA promotes. The CA is ethically individualist, which differs from ontological or methodological individualism. While ethical individualism postulates that individuals are the ultimate units of moral concern, the ontological and methodological views explain social phenomena exclusively in terms of individuals and their properties. The CA does not fall into these latter two categories, Robeyns argues, because it evaluates social relations, structures, and institutions “[i]n *virtue* of the causal importance that they have for individuals' wellbeing.”¹⁰¹ In moving forward this idea, Longshore and Seward suggest that underpinning Sen's notion of capabilities is an ontological conception of a relational society,¹⁰² in which “both individuals and social structures are causally efficacious, and interact through time.”¹⁰³ Accordingly, a person's relative position in society subjects them to causal mechanisms

¹⁰⁰ Frances Stewart & Séverine Deneulin, “Amartya Sen's Contribution to Development Thinking” (2002) 37:2 *Stud. Comp. Int'l Dev.* 61. For authors like John Alexander, Sen's approach should not be seen as too rooted into the liberal paradigm. Aside from advocating the “equal moral worth of each individual and the priority of human rights as pillars of every liberal democracy,” there are other elements that distance the CA from this common liberal conception of justice. The author points to its reciprocal view of responsibility, and its embrace of the notion of positive freedoms, the principle of “broad-consequentialism,” and the plural conception of a good life. See Sen, “Capabilities and Social Justice”, *supra* note 65. A very likely reason for Sen's thought as being deemed too liberal for some and too hybrid for others can be found in Sen's complex and contrasted philosophical roots, which merge influences from Aristotle, Adam Smith and Karl Marx. See Sanchez Garrido, *supra* note 62.

¹⁰¹ Robeyns, “Feminist Concerns”, *supra* note 77 at 82.

¹⁰² Matthew Longshore & Carolina Seward, “The Relational Ontology of Amartya Sen's Capability Approach: Incorporating Social and Individual Causes” (2009) 10:2 *J. Hum. Dev. & Capabilities* 213.

¹⁰³ *Ibid.* at 221.

that constrain and enable behaviour; likewise, social entities also have a causal influence and shape people's capabilities and agency.¹⁰⁴

That the CA assigns only an instrumental role to the evaluation of social structures in relation to the goal of individual flourishing still remains a hotly contested issue for capability scholars. This debate has led some capability scholars to elaborate proposals that extend the CA's ability to incorporate the evaluation of collective capabilities.¹⁰⁵ For these scholars, extending the CA beyond the individualistic approach is possible due to the flexibility inherent in the idea of capabilities and the "deliberately incomplete" nature of the approach. Groups as well as individuals have a distinct set of capabilities as determined by what is felt to be important collectively. Utilizing the CA in this way illuminates the extent to which fostering the expansion of means for collective action is central for the expansion of individual capabilities.¹⁰⁶ It also allows room for discussion around issues of personal and social responsibilities as well as providing a strong vision of human agency.¹⁰⁷

In line with this analysis, Séverine Deneulin advances one of the most provocative and compelling proposals to expand the evaluative space of the CA. Her claim is that the notion of "structures of living together" should also be a unit of moral

¹⁰⁴ *Ibid.*

¹⁰⁵ Frances Cleaver, "Understanding Agency in Collective Actions" (2007) 8:2 J. Hum. Dev. 223; Peter Evans, "Collective Capabilities, Culture, and Amartya Sen's *Development as Freedom*" (2002) 37:2 Stud. Comp. Int'l Dev. 54; Jean-Luc Dubois, Jerome Balletand & Francois-Regis Mahieu, "Responsibility for Each Others's Freedoms: Agency as the Source of Collective Capability" (2007) 8:2 J. Hum. Dev. 186; Frances Stewart, "Groups and Capabilities" (2005) 6:2 J. Hum. Dev. 185.

¹⁰⁶ Peter Evans, *ibid.*

¹⁰⁷ Dubois, Balletand & Mathieu, "Agency as a Source of Collective Capabilities", *supra* note 105.

concern.¹⁰⁸ This entails assessing structures beyond their impact on individuals alone to also determine “[w]hether they promote the collective structures which help individuals to flourish.”¹⁰⁹ Borrowing from French philosopher Paul Ricour, she defines structures of living together as “[s]tructures which belong to a particular historical community, which provide the conditions for individual lives to flourish, and which are irreducible to interpersonal relations and yet bound up with these.”¹¹⁰ Given that such structures emerge from our reality of living together, they can have both *positive* and *negative* effects on people lives.¹¹¹ This kind of assessment is aimed to lead either to the identification and subsequent promotion of positive structures of living together, or, by contrast, to the transformation of structures that have a negative impact on individuals’ and communities’ well-being at large.

Deneulin builds her insights from a comparative study of development in Costa Rica and the Dominican Republic. The contrasting development results of these two Central American countries, as Deneulin demonstrates, are the product of distinct historical and political processes: collective values and collective agencies brought about reforms leading, in the case of Costa Rica, to higher well-being achievements and, in the case of the Dominican Republic, to lower. An assessment of such cases leads her to conclude,

¹⁰⁸ Séverine Deneulin, *The Capability Approach and the Praxis of Development* (New York, Palgrave Macmillan, 2006) [Deneulin, *The Praxis of Development*]; Séverine Deneulin, “Beyond Individual Freedom and Agency: Structures of Living together in the Capability Approach” in Falvio Comin, Mozaffar Qizilbash & Sabina Alkire eds., *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008) 105 [Deneulin, “Beyond Individual Freedom”].

¹⁰⁹ Deneulin, “Beyond Individual Freedom”, *ibid.* at 114.

¹¹⁰ Deneulin, *The Praxis of Development*, at 56.

¹¹¹ *Ibid.*

[E]thical individualism leads to a disproportionate focus on existing individual lives, and directs attention away from the examination and historical explanation of the structures of living together, which are responsible not only for the conditions of life of individuals today but also have affected past generations and will affect future one.¹¹²

In placing due attention on the weight of history, Deneulin's proposal also broadens the understanding of human agency. She introduces the notion of "socio-historical agency" to refer to "[t]he ability that human beings have to bring about certain achievements given the particular socio-historical reality in which they are living."¹¹³ This is a strong reminder that human beings do not become "agents of change" or "designers of their own destiny" in isolation; rather, they become selves through history and relationships. The ability of individuals to act, make decisions, and frame their lives in particular ways is highly conditioned by socio-historical structures. As a result, some people might have more or less ability to design their lives depending on existing socio-economic, cultural, and political conditionings.

Deneulin's proposal has yet far richer implications. Indeed, endorsing the evaluative value of "structures of living together" ultimately suggest a shift from the CA *telos* of "living well" to one of "living well together."¹¹⁴ In addition, and perhaps what makes her approach more demanding, is the need to place concerns about power and politics at the heart of the CA.¹¹⁵ Structures of living together are shaped by historical processes, which in turn are influenced by larger politico-economic forces. The socio-

¹¹² *Ibid.* at 59.

¹¹³ *Ibid.* at 72.

¹¹⁴ Séverine Deneulin & J. Allister McGregor, "The Capability Approach and the Politics of a Social Conception of Well-being" (2010) 13:4 *Euro. J. Soc. Theory* 501.

¹¹⁵ Séverine Deneulin, "The Capability Approach: A Note on Two Interpretations" (2011) [unpublished draft, cited with permission of the author].

historical background of La Oroya provides sufficient evidence of this undeniable reality. In this light, it seems inconsistent for the CA to continue promoting the ethical value of capability expansion while remaining uncritical to those (negative) structures of living together that reduce human freedom and cause capability deprivation. Unveiling such structures, I claim, requires identifying all the conversion factors sustaining a context of systemic unfreedom in La Oroya. But unlike the predominant view within the CA, which proposes such identification in a purely instrumental (a-political) fashion, I will follow Deneulin's (critical) stand. This means my assessment of conversion factors sustaining unfreedom in La Oroya will not only be instrumental in revealing how a context of unfreedom affects people's livings, but it will be valuable in its own right in advancing a critique on the politics and relationships of power and dominations sustaining such a context that need to be transformed.

Does Deneulin's elaboration distort the CA's original commitments? My very short response is that it does not. My assertion draws on Deneulin's recent elaboration, in which she introduces the idea of the "capability tradition"—rather than a single approach. A capability tradition acknowledges that arguments are defined and refined over time, leading to two major interpretations: liberal-evaluative and relational-political.¹¹⁶ These are not dichotomized but complementary visions grounded in the understanding that an "evaluative" analysis in the space of capabilities development cannot be separated from socio-historical and politico-economic explanations of capability deprivation.¹¹⁷ The use of these two interpretations will be determined by the objectives of the study and the

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

targeted audience.¹¹⁸ My contention is that when integrating the notions of human rights and human capabilities into an analytical framework, the relational-political interpretation should be privileged.

3.5 Human Capabilities and Human Rights: Advancing the Interdisciplinary Dialogue

This section maps the current stage of the literature that relates the notions of human capabilities and human rights, both at the conceptual and methodological levels. While highlighting the richness of current debates, I argue that with few exceptions such contributions are, on the one hand, still timid in terms of advancing a critical transformative perspective of the contexts that sustain unfreedom, and, on the other hand, embryonic in terms of being responsive to the epistemological component of the CA. I suggest the need for major exploration of the integration between human rights and human capabilities from a bottom-up perspective.

A common vision shared by the concepts of human rights and human development (capabilities), highlighted by the *2000 Human Development Report*,¹¹⁹ stimulated capability scholars to examine their differences and similarities. Both concepts share the basic premise that human beings “should not be treated as means but as ends.”¹²⁰ Nonetheless, while the human development approach is sensitive to human diversity—and, in turn, to how such diversity conditions people’s ability to convert means/goods/resources into personal advantages—the human rights approach, as

¹¹⁸ *Ibid.*

¹¹⁹ United Nations Development Programme, *2000 Human Development Report*, online: UNDP <http://hdr.undp.org/en/media/hdr_2000_ch0.pdf>.

¹²⁰ Deneulin & Shahani, *supra* note 70 at 60.

capabilities scholars see it, does not necessarily consider such differences.¹²¹ Human rights focus on the accountability of governments, institutions, and the development of legislation, whereas the human development approach goes beyond this to also consider the roles of multiple entities (i.e. civil society organizations, business and individuals) in promoting human flourishing.¹²² Fundamentally, as argued in the report, the contribution of the human development approach lies in the fact that it brings a “dynamic long-term perspective to the fulfillment of rights, and directs attention to the socio-economic context in which rights can be realized—or threatened.”¹²³

At the conceptual level, the integration between human rights and human capabilities has been theorized from different angles, and diverse interpretations have been advanced. From the very outset, Amartya Sen warned against subsuming rights into capabilities entirely. He points out that capabilities—referring here to freedom-opportunity or individual advantages—cannot serve as the sole informational basis for thinking about human rights. This is because other considerations related to what he considers freedom-process (agency) are also crucial to understanding the procedural aspects of human rights.¹²⁴ Beyond such a distinction, the idea of capabilities has been thought of as a *precursor* to human rights in the sense that “without the possession of some basic capabilities it would not be possible to make effective use of the existing rights recognized in a political community.”¹²⁵ Others propose capabilities are the *objects*

¹²¹ *Ibid.* at 61.

¹²² *Ibid.*

¹²³ *Ibid.* at 62.

¹²⁴ Amartya Sen, “Elements of a Theory of Human Rights” (2004) 32:4 *Phil. & Pub. Affairs* 315 [Sen, “Theory of Human Rights”]; Amartya Sen, “Rights as Agency” (1982) 11:1 *Phil. & Pub. Affairs* 3.

¹²⁵ Alexander, *supra* note 66 at 82.

of human rights, by which they mean a “right to x” can be understood as a right to a capability that should be respected, protected, and fulfilled.¹²⁶ Most recently, Martha Nussbaum invites us to think about capabilities—and in particular her capability list—as the *species* of the human rights approach.¹²⁷ In this sense, Nussbaum maintains, capabilities act as *benchmarks* for human rights assessment insofar as they secure a means to go beyond a purely nominal or legal recognition. The implication is that right-holders must be put in a position to secure their capability to function in a specific area. Furthermore, Nussbaum argues, these two concepts taken together “should march forward as allies in the combat against an exclusive focus on economic growth.”¹²⁸ Yet, as Martin Van Hees astutely asserts, the relationship between these two concepts seems to be more complex than simply citing a “right to a capability” or asserting that “a right is a capability.”¹²⁹ While suggesting in a preliminarily way that capability-rights are, in fact, *instruments* for the realization of various capabilities goals, Van Hees acknowledges that the discussion is open-ended and, as such, can develop in different directions.

In an examination of the literature that attempts to bridge the concept of human rights and human capabilities, common themes become evident. This integration has principally captured the interest of Western scholars, who see in the idea of capabilities a conceptual device for challenging the liberal Western concept of rights as side-constraints from which duties only of non-interference can be derived. The fact that rights-

¹²⁶ Jay Drydyck, “Responsible Pluralism, Capabilities and Human Rights” (2011) 12:1 *J. Hum. Dev. & Capabilities* 39.

¹²⁷ Martha C. Nussbaum, “Capabilities, Entitlements, Rights: Supplementation and Critique” (2011) 12:1 *J. Hum. Dev. & Capabilities* 23 [Nussbaum, “Capabilities, Entitlements, Rights”].

¹²⁸ *Ibid.* at 37.

¹²⁹ Martin Van Hees, ““Rights, Goals and Capabilities” (Paper presented at the Human Development and Capability Association Conference, Amman, Jordan, 22 September 2010) [unpublished].

capabilities also demand positive obligations has been discussed extensively by Amartya Sen and Martha Nussbaum.¹³⁰ In a more sophisticated proposal, Sandra Fredman elaborates a model for “transforming rights” in which human rights are equated with substantive freedoms (capabilities) to be and do what one values.¹³¹ What is novel about her proposal is that her conceptualization of rights leads her to defend a set of three-dimensional positive duties that in substance are about empowering individuals and requiring the presence of the state as a facilitator. Such positive duties encompass the duty to remove constraints on choice, to facilitate agency, and to secure the possibility of exercising rights.¹³² As much as the notion of capabilities provides strong reasons to support positive duties, it also acquires special currency when it comes to re-conceptualizing the content and scope of the so-called socio-economic rights. In this regard, the CA has been used to enhance the normative framework for poverty alleviation as a matter of human rights;¹³³ to defend the special moral importance of “health capabilities” as the central focal variable for assessing equality and efficiency in health policy;¹³⁴ and also to conceptualize labour rights as a form of conversion factors “through which individual endowments are transformed into capabilities.”¹³⁵

¹³⁰ Nussbaum, “Capabilities, Entitlements, Rights”, *supra* note 127; Sen, “Theory of Human Rights” *supra* note 124.

¹³¹ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press, 2009) at 9-30.

¹³² *Ibid.*

¹³³ Polly Vizard, *Poverty and Human Rights: Sen’s “Capability Perspective” Explored* (Oxford: Oxford University Press, 2006); Siddiq Osmani, “Poverty and Human Rights: Building on the Capability Approach” (2005) 6:2 J. Hum. Dev. 205.

¹³⁴ Jennifer Prah Ruger, “Toward a Theory of a Right to Health: Capability and Incomplete Theorized Agreements” (2006) 18:273 Yale J.L. & Human. 273.

¹³⁵ Jude Brown, Simon Deakin & Frank Wilkinson, “Capabilities, Social Rights and European Market Integration” in Robert Salais & Robert Villeneuve, eds., *Europe and the Politics of Capabilities* (Cambridge: Cambridge University Press, 2004).

If the operationalization of the capability approach is in itself a complex endeavour (see section 3.4.2 above), the integration of human rights and capabilities further complicates matters. While coherence and great refinement can likely be achieved at the conceptual level, the richness of the ongoing interdisciplinary discussion is diluted when it comes to the design of strategies and the particular methodologies that support them. Existing methodological approaches clearly reveal the researcher's dominant discipline and the discipline's particular way of producing knowledge about capabilities and human rights. Economics thus far constitutes the dominant discipline within the CA scholarly niche. For instance, Sakiko Fukuda-Parr, a development economist working in this vein, takes issue with the fact that "the methodology of human rights analysis has been dominated by case-study analysis that emphasizes contextual specificity and uses qualitative information."¹³⁶ Even when quantitative approaches have been employed, she argues, the measurement of human rights and qualitative case studies remain limited by a predominant focus on outcomes (rather than progressive realization), on rights holders (rather than duty bearers), and on individual cases as units of analysis (rather than countries).¹³⁷ Her main concern is that "qualitative case studies cannot be aggregated to reflect on the behavior of the state as a whole with respect to its entire population rather than specific individuals or groups."¹³⁸ Reflecting on what she considers a failure of existing methodologies of human rights, she proposes a framework called the "Economic and Social Rights Fulfillment Index," which she describes as an empirical model for progressive realization and setting benchmarks. In her approach, human rights are

¹³⁶ Sakiko Fukuda-Parr, "The Metrics of Human Rights: Complementarities of the Human Development and Capability Approach" (2011) 12:1 J. Hum. Dev. & Capabilities 79.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.* at 80.

subsumed within capabilities by the assumption that capabilities clarify that human rights impose positive duties to defend economic and social rights.¹³⁹

In terms of the implementation of the controversial “progressive realization” clause, Fukuda-Parr’s proposal is perhaps one of the most innovative and comprehensive. Yet, it displays a serious quantitative bias, the product of a disciplinary assumption about how to best make the case for human rights protection. Particularly problematic is her focus on duty-bearers in terms of national obligations, which overlooks the undeniable fact that harm is unevenly distributed within societies and nations, a point made very forcefully by structural approaches to human rights (see section 3.2.2 above). Qualitative studies (and disaggregated data for that matter) are useful in providing information about human diversity and how such diversity is associated with the manner in which our rights are affected or realized in different ways. As mentioned previously, sensitivity to human diversity is also a pressing concern among capability scholars due to its impact on the process of converting means into individual advantages; thus, one might rightly wonder how this concern is addressed by quantitative approaches. How can *aggregative* cross-country methodologies contribute to fostering awareness, for instance, about differences in health and health care access in mining communities or Aboriginal communities compared to the rest of the population of a given country? Even more, how can we make countries the “unit of analysis” and still remain ethically responsive to the people-centred commitments promoted by the CA? My point here is that an uncritical overemphasis on the virtue of quantitative methodologies risks losing focus on people’s stories of lived suffering and deprivation, stories that are not only valuable themselves but instrumental

¹³⁹ *Ibid.* at 74.

in fostering emotions and promoting the values of care, solidarity, and compassion so important to capability scholars.¹⁴⁰ This is not to stipulate an either/or approach to quantitative and qualitative methodologies, but to argue that these should act in tandem to make better sense of the integration of human rights and capabilities. Hence, a fundamental challenge for capability scholars is to interweave the unique contributions of these methodological approaches rather than to reinforce their bifurcation. Interdisciplinary approaches and interconnected methodologies are crucial steps for the *paradigm shift* that Paul Farmer urges we need to embrace in order to advance a more robust understanding of human rights in theory and practice.¹⁴¹

In a novel and very promising proposal, Tania Burchardt and Polly Vizard have come up with a mixed method device that nicely links the idea of capabilities and rights, without subsuming one into the other.¹⁴² Challenging the widely held assumption that “capabilities” cannot be operationalized, the authors demonstrate that they certainly can. They do this by means of a “capability-based measurement framework,” which evaluates the equality and human rights position of individuals and groups by measuring three aspects: functionings (realized states of beings and doing), treatment (i.e. discrimination and other forms of detrimental treatment), and autonomy (empowerment, choice and control).¹⁴³ A remarkable aspect of such a methodology lies in its use of disaggregated data (along the lines of age, disability, gender, race, religion or belief, and sexual orientation) that addresses the “human diversity” concern. Also, the methodology seeks

¹⁴⁰ Nussbaum, *Creating Capabilities*, *supra* note 85.

¹⁴¹ Paul Farmer, “Challenging Orthodoxies: The Road Ahead for Health and Human Rights”(2008) 10:1 *Health & Hum. Rts. J.* 5.

¹⁴² Tania Burchardt & Polly Vizard, “‘Operationalizing’ the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain” (2011) 12:1 *J. Hum. Dev. & Capabilities* 91.

¹⁴³ *Ibid.* at 92.

to promote a balance between international human rights standards and “bottom-up” strategies that incorporate a process of public consultation to define and justify basic capabilities.¹⁴⁴ As such, this proposal advances a holistic mixed-method approach that illustrates how rights-capabilities can make the most of each other for strategic purposes. In general terms, Burchardt and Vizard’s contribution sheds important light on how a capability-rights strategy or methodological approach should be oriented in order to genuinely convey the spirit and normative commitments the CA seeks to promote.

As Vizard, Fukuda-Parr and Elson, in the most recent issue of the *Journal of Human Development and Capabilities* remark,¹⁴⁵ the integration of human rights and human capabilities is still in an exploratory phase both at the conceptual and methodological level. A future agenda is set to advance the design of “applied frameworks” in which the CA can, on the one hand, contribute to the evaluation of the human rights position of individuals and groups, and, on the other, explore how both approaches can be “applied as mutually reinforced framework[s]” across traditional disciplinary divides.¹⁴⁶ Further empirical research is also required on the interaction between capabilities and human rights in order to clarify the nature and scope of positive obligations and to explore which types of human rights-based interventions are most likely to succeed, among other issues of interest.¹⁴⁷ The following section sets out how this study can contribute to advancing this agenda.

¹⁴⁴ *Ibid.*

¹⁴⁵ Polly Vizard, Sakiko Fukuda-Parr & Diane Elson, “Introduction: The Capability Approach and Human Rights” (2011) 12:1 *J. Hum. Dev. & Capabilities* 1.

¹⁴⁶ *Ibid.* at 2.

¹⁴⁷ *Ibid.* at 15-18.

3.6 Human Rights “Concretized”: A Capability-Oriented Model of Human Rights

Throughout this chapter I have argued that my integration of human rights and human capabilities into an analytical model for exploring the context of systemic unfreedom in La Oroya is based on strategic and pragmatic concerns. These two concepts have distinct analytical backgrounds and particular ethical commitments that, in turn, influence the design of my capability-oriented model of human rights. As noted earlier, the idea of human rights that informs my model draws on *structural approaches* to human rights, while the idea of human capabilities rests on a *relational-political* interpretation of the CA. Accordingly, a capability-oriented model of human rights model is designed to provide guidance in two aspects. First, it aids in identifying the constellation of “conversion factors” that compounds the context of systemic unfreedom in La Oroya. This task will reveal the positive or negative “structures of living together”—in Séverine Deneulin’s terms—that shape the lives and relationships of inhabitants in La Oroya. As noted earlier, this analysis has an instrumental but, fundamentally, intrinsic value. By identifying the exact components of a context of systemic unfreedom, the goal is to advance a critique on the powerful forces shaping such a context and in turn to advance arguments for its transformation. Second, once the contours and components of a context of systemic unfreedom in La Oroya are identified, my proposed model will guide analysis of the extent to which living under unfreedom affects people’s value judgments, shapes their identities, structures inequalities, and determines their overall possibilities of well-being—of both individuals and the community of La Oroya at large. It is on the basis of such an analysis that I seek to

respond the main questions of this dissertation, and also to shed more light on what I see as a symbiotic relationship between the notions of human capabilities and human rights.

What distinguishes my capability-oriented model of human rights from other proposals integrating these two concepts—discussed above—is its commitment to people’s voices (alternative epistemologies). To be sure, since the CA is defined as a people-centred approach resting heavily on respect for “what people value being and doing in life,” I sustain that any investigation of a context of systemic unfreedom—and the experiences of human rights abuses such context triggers—cannot be advanced by privileging the researcher’s internal values and personal or disciplinary assumptions. This is why my model will incorporate the voices and testimonies of the inhabitants of La Oroya on their living experiences of unfreedom into such an assessment.

3.7 Conclusions

This chapter introduces the analytical framework for this study. A capability-oriented model of human rights embraces a *critical-optimist lens* to explore and assess historical processes and politico-economic dimensions of human rights abuses in the smelting town of La Oroya, Perú. This model is in line with structural approaches to human rights; and for strategic, contextual, and pragmatic reasons, I propose to “concretize” or anchor it in the idea of human capabilities. The idea of human capabilities is taken from a politico-relational interpretation of the capability approach. The framework is designed to provide guidance in two aspects. First, it orients the investigation of the contours and components of a context of systemic unfreedom in La Oroya; second, it guides the assessment of the extent to which living under unfreedom affects both the development of human capabilities and the realization of human rights.

Although the investigation of a context of systemic unfreedom in La Oroya is by and large an exploratory process, it draws on the following preliminary hypothesis. There is a *process* that goes from the acquisition/enjoyment of opportunities (capabilities) to the conversion of these opportunities into well-being outcomes (functionings). The *process* of converting opportunities into functionings is facilitated (or constrained) by a variety of factors, such as social practices, institutional arrangements, political systems, and economic contexts. The exercise of our agency—that is, our ability to pursue and realize goals that we value—also plays a crucial role in achieving well-being outcomes. Agency is not only concerned with individual goals but also with “what we can do as members of a group, collectivity or political community” to promote changes.¹⁴⁸ To this extent, agency is socio-historically determined; thus, such history and “structures of living together,” as Deneulin would put it, need to be carefully scrutinized to understand how they shape and form our values systems. Sometimes these values and goals will be conducive to our personal and social well-being, but other times they may conflict with each other. By and large, context and structures shape our value judgements and our ability to pursue these goals and become the owners of our own destiny. In so doing, they also influence the possibilities (or lack thereof) we have to exercise our rights, and to promote the rights of others—and finally, the possibilities others have to successfully advocate for the protection of our rights.

As noted before, my capability-oriented model of human rights is distinct from other proposals in its intention to incorporate a bottom-up dimension in assessing a context of systemic unfreedom. To do so, it requires a methodology that responds to an

¹⁴⁸ Deneulin & Shahani, *supra* note 70 at 37.

interdisciplinary orientation yet remains loyal to the people-centred commitments of my proposed integrated analytical framework. The next chapter discusses what such a methodology should look like.

Chapter 4

A Capability-Oriented Model of Human Rights Methodology *for* and *from* the Community of La Oroya

4.1 Introduction

The main purpose of this study is to go “deeper and wider” into identifying the contours and components of the context of systemic unfreedom in La Oroya, and in this way to evaluate how such a context affects the realization of rights-capabilities. More concretely, it concerns how such a context relates to the trade-offs between “health” and “work” in La Oroya. To attain these goals, as the previous chapter suggests, a special methodology is needed that remains responsive to the interdisciplinary nature and ethical commitments of a capability-oriented model of human rights. This chapter deals with the design of such a methodology.

The people-centred commitments of the capability approach (CA), along with the tenets advanced by structural approaches to human rights, carry specific methodological implications. First, inherent in the CA, as I interpret it, is a concrete epistemological stand that strongly suggests acknowledging people as primary “knowers” of the things they value doing and being. Thus, the suggestion is to develop our understanding of how and why people choose among different ways of living by relying upon “people” as a crucial source of information.¹ In other words, we must locate people as subjects rather

¹ The capability approach (CA) is often considered an “objective” approach to well-being in the sense that its major concern is with “beings and doings,” which depend upon the conversion of “havings” or material possessions into a set of “human capabilities to function.” By contrast, “subjective” approaches to well-being (i.e. utilitarianism and welfarism) place major emphasis on “perceptions, life satisfaction and happiness.” As discussed in the previous chapter, when measuring life satisfaction or happiness, subjective approaches tend to be blind to the phenomenon of “adaptive preferences” in the result of people’s choices, a fact that has been highly criticized by proponents of the CA. Unlike subjective approaches to well-being

than mere objects of research. Indeed, capability scholars concerned with a prospective use of the CA suggest the “bottom-up” nature of the approach as a first step to tailoring a capability-oriented methodology. Such a nature, according to Flavio Comim, “[r]equires [the] participation and involvement of those people who are the agents of development.”² For the rest, researchers must have intuition, creativity, coherence, familiarity with the historical context of study, and a capacity to relate local problems with wider structures. These are the minimal requirements for the exhausting but enthusiastically pursued goal of what Sabina Alkire metaphorically refers to as “making a solid pudding,” alluding to the process of designing a sound capability methodology.³ This is a process in which “bakers and tasters alike” should play an important role.⁴

The second methodological implication is that the suggestions advanced by proponents of structural approaches to human rights—namely, those seeking to move beyond the international human rights legal framework as the main source of understanding human rights and their violations—requires, in Mark Goodale’s opinion,

that take for granted people’s choices are as a result of an immaculate process of free reasoning, the CA remains critical by observing the context that influences such choices. Thus, it is not that the CA rejects evaluating subjectivity; rather, it does so immersed in the contexts that influence people’s choices and preferences. In fact, it would seem contradictory to affirm otherwise given the strong weight the CA puts on people’s values. In this light, I suggest the CA would be better labelled a “holistic approach to well-being” rather than solely objective. For a discussion about the different approaches to well-being in the literature, see Sarah White, “Bridging Well-being into Development Practice” (2009) Wellbeing Research in Developing Countries (WeD) Working Paper 09/50, online: WellDev <<http://www.welldev.org.uk/wed-new/workingpapers/index.html>>.

² Flavio Comim, “Measuring Capabilities” in Flavio Comin, Mozaffar Qizilbash & Sabina Alkire, eds., *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008) 160.

³ Sabina Alkire, “Using the Capability Approach: Prospective and Evaluative Analyses” in Comim, Qizilbash & Alkire, *ibid.* 26 at 46.

⁴ *Ibid.*

an “epistemological inversion.”⁵ Inspired from an interdisciplinary perspective, this is an invitation to look into the practice of human rights as a terrain where meanings about human rights and experiences of human rights violations precede and enhance the theoretical thinking about human rights.⁶ If the goal is to foster social transformation, we are compelled to be critically self-reflexive about existent dominant epistemologies and their limitations in advancing a more comprehensive understanding of the social phenomena under study. As de Sousa Santos rightly asserts, “It is not possible to think and even less enact alternatives for emancipatory social change without epistemological changes.”⁷ This does not mean that a radical replacement of ways of producing and organizing knowledge by others is necessary; instead, we must undertake a process of dialogue and stimulate a greater awareness of our position as producers of knowledge.⁸ If the need to create an awareness about human rights violations lies at the core of the political use of the human rights discourse, then we also need to examine how faithful the mode of producing such an awareness has been to the experiences and knowledge of those for whom we employ the discourse.

To be responsive to the above-mentioned concerns, the design of a capability-oriented model of human rights methodology as an exploratory-explanatory device draws its inspiration from two key aspects of the “methodology for an immanent theory”

⁵ Mark Goodale, *Surrendering to Utopia: An Anthropology of Human Rights* (Palo Alto, CA: Stanford University Press, 2009) at 112.

⁶ *Ibid.*

⁷ Boaventura de Sousa Santos, *Another Knowledge is Possible: Beyond Northern Epistemologies* (New York: Verso, 2008) at xlix.

⁸ *Ibid.*

elaborated by Brooke A. Ackerly.⁹ In terms of its focal point, the methodology for this study seeks to “[f]ocus particularly on those hurt—and differently hurt—by existing institutions and practices.”¹⁰ In order to act *in tandem* with a conceptual framework aimed at fostering critical thinking, this methodology also seeks to act as “[a] tool for destabilizing our own epistemological confidence that our analysis is ‘true’ and our own confidence that we are analyzing without normalizing.”¹¹

This chapter will proceed as follows. The first section will introduce the general principles and commitments upon which a capability-oriented model of human rights methodology should rest. Next, I will translate such principles to inform the research methods for the context of La Oroya. The La Oroya case will then be presented as an emblematic and strategic case study that exposes the inherent complexities of contexts of unfreedom and at the same time fosters reflection on the extent to which the components of this context have been historically shaped and politically and economically reproduced. It does so by using people’s experiences and knowledge as valuable sources of information. This section also discusses the data collection methods for this exploratory enterprise: the research sample selection, recruitment process, and data analysis strategies. In the third and last section, I will deal with the limitations and practical challenges that arose during the data collection process. The chapter will wrap up by reflecting on some ethical considerations and the challenges these pose to the principles of a capability-oriented model of human rights methodology.

⁹ Brooke A. Ackerly, *Universal Human Rights in a World of Difference* (New York: Cambridge University Press, 2008) at 22. Ackerly’s theorization about human rights has a slightly different purpose, as her proposal engages primarily with the diverse experiences and knowledge of “human rights activists,”—namely, women’s human rights activists.

¹⁰ *Ibid.* at 128.

¹¹ *Ibid.* at 138.

4.2 A Capability-Oriented Model of Human Rights Methodological Principles

Broadly speaking, a capability-oriented view of human rights methodology will facilitate major socio-political and historical consciousness about the context in which the research is situated. As a device through which to explore the interconnection between two approaches—rights and capabilities—that themselves present conceptual and operationalization challenges, this methodology demands we critically evaluate their predominant epistemological assumptions to avoid reproducing them through their integration. In this manner, whatever the central questions or data collection techniques of a given study are, the researcher's world view should remain responsive to the core demands advanced by the CA and be honest about the effects on human rights they envision. Accordingly, a capability-oriented model of human rights methodology rests upon the following commitments.

4.2.1 Self-Reflexivity

For de Sousa Santos, self-reflexivity “[i]s the first step towards the recognition of the epistemological diversity of the world.”¹² Given that research is not value-free, and we might be tempted—consciously or unconsciously—to continuously revert back to our own world views, self-reflexivity challenges us to be humble and unchain our own preconceptions. The fundamental goal is to, on the one hand, avoid the dictatorship of certain regimes of truth and, on the other hand, develop awareness about the researcher's position as knower.

In the case of the human rights discourse, being aware of the epistemic diversity of the world is to accept that a single universal meaning of human rights might be

¹² de Sousa Santos, *supra* note 7 at xxi.

impossible to achieve. Diverse ways of understanding the meaning of human rights and what it means to be human become apparent through simple dialogue with the participants of the studies undertaken and fellow researchers, as well as from reading judicial cases in diverse world jurisdictions. More contested is the existence of a plurality of ways by which “experiences of human rights violations” are understood. This raises a question about who has the legitimacy to claim the experiences of oppression and suffering. While the response to this may seem straightforward, the reality is that human rights operators¹³ often understand, capture, and reproduce such experiences only so far as their own personal assumptions and available knowledge allow them to do so. As a result, important aspects of such experiences of injustice are overlooked or misinterpreted. This problem leads to the second dimension of self-reflexivity, which is self-scrutiny of the researcher’s position as knower. Self-reflexivity, in this sense, implies a continual interrogation about how we see ourselves in relation to others (i.e. participants, research subjects) and who will benefit from our study.

An inadvertent position of superiority as carriers of knowledge may well push us to minimize certain aspects of our participants’ living experiences. At its worst, it can also lead to actions or reinforce assumptions that, although designed to restore or enhance the “good” for a society, end up reinforcing or creating “harm.” Self-reflexivity symbolizes then a commitment to think before acting.

¹³ By this I mean those who place the human rights discourse in its practical domain: for example, activists making claims under the language of human rights, judges deliberating about human rights, policy-makers enacting legislation that touches human rights issues, and academics researching and writing about human rights.

4.2.2 Voicing People

A capability-oriented model of human rights methodology embraces a people-centred approach. This is not only because it helps to produce knowledge about “people,” but because it fundamentally seeks to make people’s experiences of injustice visible and available to the world. People’s narratives about their experiences of injustice are not only relevant to understanding and recreating the complexities of the outside world, but such experiences themselves are intrinsically valuable. A people-centred methodology goes beyond the seeming romanticism inherent in approaches aimed at “voicing people,”¹⁴ although it is undeniable that such approaches are effective in enhancing readers/viewers sensibilities about experiences of injustice and suffering and, in turn, promoting values of solidarity and commitment.¹⁵

Voicing people is intrinsically important for three reasons. First, in line with the principle of self-reflexivity, voicing people allows us to know individuals, to disclose their axes of identity, and to locate them in the contexts of their own societies or communities. In this manner, researchers develop an awareness of the coexistence of complex and diverse experiences; thus, they consciously avoid the common mistake of homogenizing individuals, collectivizing their experiences, and ignoring a community’s internal conflicts. Second, by voicing people and learning how they deal with their problems, a researcher is better positioned not only to identify but to understand phenomena such as “adaptive preferences” or “tragic choices”—in which people’s

¹⁴ See, for example, the “Voices of the Poor” series published by the World Bank. For the latest issue, see Deepa Narayan, *et al.*, eds., *Can Anyone Hear Us?: Voices of the Poor*, vol. 1 (Paris: Eska, 2001).

¹⁵ I clearly noticed the impact of my own presentations about the La Oroya case in international forums. The audience was more engaged in presentations when I introduced the “voices of La Oroya” either through citing community members’ insights or showing a video about the community than when I spoke about an “imaginary” community.

preferences and choices do not emerge naturally but are strongly mediated by external forces (for a wider discussion, see Chapters 1 and 6). Such identification allows the researcher to expose patterns of domination, oppression, and subordination that otherwise are overlooked or normalized by social practices and institutional arrangements. Third, voicing people recognizes that peoples' narratives, beyond mere illustrations of fact, are important sources of knowledge. This requires critical reflection about how the researcher interprets and represents such narratives. To be sure, in interpreting and representing such data one should ask to what extent it is possible, if at all, to harmoniously combine the researcher's and participant's voices without denaturalizing the latter.

It is commonly assumed that "voicing people" privileges a bottom-up perspective and therefore retains a partisan view of local reality. While people's living experiences can act as an entry point to a study, this does not impede the "reaching out" or interconnection with other sources of knowledge. The dilemma is not to choose between top-down or bottom-up approaches to producing knowledge and understanding social problems, but rather to break this dichotomy and conflate both perspectives to create a more holistic and robust way of "knowing and thinking for a better doing."

4.2.3 Fostering Historical and Political Awareness

Tracking the history of communities matters. This is particularly true in a capability-oriented model of human rights methodology, which must unveil the historical formation of patterns of domination, subordination, and power imbalances that create the "context of systemic unfreedom" in which people live. Nonetheless, fostering historical awareness is more than simply recapitulating events. It requires scrutinizing the very manner in which history is being told and written. History is significant in highlighting

and making relevant certain events and certain subjects, or, by contrast, in minimizing them for the social imagination¹⁶ When contrasted with historical accounts as told by inhabitants of communities, the history that is recreated and exposed by texts may differ or omit important facts. Advancing historical awareness requires being conscious about such possibilities, reviewing different sources of historiography by looking for similarities, gaps, and contradictions.

Likewise, a capability oriented model of human rights methodology cannot be politically blind; it cannot ignore how political and economic arrangements conspire to diminish people's freedom. Because it is a methodology designed to navigate contexts where societal progress has always hinged on and been subjected to "development formulas," the political and economic forces and actors supporting and promoting such formulas need to be interrogated. This recommendation equally applies for evaluating societal progress in the so-called high-income countries.

4.2.4 Engaging in the Scrutiny of Individuals and their Social Embeddedness

Both human rights and human capabilities are often criticized for their individualistic nature. And although both approaches have progressively opened their frameworks to recognize collective rights or rights of groups (i.e. the rights of indigenous communities, religious groups, and visible minorities) and collective capabilities (i.e. self-help initiatives), such recognition is often grounded in commonalities and shared cultural identities. As such, the dynamics of rights in the

¹⁶ Post-colonial and subaltern studies are particularly illustrative in this regard. They have exposed how Eurocentric history acts as a dominant discourse, excluding voices and events that would have been told from the perspective of powerless citizens—referred to as the "subaltern" or colonized. Thus, subaltern studies proposes rethinking history by restoring it to the subaltern, that is, to those whose voices have been historically ignored. See Gyan Prakash, "Subaltern Studies as Postcolonial Criticism" (1994) 99:5 *Am. Hist. Rev.* 5.

context of socially fragmented communities (i.e. La Oroya), where the notion of identity is complex, have been left unexplored. This becomes increasingly problematic if a researcher blindly upholds the ethical individualistic nature of the capability approach—as promoted by Amartya Sen—according to which individuals and only individuals should be regarded as units of moral concern. As noted in the previous chapter, authors such as Séverine Deneulin argue that ethical individualism is in fact insufficient to capture certain realities, in particular the realities exposed by processes of development. As Deneulin puts it, structures of living together are crucial to providing the collective basis for individuals to flourish in life, and thus they also deserve the same moral concern.¹⁷

4.3 A Methodology *for* and *from* La Oroya

The aforementioned principles are thought to guide the design of methodologies for any given study—bridging human rights and human capabilities—in a manner that remains responsive and responsible to the context of the study. In so doing, it must be noted, such principles act in an interconnected manner. Based on this premise, I have designed a contextualized methodology *for* and *from* the community of La Oroya. It is designed *for* La Oroya because it requires a prior period of familiarization and sensitization with the community and the issues specific to it.¹⁸ It does this by looking critically at the present state of La Oroya in relation to its past as well as at the wider economic and political structures that influence life in the community. It is designed *from*

¹⁷ Séverine Deneulin, “Beyond Individual Freedom and Agency: Structures of Living Together in the Capability Approach to Development” in Comim, Qizilbash & Alkire, *supra* note 2, 104; Séverine Deneulin, *The Capability Approach and the Praxis of Development* (London: Palgrave Macmillan, 2006).

¹⁸ For instance, along with keeping up with the latest news and publications on La Oroya, I visited the community one year prior to conducting interviews in La Oroya to establish contact with numerous community leaders, local NGOs, and Lima-based researchers working on the La Oroya case.

La Oroya because it seeks to investigate La Oroya problems by “giving voice” to community members, acknowledging the legitimate value of their knowledge and living experience as a source of first-hand information. This is important in order to truly understand who the community members of La Oroya are and how they think and see themselves in relation to the rest of the community. It also provides space to reflect on the insights of those who have devoted a great deal of time and emotion to fostering changes in La Oroya and of public servants who, in one way or another, have dealt with the case.

My methodological commitments being such, I considered it appropriate to borrow from qualitative research methods, in particular, to approach my investigation through the form of a case study. In the first case, “[q]ualitative approaches allow room to be innovative and to work more within research designed frameworks.”¹⁹ They are strategically useful for advancing an emergent design and for complementing frameworks based on empirical evidence, which in part characterize my project. In addition, qualitative research tends to be more sensitive to the people and places under study. In a qualitative study, the final report usually blends “[t]he voices of participants, the reflexivity of researcher, and a complex description and interpretation of the problem.”²⁰

In the area of environmental health research, qualitative studies are gaining currency due to their ability to “improve understanding of complex exposure pathways, including the influence of social factors on environmental health, and health outcomes.”²¹

¹⁹ John W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Method Approaches* (London: Sage, 2009) at 19.

²⁰ John W. Creswell, *Qualitative Inquiry and Research Design* (London: Sage, 2007) at 37 [Creswell, *Qualitative Inquiry*].

²¹ Madeleine Kangsen Scammell “Qualitative Environmental Health Research: An Analysis of the Literature 1991-2008” (2010) 118:8 *Env. Health Perspectives* 1146.

The emergent interest in qualitative research is bringing together scholars from different disciplines—most notably epidemiologists, anthropologists and ethnographers—who work together in “transdisciplinary research,” meaning a type of research in which “methods transcend the techniques of any single discipline.”²²

Unlike case law, in which problems are presented as concrete claims under the law leading to solutions only in accordance with such laws, case study methods are most suitable to fostering a better understanding of the web of factors embedded in contexts of unfreedom.²³ Indeed, contexts of systemic unfreedom, in which processes of capability deprivation are sustained and endured, are deeply complex, and traditional legal methods remain unequipped to provide a full account of them. Such processes are not neatly linear but messy, historical, interconnected, and relational. In these contexts, consequences of abuses are reproduced from the past to the present, from the local to the global, and *vice versa*. Moreover, complex contexts of unfreedom tend to institutionalize and normalize patterns of domination, exclusion, and inequality, making them invisible even to the subjects who suffer their consequences. Given such complexities, the case study method stands out as a good option because it allows us to investigate social phenomena; as Robert Yin posits, the method allows investigation to occur “in depth and within its real-life contexts.”²⁴ More specifically, the case study of La Oroya will follow the template of

²² *Ibid.* at 1147.

²³ Let us imagine a sheet of paper full of dots, each dot representing diverse characteristics, social conditions, historical backgrounds, and different states of being and doings of the members of the La Oroya community. While the “case law” will likely investigate only one of these dots—for instance, the consequences of environmental pollution to population health—the “case study” looks at the multiple and potential interconnections of these dots, making relevant their role in influencing the lives and social relationships of La Oroya citizens.

²⁴ Robert K. Yin, *Case Study Research: Design and Methods* (London: Sage, 2009) at 18.

an “extended case study” as proposed by Michael Burawoy.²⁵ Given that social struggles often transcend space and time, Burawoy’s extended case method engages multiple dialogues between participants and researcher, between local processes and wider structures, “[t]o extract the general from the unique, to move from the ‘micro’ to the ‘macro’, and to connect the present to the past in anticipation of the future.”²⁶ Accordingly, the case study of La Oroya is used in my project both as an emblematic and strategic case study because it exposes inherent complexities in the contexts of unfreedom of La Oroya and, at the same time, allows for an in-depth assessment of the socio-historic roots and political dimension of rights-capabilities development.

Cross-case study analyses are deemed the ideal option to advance generalizable claims, as they facilitate more data gathering and consider all the different variables in place. Time and resource limitations precluded me from originally choosing this option; nevertheless, I ultimately decided to more strategically maintain a single case study based on my conviction that La Oroya itself encompasses enough complex elements to be fully explored alone. Despite potential and understandable disagreement, I do believe the La Oroya case study can promote an enhanced social awareness about the (hidden) reality of communities with a long mining or smelter tradition in the Peruvian context and beyond.²⁷ Ultimately, it all depends upon one’s perspective of the issue of

²⁵ Michael Burawoy, “The Extended Case Method” (1998) 16:1 Sociological Theory 4.

²⁶ *Ibid.* at 5.

²⁷ It should be noted that conflicts related to extractive activities are affecting not just traditional mining countries such as Perú, Guatemala and Bolivia, but non-traditional ones such as Argentina, Colombia, and Panama. This creates a platform for this study to stimulate debates beyond the geographical boundaries of La Oroya. In fact, in some of my presentations in international forums, Latino scholars have pointed to some similarities between my case study and other cases in the Latin American region. For a follow-up on social conflicts related to the extractive industry and the emergent areas of research they are motivating, see “El observatorio de conflictos mineros de America Latina” (The Observatory of Mining Conflicts in Latin America), online: Conflictos Mineros <<http://www.conflictosmineros.net/>>.

“generalizability.” For instance, Robert Donmoyer argues that the traditional notion of generalizability has become problematic, particularly when the researcher’s expectation is to find lawful regularities between causes and effects, as in aggregative or mathematical terms. This narrow vision overlooks the possibilities for a case study “to expand and enrich the repertoire of social constructions available to practitioners and others; it [case studies] may help, in other words, in the forming of questions rather than in the finding of answers.”²⁸ By proposing La Oroya as a strategic and emblematic case through which we can rescue important lessons to rethink other cases, I follow Donmoyer’s vision of generalizability.

4.3.1 Data Collection Methods

Case study research often relies on the collection of multiple sources of data.²⁹ The data collection for this study integrates two mutually connected phases: a contextualized strategy and a set of semi-structured interviews with members of the community of La Oroya.

Contextualizing Strategy

By “contextualizing strategy” I refer to a series of steps to gain familiarity with the setting. This strategy prepares the terrain before undertaking fieldwork activities and enhances the subsequent interpretation of findings. It encompasses the following steps:

Textual analysis: A review of historical literature on the socio-economic formation of the community of La Oroya revealed the ways in which the smelter activity

²⁸ Robert Donmoyer, “Generalizability and the Single-Case Study” in Roger Gomm, Martyn Hamerseley & Peter Foster, eds., *Case Study Method* (London: Sage, 2000) at 52.

²⁹ Yin, *supra* note 24.

has shaped, among other things, social relationships, the community's social structure, internal power dynamics, access to opportunities, and gender roles.

Legislation analysis: A critical analysis of legislation and environmental regulations mapped the extent to which such legislation set up environmental standards in comparison to international ones. In particular, I analyzed the implementation and supervision of regulatory instruments such as the Environmental Mitigation and Management Program for the La Oroya Smelter ("PAMA" in Spanish) in ensuring environmental protection for La Oroya.

Medical evidence of toxic metals exposure and poisoning: I reviewed all the evidence produced on environmental contamination and its manifestations in people's health in La Oroya (i.e. air pollution reports, studies on lead poisoning, high levels of cadmium and arsenic in people's blood). I then analyzed the responsiveness of the Peruvian government in implementing medical diagnosis and ongoing treatment.

Litigation and court decisions: I reviewed court decisions and human rights litigation pertaining to the case of La Oroya to understand how problems in La Oroya are framed, what is included, and to what extent litigation has contributed to promoting positive changes for the environmental-health dilemmas in La Oroya.

Documentaries and media reports: I reviewed documentaries and media reports about La Oroya to scrutinize what the issues are regarding this community, which issues have received more attention than others over time, what these reports make visible, and, in turn, what they conceal.

Knowledge networking: In September 2009, I briefly visited the field and established preliminary contact with potential "key informants," which included

academic experts on mining and conflict in Perú and human rights activists working on the La Oroya case. This visit was crucial not just in initiating contact with members of the community, but also in alerting me to potential difficulties I might encounter when conducting later interviews. An environment of mistrust, suspiciousness, and fear among members of the community became evident during this trip, which allowed me to flag some ethical considerations in the planning of my 2010 visit to La Oroya. Some members of the community suggested meeting in discrete places to avoid the stigma of talking (or providing information) to “environmentalists.” This prompted me to reflect on how to introduce myself: that is, how to gain community trust and at the same time avoid exposing my potential study participants to ostracism. I also realized the need to be cautious and to distinguish my work from that of human rights activists to keep my research impartial.

Semi-structured interviews: This included one-on-one audio-recorded interviews with two groups of participants. The first group comprised human rights activists, namely, those campaigning for the protection of environmental health in La Oroya (MOSAO group).³⁰ The second group was made up of public functionaries who were involved in, among other things, the supervision and enforcement of the PAMA for La Oroya; the diagnosis and treatment of the population affected by lead poisoning; and the design of employment alternatives or relocation plans for smelter workers.

My interviews with these two groups of participants were mainly informational (see Appendix 1 and 2). The intention was to further enrich my understanding and

³⁰ Aside from the MOSAO, I was unable to find civil society groups engaged in anti-poverty campaigns or pushing for better standards of employment in La Oroya, beyond unions. While, during the 1970s and 1980s, some of the MOSAO technical group members (i.e. Grupo Andes) provided technical assistance to smelter unions and workers in terms of salary and occupational health improvements, the focus changed during the late 1990s, when environmental and community health concerns gained major relevance.

knowledge about La Oroya and to fill the “knowledge gaps” left after the historical and legal analysis. Given that human rights activists and public servants dealt with problems in La Oroya during the peak of the conflict, I found it useful to collect their experiences of and reflections upon this period. For instance, activists vividly described experiencing, at the height of the socio-environmental conflict, a “non-breathable” La Oroya due to the high levels of pollution. By contrast, my visit—after the smelter was suspended—took place in a less conflictual environment, where I was able to observe the aftermath of conflict and the extent to which it has affected community well-being.

I sent 13 invitations to human rights activists based inside and outside La Oroya to participate in the study. Ten of these expressed willingness to participate. In the case of public servants, invitations were sent to current and former public functionaries from the Peruvian Ministry of Health (in Lima and La Oroya); the Ministry of Labour; the Ministry of Energy and Mines; the Peruvian Supervisory Board for the Investment in Energy and Mining Projects (“OSINERGMIN” in Spanish); the Peruvian Ombudsman—Office of the Environment, Public Services and Indigenous People; and the Mayor of La Oroya. All of these accepted the invitation to be interviewed with the exception of functionaries from the Ministry of Health: these latter were the director of the Peruvian Program for Medical Treatment of People Affected by Metal Contamination and Other Chemical Substances and the director of the Covenant between the Ministry of Health and Doe Run Peru to Treat People Affected by Lead Poisoning, who is also the head of the regional hospital in La Oroya. The former refused to be interviewed at the outset; the latter did not respond to my e-mail or return my phone calls, implicitly revealing his

refusal to participate in the study. I subsequently requested written information, and have only received a formal response from the office in Lima (see Appendix 3).

Participants from both groups were given the option to remain anonymous; in addition, I ensured confidentiality and privacy by signature of consent forms. Interviews took place parallel to my interviews with community members from October to December 2010. The following is a summary of the sample of participants who contributed in this contextualizing strategy:

Table 1: Data Summary – Human Rights Activists and Public Functionaries

No. Participants	Human Rights Activists	Public Functionaries
From inside La Oroya	5 (Barreto, Villa, HR001, HR002, HR003)	1 (The Mayor of La Oroya)
From outside La Oroya (Lima/International)	5 (Aste, Puentes, Ames, Chacon, Scurrah)	4 (FP001, FP002, Shinno, Lanegra)
Total	10 participants	5 participants

Semi-Structured Interviews: Sample Selection and Recruitment Process

An essential aspect of this study is to give “voice” to people in La Oroya: to listen to them, learn from them, and acknowledge the legitimacy of their living experiences of conflict, mistrust, and suffering as valuable sources of knowledge. Such knowledge is crucial to my understanding of the dynamics between human rights and human capabilities in and for the context of La Oroya. To this end, my research proposal received approval from the University of Victoria Human Research Ethics Committee

prior to collecting a set of one-on-one semi-structured interviews with members of the community of La Oroya³¹

Sample selection for the study considered the following criteria: the socio-demographics of the setting, an account of human diversity, and the need to ensure participation of the diverse and often conflicted voices of La Oroya.

The La Oroya district has a population of approximately 18,606 inhabitants.³² The population is reported to be predominantly young, 35.1% are under 15 years old. It is also characterized by constant migration, as 37% of La Oroya inhabitants come from other provinces.³³ In the vast majority of households (83.7%), men are considered the breadwinners. Almost 25% of the economically active population work in smelting activities, and 16.1% work in construction and commerce. Women compose only 3.0% of the economically active population.³⁴ Levels of poverty are manifested in a lack of basic services, most notably access to health care. While 39.4% of the population contributes—through their employers—to the public health care system, 3.4% have private insurance. The rest of the population, approximately 43%, lack access to either the public or private

³¹ Ethics approval was also granted by the University of Victoria for my interviews with human rights activists and public functionaries in La Oroya and Lima.

³² This is according to a 2007 census conducted by the Peruvian National Institute of Statistics (Censos Nacionales 2007: XI de Poblacion y VI de Vivienda). It is very likely that the number of inhabitants has varied since then. The suspension of smelting activities since July 2009 has prompted a large number of residents to move away from La Oroya to look for job opportunities. To date, there is no reliable data reporting the real socio-economic impact of suspension of smelting activities. This inquiry was made to the La Oroya Mayor, Cesar Gutierrez Revilla, in an interview conducted on December 16, 2010. Approximate figures were given, but beyond a subjective appreciation, the municipality could not demonstrate the certainty and validity of those results as a supportive study was non-existent.

³³ Peruvian National Institute of Statistics (INEI-Junín). *Estudio socio-económico 2001: La Oroya, Perú*. To my knowledge, this is the latest socio-economic study conducted in La Oroya; subsequent studies have covered socio-economic characteristics at the provincial rather than the district level.

³⁴ *Ibid.*

health care system. Alcoholism represents the highest social problem in La Oroya (42.4%), followed by family violence (26.1%) and drug addiction (10.2%).³⁵

Poverty and male dominance in economic activities (and very likely in decision-making in the family sphere) are strong characteristics of La Oroya's socio-economic composition. I was particularly concerned to be responsive to gender equality and also to include participants with diverse socio-economic status. Given the sharp division between community members who have publically defended employment opportunities and those who have defended environmental health, my second concern was to ensure a participatory balance between these two groups. However, I also wanted to ensure participation of more likely "moderate" individuals, in which group I included elders and young people (age >18 <25). By "moderate individuals" I mean those who have a more balanced, less confrontational opinion of the tension between health and work in La Oroya. I designed an interview model guide (with a total of 75 questions) to cover three major aspects of my selected participants' socio-economic background, perspectives, and values in life, and also their opinion about recent socio-environmental issues the community confronted as a whole (see Appendix 4). My first set of questions collected information on their personal backgrounds: living conditions, education and professional training, current work situations, and their health, as well as their childrens'/family's health. The second set of questions aimed at grasping the participants' values, needs, community identity, and expectations for a life of well-being. These questions attempted to capture, through interviewee insights, the strength and weakness of their connection as individuals to their social and collective environment. The third and final section of

³⁵ *Ibid.*

questions invited participants to share their views about the recent events and social struggles in the community over environmental pollution, the public health crisis, and the potential closure of the smelter. My goal was not only to get a sense of interviewees' feelings about these issues, but to ascertain how they think other members of the community view them. Anonymity, confidentiality, and privacy of the participants were ensured. Their names were replaced by codes ranging from MC 1 to MC 47 (where MC signifies "member of the community"). Interviews of about 45 minutes to one hour in duration were audio-recorded with the participants' permission and the signature of informed consent forms (see Appendix 5). A total of 46 interviews were collected. This was considered a reasonable number to ensure a broad participation of the diverse members of the community of La Oroya. The following is a summary of my sample of participants:

Table 2: Data Summary – Members of the Community of La Oroya

No. Participants	Community Members		
By gender	25 Female / 22 Male		
By age	>20<30 = 7	>31<40 = 8	>41<50 = 12
	>51<60 = 13	>61<75 = 6	
By current or former activism in defense of environmental health	18 participants		
By current or former affiliation or defense of job opportunities in the smelter	13 participants		
By holding a moderate position *	15 participants		
Total participants: 46 **			

* No direct affiliation with organizations or groups that publicly defend environmental health or job opportunities.

** Technically, I interviewed 47 individuals; however, participant MC 24 refused to allow his wife to be interviewed and coded separately, arguing that they, as a family, share the same values and beliefs. Thus, upon the wife's agreement, I gave them both the same code and collected their responses as a single interview. Also, participant MC 46 accepted the invitation to be interviewed and received a code and the consent form in advance; however, in the end, the interview did not take place. For this reason, I gave my last interviewee the code MC 47 rather than using MC 46 again.

The recruitment process took place in the cities of La Oroya and Lima from October to December 2010. In recruiting participants, I combined a *purpose sampling method* along with a *chain-referral sample* strategy.³⁶ Specifically, I drew on a chain-referral sample termed “respondent-driven sampling” (RDS).³⁷ This is a network-based sample method in which the recruitment process begins with initial respondents or “seeds” who are asked to recruit a limited number of subsequent respondents. This strategy is meant to efficiently and *safely* penetrate social groups that, for a variety of reasons, are only accessible to insiders.³⁸ Additionally, confidentiality of participants is less threatened by this strategy because participants interested in the study are the ones who contact the researcher, rather than the other way around. This is thus a suitable recruitment strategy for the context of La Oroya, given the dimension of conflict and internal social fragmentation and the levels of mistrust of out-of-town researchers.

I began the recruitment process by purposely identifying 10 individuals through their role as community leaders (i.e. members of the group “movement for the health of La Oroya,” parents of children affected by lead poisoning, and, on the other hand, union representatives and smelter workers who actively defended securing gainful job

³⁶ Upon reflection and following the suggestion of my supervisory committee, I decided to continue my recruitment process by also using a *chain-referral sample* strategy, anticipating that, through purpose sampling methods, I would only be able to contact a narrow number of participants. As I wanted to ensure heterogeneity but, first and foremost, respect the privacy, anonymity, and confidentiality of participants, I came to terms with the fact that adapting a chain-referral sample strategy for the context of La Oroya was my best possible alternative.

³⁷ RDS is a refinement of traditional chain-referred methods, such as snowball sampling or population targeting. It was originally designed to target difficult-to-reach populations, such as sex workers and drug addicts. See Douglas Heckathorn, “Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations” (1997) 44 Soc. Probs. 174.

³⁸ Cyprian Wejnet, “An Empirical-Driven Sampling: Point Estimates, Variance, Degree Measure, and Out-of-Equilibrium Data” (2009) 39:1 Sociological Methodology 73.

opportunities). From my initial list I was only able to reach three participants—MC 1, MC 2, and MC 21—who agreed to being interviewed. While they also showed willingness to act as “seeds” for recruiting additional participants, only participant MC 1 helped to recruit a second wave of participants. I first asked her to put me in contact with those community members from my initial list of 10 whom I was unable to reach due to lack of contact information. MC 1 effectively put me in contact with two of them. To ensure heterogeneity of participants, she followed my selection criteria for the next round of recruits (diversity of gender, diverse socio-economic status, diverse location, age diversity, etc.). I interviewed a total of 10 participants, including a modest third wave of participants.

For my second visit to La Oroya, MC 1 was again willing to cooperate, assisting me in contacting an additional 14 participants from which another modest third wave of participants was elicited. This was understandable given MC 1’s role as a community activist with a large social network within the community. Her intermediation sped up the process of recruitment in a way that I would not have been able to manage on my own. In order to create more balance in this second round of interviews, I insisted on contacting union representatives and their family members. I visited the union building, but workers refused to give me an interview without prior authorization from their union representatives and they refused to give me the representative’s telephone number to obtain the authorization. I left my card and contact information, but they never contacted me. An individual I had met during my first visit who had refused to be interviewed accepted the role of acting as a “seed,” putting me in contact with a couple of participants and with an organization that brings together wives of smelter workers. I interviewed one

of these women, and she was willing to put me in contact with other wives. We planned a set of interviews for my next visit to La Oroya. I completed my second visit with a total of 20 interviews.

During my third visit to La Oroya, the expected participants from the “wives of smelter workers” suddenly refused to collaborate, alleging they truly believed I belonged to an environmental NGO. I explained my academic affiliation and my research goals; they rejected any kind of contact with me. This refusal occurred in the context of a visit to La Oroya by American lawyers who were recruiting children affected by lead poisoning to advance legal actions against the smelter company in the US. This upset smelter workers and their families and increased their suspicion of any outsider in town.³⁹ On the positive side, I was finally able to contact union leaders who facilitated my access to three more participants. Also, a participant from my second visit put me in contact with four more participants. I completed a total of 11 interviews during this visit, which in total amounted to 41 interviews.

At this stage, smelter workers and wives of smelter workers were underrepresented within my sample, due not to a lack of inclusion but to their refusal to participate. In order to address this shortcoming, I planned a fourth and last visit to La Oroya to recruit participants from this group. I asked a union leader to act as “seed,” as

³⁹ For instance, during that week, two of my participants told me that during a popular radio program in La Oroya (“Radio Carisma”), the presenter, Luis Zevallos, warned people about my presence in La Oroya saying that “I belong to an NGO recruiting children to advance legal actions against Doe Run in the United States.” I suspected that my personal information was given to him by the wife of a smelter worker to whom I contacted and gave my card but who refused to participate in the study. Interestingly, Mr. Zevallos never approached me to verify the truth of such information, despite having my contact information. I was told that this is a common *modus operandi* to create psychosocial insecurities among members of the community. For that reason, and in light of guaranteeing the confidentiality and privacy of interviewees, I decided to dismiss this incident as a simple but important anecdote—one that showed me how things work, or better, how things do not work, in La Oroya at the media level.

my visit would coincide with the return of workers to register their assistance in the smelter. He refused to help and suggested it would be better for me to introduce myself directly to workers at the end of their work day. I took the risk, but, as anticipated, the workers, rushing to return home, did not stop to talk to me. However, I was able to get five interviews through a “seed” from my former visit and a non-interviewed person who expressed willingness to act as a “seed.” I closed my interviews with this group after reaching a total of 46 interviews and with the confidence of nearly reaching saturation of responses (for a map of the recruitment process see Appendix 6).

4.3.2 Data Analysis Strategies

Interviews collected in Spanish were transcribed for further analysis.⁴⁰ To analyze my data, I was guided by the general procedures used by qualitative researchers. This is, as John Creswell describes it, “[a] process of coding and condensing the codes, and finally representing the data in figures, tables, or a discussion.”⁴¹ I read my transcripts two to three times to become familiar with the information collected and to identify similarities and differences in the responses. Similarities and differences expressed in specific words or phrases (“codes”) were canvassed in relation to the purpose of this study. A special focus was placed on phrases that opened “unexpected windows” or provided major “clues” about where to direct attention to best accomplish the study goals. As the purpose of my data collection was not to develop a theory from scratch, I was particularly interested in contrasting the information collected with what I had already

⁴⁰ I am a native Spanish speaker with English as my second language, which allowed me to analyze the data in my first language and report my findings in my second. I analyzed my data manually rather than through the use of sophisticated software programs. Through this technique, I seek to gain more practice in the intuitive aspects of analyzing qualitative data.

⁴¹ Creswell, *Qualitative Inquiry*, *supra* note 20 at 148.

read about La Oroya in terms of recent struggles and past history. The intention was to identify missing elements or different areas of emphasis or interpretations—comparing what community members highlight in their own narratives to what “experts” have written or said about La Oroya. I then looked for “trends” while compressing the phrases or words previously selected. As a result, I compiled a list of themes or topics that shed more light and provided more precise identification of the contours and components of a context of unfreedom in La Oroya. This, in turn, allowed me to map valuable capabilities (expressed as the being and doings that participants value for leading a life of well-being) and the existence of diverse claims for justice as proxies to specific human rights. I first made a selection of 16 broad themes.⁴² I identified the most representative phrases or statements for citation in those themes. In a second revision, I again mapped connections to reduce the 16 themes to the six most representative ones; these provided me with the rationale and certainty to respond to this study’s main questions and goals (see Chapter 5 for a report of these findings).

For the sake of credibility, in the process of interpretation of such thematic structures and to enhance the quality of my findings, I “triangulated” the analysis of my interviews with other sources of data collected as part of my “contextualizing strategy.” Social science researchers often define “triangulation” as a combination of multiple data sources, diverse methods, and theoretical perspectives in the study of the same

⁴² Such themes encompass narratives about community identity; socio-economic status; dysfunctional community relations; participants’ values and needs; environmental consciousness; experiences of pollution exposure and health risks; subjective and objective appreciation of health status; experiences of health care provision; absence of symptomatology and neglect; illness and stigma; perceptions of governmental authorities decision-making about La Oroya; perceptions about NGOs’ involvement in La Oroya; perceptions of the role of smelter workers’ unions; human rights activism and experiences of aggression; perceptions about the socio-economic consequences of suspension of smelting activities; and, finally, expectations for a future in La Oroya.

phenomena in order to obtain a more robust vision of problems and, in this way, to strengthen the study overall.⁴³ In qualitative research, interpretations of the findings are usually verified with research participants directly to ensure the validity of results. Due to research site distance as well as time and resource constraints, I was not able to undertake this ideal route. Instead, interpretative rigour and external validity were ensured by means of advice from my supervisory committee and also comments and suggestions from participants in the seminar “Human Rights Trade-Offs: The Case Study of the Smelter Community of La Oroya, Perú” at the Centre for Development Studies (CDS), University of Bath, UK, where I presented the preliminary results of my fieldwork in April 2011.

4.4 Limitations and Practical Challenges

A potential limitation of my study is in my “respondent-driven sample” (RDS) strategy for recruiting my participants from the community of La Oroya. According to the literature, in order to avoid or decrease bias in using RDS (i.e. bias towards more cooperative individuals or homogenous individuals) at least six recruitment waves are expected. For this purpose, RDS generally works with a dual incentive system that provides rewards for being interviewed and compensation for recruiting others. The goal is to stimulate a more robust recruitment process through economic means.⁴⁴ This was not the case in my research work in La Oroya, where economic incentives were absent. I relied heavily on one of my initial participants and, as a result, the study did not reach more than a modest third wave of participants. The lack of economic compensation might have played a role in the failure to reach more than a third wave of participants. Other factors may have included a lack of culture of research; fear, suspicion, and distrust

⁴³ Michael Quinn Patton, *Qualitative Evaluation and Research Methods* (London; Sage, 1990) at 464.

⁴⁴ Heckathorn, *supra* note 37.

within the community; and neglect of the environmental problem in La Oroya. In the majority of cases, participants were willing to participate only because of the anonymous and confidential nature of the study. It can be inferred then, that acting as “seeds” might have been seen as putting anonymity and confidentiality at risk, explaining the lack of cooperation.

Despite these shortcomings, my population sample to a great extent mirrors the community. Heterogeneity and diversity was a constant concern during my recruitment process. Ideally, I would have expected to collect more interviews from smelter workers and their family members, but the reality is that not all of them were as open and willing to cooperate as other members in this community. I found that the responses of my participants became quite predictable as my interviews came to a close in La Oroya. I was able to avoid potential bias through the triangulation process of analyzing my data.

Another potential limitation of this study is the absence of “follow up” interviews in the case of my participants from La Oroya. Research site distance, funding limitations, and time constraints, as noted previously, impeded me from making a second visit to the field. La Oroya is a community that has experienced rapid socio-economic changes in the last decade. It can be reasonably presumed that such changes may also lead to changes in perceptions, value judgments, and expectations for a future life in this community.⁴⁵ A second visit may well have been a crucial source of information on how much this

⁴⁵ My interviews took place during a time when the conflict in La Oroya was less intense than it had been in the past. As the smelter is not in operation at the moment, air pollution levels have dropped significantly. Some citizens pointed out to me with great pleasure that small vegetation is finally growing in the still pale and dry hills of La Oroya. One can tell that a good portion of the population is relieved by the absence of air pollution; however, these are not necessarily the feelings of smelter workers and their families. Rather than appreciating the cleaner environment, they expressed feelings of worry, instability, uncertainty and even anger due to this situation. Three to five years ago, when the smelter was operative, the dynamics would have been reversed.

community's individual and collective perception of well-being is mediated and shaped by external influences.

A series of challenges also arose during my fieldwork in La Oroya. My first contact with community members of La Oroya was through human rights activists (i.e. MOSAO members), and it was difficult to avoid being identified with them. For this reason, I tried as much as possible to avoid creating expectations of an existent or potential alliance with them. Regardless of my sympathy with their work, maintaining such a distance was necessary not only to remain open to those in the community who do not share their vision, but also to be able to impartially reflect on the consequences of human rights activism in La Oroya. Although MOSAO were, by and large, the most “collaborative” participants—and indeed I initiated my recruitment process with them—I was open about my intention to recruit a broad range of participants, including smelter workers and their families. The explorative component of my study and my need to assess how *all* members of the community have been affected by the recent social struggle, when explained to the MOSAO participants, was deemed a fair and understandable goal. My interviews with these “more collaborative” members of the community were very enriching in that I gained confidence and practice in interviewing. I also received “tips” on how to approach “less collaborative” members of the community. Throughout these interviews I also began to unveil the suspicion and fear inherent in some members of the community. I was warned to be careful and to not expose myself unnecessarily, especially in La Oroya Antigua. An incident of verbal aggression against a group of Argentinean journalists exacerbated the tension and social fragmentation among some members of the community during that time. I learned then that it would take a

good deal of effort and intuition on my part to build trusting relationships, especially with less collaborative members of the community.

When I began interviewing these “less collaborative” participants, the challenges, as anticipated, were even greater. After I introduced the purpose of my study, participants insisted on asking me questions about my professional affiliations and whether I work or have sympathy with environmental NGOs. In a brief introductory meeting I had with a group of smelter worker’s wives about my project, for example, one of the women asked me what the “results” of my study were and whom I was seeking to “benefit” with the results. When I explained that I was still in an exploratory phase and did not take any stand yet, and that ultimately I sought to benefit the whole community, I sensed she did not find my response satisfactory. Another of the women, by contrast, allowed me to interview her with, as she mentioned, the hope that somebody would finally tell the “truth” about La Oroya. Her comment resonated in my mind until the end of the recruitment process for my interviews. I could not help but wonder what kind of “truth” she was referring to? What kind of truth do my participants hold? What if my “truth” differs from their “truth”? Did I ultimately really want to demonstrate any superior “truth” at all? These questions are significant ethical considerations that I come back to reflect upon in the last section of this chapter.

Another challenge lay in how relationships and expectations are built within the Latin culture. It is not difficult for Latinos to talk about and share important aspects of their private lives when they first meet someone. This creates an expectation of reciprocity on the other side. While feeling comfortable with this kind of openness as a Latina, I was at the same time conscious of the need to create a “cultural bracketing”

between my participants and myself. This was more difficult in some cases than in others, especially when my distance could be interpreted as indifference. One participant expressed nostalgia and resentment because those human rights activists whom she considered her “sisters” were now absent in her life. After a very emotional testimony, she asked for help that would have involved me in legal actions on her behalf. I explained why it would not be appropriate for me to act on this. Yet, I felt caught in the ethical dilemma of writing a dissertation that, on the one hand, deals with issues of injustice and social indifference and, on the other hand, puts me in a position that impedes my ability to help participants in their concrete and urgent claims for justice.

At a logistic level, I had to adapt my agenda to the convenience of participants’ schedules and desired places of interview. In some cases, this led to the challenge of dealing with excessive noise during the interviews. Some participants asked me to interview them on the street or in the small stores (“*bodeguitas*”) or local businesses they ran. They often asked me to “hide” the recorder and pretend we were having a regular conversation to avoid the hostility of other members of the community. This was particularly true of smelter workers and their families. I generally did not have any problem getting authorization to record interviews—with the exception of participants MC 24 and MC 29, who expressed fear that the recorded interview would be used for purposes other than my dissertation. In these cases I took written notes of their responses.

I did not experience any particular challenge in terms of my participants understanding the interview questions, with the exception of question 34. This question asks, “What are the things that you value the most and regard as necessary to achieve a good quality of life?” Some participants mentioned that “quality of life” seemed a very

technical word; others asked me to clarify whether my question referred only to “material” things or to everything they value in general. I was afraid that, by clarifying the question, I would orient the nature of their responses. Taking into account the broad range of things that people might value in life, and also the fact that a list of valuable things remains controversial for capability scholars, I switched “quality of life” to “well-being.” The latter is more colloquial for Spanish speakers when translated as “*bienestar*” or “*estar bien*,” and I noticed that participants advanced their reflections more easily with the new wording.

As noted earlier, some of the challenges mentioned in this section carry important ethical considerations that demand further reflection on some aspects of the proposed capability-oriented model of human rights methodology. In the next section, I turn to that discussion.

4.5 Ethical Considerations and Challenges for a Capability-Oriented Model of Human Rights Methodology

At the beginning of this chapter, I listed and explained the principles that should guide the creation of a capability-oriented human rights framework. The principle of self-reflexivity arose as the first crucial step in conducting research when bridging the notions of human rights and human capabilities. The goal, I posited, is twofold. On the one hand, self-reflexivity helps to avoid the dictatorship of certain regimes of truth; on the other hand, it enhances the awareness of the researcher’s position as knower. Such prescriptions assume that research and knowledge production is not value-free. Yet, once in the field and while conducting interviews, my main concern was to respect the diverse opinions and values endorsed by my varied group of participants. In doing so, and in order to validate the “objectivity” of my research, I sought to show a position of value-

laden neutrality—or what qualitative researchers often call “bracketing” our assumptions.⁴⁶ When one of my participants brought up the issue of “telling the truth about La Oroya,” I came to terms with the fact there was a troublesome contradiction between my methodological prescriptions and my performance on the field. Such a contradiction appears to be the result of upholding self-reflexivity to challenge the supremacy of conventional regimens of truth, and, in the meantime, borrowing and accepting the limitations of qualitative research methods. Although these are flexible and open-ended in nature, they are still embedded in the reasoning of modernist methodologies. Qualitative researchers uphold their own conventions or truth-finding methods expressed in their own procedures of data collection and data interpretation to ensure objectivity and validity of results. For instance, while qualitative researchers promote being self-reflexive about the researcher’s assumptions, at the same time their dominant procedural rule prescribes that such a process must lead them to the “artificial” exclusion or erasing of such assumptions or bias during the research process. Failing to do this—that is, failing to produce unbiased research—would likely result in the disregard of their research findings; moreover, this type of practice could result in the exclusion of the overall research from academic recognition.⁴⁷

If the reality of an epistemological diversity is what inspires the principle of self-reflexivity, as proposed here, then we must acknowledge that such reality, as Bonaventura de Sousa Santos would argue, exposes a direct critique of Western-based

⁴⁶ Creswell, *Qualitative Inquiry*, *supra* note 20.

⁴⁷ Stefanos Mantzoukas, “The Inclusion of Bias in Reflective and Reflexive Research: A Necessary Prerequisite for Securing Validity” [year?] 10:3 *J. Research in Nursing* 279.

conventional theories and modernist methodologies.⁴⁸ When borrowing from the “master’s tools” that Western scholars use to produce and validate their objective truths,⁴⁹ we might in a way become trapped in an unavoidable contradiction. Furthermore, we might end up embracing a *double* contradiction by unconsciously adopting the inconsistencies embedded in qualitative procedures themselves.

Becoming aware of such dilemmas led me to propose a third goal for the self-reflexivity principle of a capability-oriented model of human rights methodology. Self-reflexivity requires us to be aware that the above-mentioned contradictions are likely to arise when conducting research, namely, when conducting a kind of research that is critical of mainstream epistemological assumptions yet advocates for an interdisciplinary methodology. If avoiding such contradictions does not seem to be a plausible goal, we can certainly avoid feeling trapped into a “double” contradiction. To be precise, by borrowing from qualitative research methods, we can safely avoid upholding their internal inconsistencies, most notably, the artificiality of erasing or “bracketing” our bias. Here I draw particularly on Mantzoukas, who eloquently defends the non-elimination but acceptance of bias in the process of research:⁵⁰

Keeping an open mind as researchers should not be equated with having an empty head. Quite the opposite: reflective and reflexive studies are meaningful only if the researcher can use the virtues of previous experiences, expertise, knowledge, language and expectations to design, interpret and present the research findings.⁵¹

⁴⁸ de Sousa Santos, *supra* note 9.

⁴⁹ On this aspect, see Susan Strega, “The View from the Poststructural Margins: Epistemology and Methodology Reconsidered” in Leslie Brown & Susan Strega, eds., *Research as Resistance: Critical, Indigenous, and Anti-oppressive Approaches* (Ontario: Canadian Scholars’ Press, 2005); also see John Law, *After Method: Mess in Social Science Research* (London: Routledge, 2004).

⁵⁰ Mantzoukas, *supra* note 47.

⁵¹ *Ibid.* at 291.

In this sense, our commitment to advancing self-reflexivity in the research process is not about “acknowledging for hiding”; rather, it is about recognizing the unavoidable existence of our personal/professional/disciplinary assumptions or biases. These biases will, in turn, inevitably influence all the steps of our research process, from the selection of our theoretical frameworks and methodological orientation, to the interpretation of data collected. As such, self-reflexivity—as an ongoing requisite in the research process—becomes a necessity, particularly in the interpretation and representation of research findings. This is because, through self-reflexivity as a process, we avoid discouraging what we do not understand or what we do not want to see or are unable to see. More concretely, through such self-reflexivity, we learn to see beyond what our academic or personal preferences allow us to narrowly see. Keeping this in mind, in the next two chapters I will turn to the reporting and interpretation of my fieldwork findings in La Oroya.

Chapter 5

Fieldwork Findings Report: Unveiling Systemic Unfreedom in La Oroya

5.1. Introduction

This chapter completes the *exploratory* phase of this dissertation aimed at unveiling the contours and components of a context of systemic unfreedom operating in today's La Oroya.¹ While acknowledging that unique personal circumstances determine the possibilities for individuals to expand their freedoms (or “capability sets”), the findings reported in this chapter reaffirm the basic premise that individuals do not evolve in isolation. As will be shown throughout this chapter, the way that the community of La Oroya has developed historically not only determines the possibilities (or lack thereof) for its residents to lead lives of well-being, but in doing so it affects individuals so that their choices and actions transcend personal spheres to impact the lives of others. Accordingly, the “conversion factors” that I will present not only speak about the *causes* and *processes* conditioning the opportunities (or lack thereof) inhabitants of this community have to achieve freedom and challenge unfreedom; they fundamentally illustrate the extent to which La Oroya's social embeddedness is constituted.

The chapter is divided into three sections. The first introduces the findings from a set of 46 in-depth interviews I conducted among a diverse group of residents in La

¹ Note that this exploratory phase started in Chapter 2, in which I mapped the origins and politico-economic background of a context of systemic unfreedom in La Oroya. While Chapter 2 was primarily grounded in a review of historical literature, this chapter draws on the result of a set of qualitative interviews with community members, human rights activists, and public servants. Information from both chapters will be assessed together to inform my analysis and response to the main research questions in Chapter 6.

Oroya.² These findings are organized around the following six key themes: (1) historical pollution and perceptions of damage; (2) migration and collective identity; (3) structuring of inequalities (i.e. socio-economic status, access to services, and gender roles); (4) uncertainty about the health impact of pollution; (5) access to information, responsibility for illness, and stigma against the poor; and (6) individuals' values and needs. Guided by a capability-oriented model of human rights (see Chapter 3), these themes are grouped and presented in terms of environmental, social, and personal conversion factors. To recap, as noted in Chapter 3, "conversion factors" refer to the enabling (or disabling) conditionings that determine the extent to which a person can transform or convert inputs—such as goods, services, resources, and even societal practices and behaviours—into outputs in terms of expanding capability to achieve well-being. Environmental conversion factors refer to the role of territories, geographies, and climates in influencing people's lives. Social conversion factors point to the role of social institutions, social norms, traditions, and societal practices, among others; and personal conversion factors generally relate to individuals' mental and physical selves as well as diverse dimensions of a person's identity. Although I draw on this compartmentalized model to present and discuss my findings, results from my study show that conversion factors pertaining to the reality of La Oroya are deeply interconnected and mutually reinforcing, meaning that a sharp differentiation between different types of factors holds only for explanatory purposes. In practice, such a constellation of factors intermingles in a continuous manner—from the past to the present, from the global to the local—ultimately shaping the "context of systemic unfreedom" in La Oroya.

² All interviews conducted for this study were audio-recorded and transcribed in Spanish. I have personally translated the quotes cited here into English. Interviewed residents from La Oroya were given codes ranging from MC 1 to MC 47. The abbreviation MC refers to "member of the community."

To better contextualize this list of themes and contribute to their interpretation, I include in the second part of this chapter the results of 15 open-ended interviews with human rights activists and public servants who actively participated in decision-making in the La Oroya case. A number of issues emerged from these interviews: economic dependency and power; the state's leniency in enforcing Doe Run's environmental obligations; the Peruvian model of economic development; and the institutional fragility of human rights discourse. For explanatory purposes, themes in this section are categorized as "institutional conversion factors" because they point to how the unequal distribution of societal harm—in terms of environmental pollution and health inequalities—has been institutionalized historically and politically in La Oroya. It should be noted that I do not want to suggest that the factors listed in the first two sections of this chapter are the only ones conditioning the possibilities of freedom (or lack thereof) in La Oroya. Rather, these factors point to the most salient predictors of unfreedom based on the results of the qualitative component of this study and on the recent context of conflict in La Oroya.

The last section of this chapter provides a discussion of the extent to which these factors mutually interact, sustaining and reinforcing a systemic context of unfreedom in La Oroya. A holistic understanding of such interactions provides the grounds for a better understanding in general of the dynamics between the ideas of human capabilities and human rights—and, more concretely, of the underlying causes of the paradox of having to choose between "health and work."

5.2 Voices from La Oroya

This section focuses on the most salient findings from interviews carried out with community members in La Oroya. As previously noted, to be all-encompassing and responsive to the diverse claims and “voices” existing in this community, I conducted interviews with three subgroups: those who publicly advocate for the defence of environmental health (18 participants); those who are/were involved in the defence of job opportunities at the La Oroya smelter (13 participants); and those embracing a moderate stance (15 participants) in that they have not been involved in activism favouring either of these two groups. The following findings contribute to unveiling the concrete, intermingling factors that sustain the context of unfreedom in La Oroya.

5.2.1 Environmental Conversion Factors

Historical Pollution and Awareness of Hazards

Although the issue of smelter pollution in La Oroya only recently became a matter of transnational concern, pollution in La Oroya has been an endemic problem since the creation of the community as a smelter town in 1922. While stories about the negative effects of pollution have been passed down from one generation to the next, awareness of and reaction against these effects have varied through the history of this community. Drawing upon participants’ narratives, I identified three marked stages of environmental hazard awareness. These temporal stages coincide with the three different administrations of the smelter: Cerro de Pasco Corporation (private owner, 1922-1974); Centromin Perú (national company, 1974-1997); and Doe Run Peru (private owner, 1997—activities suspended since 2009). These three stages can be broadly characterized as follows: the first stage consisted of an initial period of awareness about pollution and its serious damage to traditional sources of livelihood; the second stage consisted of a

seeming passivity to pollution, presumably due to a perception of pollution as something inevitable or unavoidable; and, finally, the third stage has seen an “awakening of awareness” resulting from new medical evidence of the effects of pollution on human health in La Oroya and the realization that something should be done to reverse this predicament.

As noted in Chapter 2, La Oroya’s transformation into a smelter town with the arrival of the US-based Cerro de Pasco Copper Corporation in 1922 had a number of effects: it weakened the community’s ancestral organization, transformed its socio-economic landscape, and marked the beginning of a legacy of environmental pollution. In this first stage, people were aware of pollution primarily because of its obvious detrimental effects on agricultural land and livestock, as both were the main sources of traditional livelihood in the communities surrounding La Oroya. One participant describes those years in the following way:

La Oroya used to be an agricultural and livestock community but when the smelter was first constructed [by the Cerro de Pasco Corporation], things started to change. Our animals started to die from pollution.³

Another participant explained how his youth was transformed by the presence of the smelter, leading to his assimilation into smelting activities:

[I]n my youth I used to fish for trout in the Mantaro River and sell them for my subsistence. Then, around 1953, ashamedly, the Cerro de Pasco Corporation started to use the water of the river and contaminated it. I clearly remember trout dying and floating... [A]fter that, I had to survive by doing something different. This is how I started to work in the smelter.⁴

The presence of the La Oroya smelter had not only an economic impact on community members, but cultural and emotional impacts as well. Interviewees mentioned

³ Interview with MC 17 (14 November 2010), La Oroya, Perú.

⁴ Interview with MC 25 (15 November 2010), La Oroya, Perú.

the pain and frustration community members felt seeing their animals die despite efforts to keep them alive. A participant shared a family story, illustrating how these events were interpreted during those days:

[M]y aunt told me that when the smelter first started to operate, arsenic [emitted into the air] covered the land up to several centimetres thick. As a result, animals such as chickens and sheep burned their feet, which prompted owners to protect them with “feet gloves.” Still, such a measure did not prevent those animals from getting sick and ultimately dying . . . [A]nimal owners collapsed to their knees and prayed to God. They thought it was the end of the world. Ultimately, they had to leave La Oroya.⁵

As these participants suggest, the two most notorious consequences of this period were that community members turned to the smelter as a new source of subsistence and were relocated to protect livestock from dying. Collective efforts to defend traditional sources of livelihood were not sufficient. One participant referred to such struggles:

I am a descendent of the farming community of Huaynacancha . . . [O]ur community organized themselves to counteract the effects of contamination by means of a legal process against the company that we ultimately won . . . [B]ut we were not satisfied with the result [of the legal process] because our losses were higher than the minimal compensation we gained. This [compensation] was not enough to fully recover our agricultural land, you know? Huaynacancha has not been an agricultural community ever since; you can only grow grass there.⁶

Participants indicated that although locals continued to resist throughout Cerro de Pasco Corporation’s control of the smelter, they could not impede the complete deterioration of the socio-economic unity of the various small communities making up La Oroya. Their responses left me with the impression that a new social composition began to emerge in La Oroya, especially during the last decades of Cerro de Pasco Corporation’s operations. A different understanding of the issue of pollution began to

⁵ Interview with MC 21 (15 November 2010), La Oroya, Perú.

⁶ Interview with MC 9 (27 October 2010), La Oroya, Perú.

develop. When the national company Centromin Perú came to manage the smelter, contamination persisted despite new technology available to reduce pollution (see Chapter 2). Interviewees who were born during those years made the following comments:

[I knew about pollution] since the time of Centromin . . . I used to live and study in La Oroya Antigua [“old” La Oroya]. [I remember] during school days I often felt my throat burning around 11 am every day, a time when the company released toxic metals into the air. We had to cover our mouths with a handkerchief to avoid the burning sensation.⁷

Since the time of Centromin, people used to talk about the seriousness of the contamination. [I knew about it] directly from unionized smelter workers when I attended their meetings.⁸

[I first knew about pollution] around 1985 when I was 13 years old, during the time of Centromin. The company spread gases that fell down on the earth as snowflakes; however, nobody said anything [nobody complained].⁹

If, as participants indicate, environmental pollution continued to be a serious and visible problem in La Oroya, it is puzzling that the Peruvian government did not take any significant actions to reverse the situation. Although, as indicated in Chapter 2, union leaders showed some degree of solidarity towards peasants whose lands were destroyed by pollution, the union’s claims were mainly oriented towards different ends, such as better housing, health care, food security, and education. Hence, the seeming passivity or “habituation” to pollution during the time of Centromin can be interpreted as the prioritizing of socio-economic needs over concerns about pollution. The following quote illustrates this assumption:

My grandparents used to work at Centromin. I remember when I was a child, the company used to distribute food such as beef and a great deal of milk to their

⁷ Interview with MC 14 (13 November 2010), La Oroya, Perú.

⁸ Interview with MC 8 (27 October 2010), La Oroya, Perú.

⁹ Interview with MC 30 (17 November 2010), La Oroya, Perú.

workers that fulfilled our family needs. Workers also received kerosene [for cooking] and school supplies for children . . . [T]hose were times when union leaders and smelter workers often went into the streets to defend better working and living conditions, receiving the support of the whole community. For instance, when workers went on strike and their salaries were suspended, the community used to organize to prepare huge *ollas comunes* [communal kitchens] to distribute food among workers and their families.¹⁰

When the smelter was privatized and Doe Run took ownership in 1997, participants reported that the “*bonanza*” (economic boom) that existed during the years of national ownership finally ceased. The privatization of the smelter brought about a drastic reduction of the labour force, and as the benefits of working at the smelter became accessible to only a few, it is likely that the perception of *bonanza* diminished in the community. One participant shared his views about working at Centromin:

During the years of Centromin, we enjoyed an economic boom mirrored in a series of benefits to all smelter workers. La Oroya was then characterized by their labour force, by their incomes. When the smelter was privatized, it entailed significant changes such as restrictions on benefits and labour rights. Our union was also weakened.¹¹

The most pivotal event in raising concerns about pollution in the aftermath of privatization was, arguably, medical research that for the first time revealed cases of lead poisoning in children. This new information prompted what I call the “awakening of awareness.” The social struggles against pollution of the 1920s—which lay dormant during the Centromin years—returned in defence of human health. Participants in the subgroup of environmental-health defenders and those embracing a more moderate stance mentioned that was not until such information became available that they started to

¹⁰ Interview with MC 1 (22 October 2010), Lima, Perú.

¹¹ Interview with MC 27 (16 November 2010), La Oroya, Perú. For a discussion of the weakening of unions in light of the privatization process of the 1990s, see Chapter 2.

associate the cause of their ailments with the endemic pollution.¹² As some participants noted,

[I became aware of pollution] especially when Doe Run started its operations . . . [W]e felt affected and started to question our real state of health. [This is because] despite receiving good nutrition at home, we kept feeling weak.¹³

I heard about pollution since I was a child, but [the awareness] was not as intense. When Doe Run started its activities we just started to realize the serious [health] problems we have been suffering for so long.¹⁴

Coinciding with the arrival of Doe Run [to La Oroya], we started to hear, for the first time, about themes such as the environment, pollution, ecology and so on. This was breaking news for many of us who did not know about it.¹⁵

In addition to dissemination of medical information, participants also referred to the intensifying levels of pollution as another reason for increasing collective awareness of the issue. While acknowledging that pollution had been a persistent problem in La Oroya, interviewees affirmed that the levels increased significantly and became intolerable when Doe Run took over operations.¹⁶ However, participants in the subgroup defending job opportunities at the smelter used this acknowledgement of the history of pollution to argue for flexibility in its amelioration or to highlight the positive changes Doe Run supposedly brought about in terms of occupational health:

People started talking about environmental pollution in 1990. Before then, nobody said anything about pollution despite the fact that many workers had lead poisoning and others even died from pollution. So, if nobody [from the local population]

¹² As noted in Chapter 1 (see footnote 36), along with widespread neoliberalism, the 1990s also brought about the instauration of the first environmental regulation for the mining and extractive sector, which, in turn, influenced major environmental awareness in the country.

¹³ Interview with MC 12 (13 November 2010), La Oroya, Perú.

¹⁴ Interview with MC 16 (13 November 2010), La Oroya, Perú.

¹⁵ Interview with MC 28 (16 November 2010), La Oroya, Perú.

¹⁶ This was a consistent affirmation in the testimonies of participants: MC 1, MC 6, MC 12, MC 16, MC 24, MC 33 and MC 34.

complained about pollution then we cannot expect to protect the environment overnight. It is indeed our moral obligation to protect the environment but we have to do it progressively.¹⁷

[The problem of] pollution comes since the Cerro de Pasco Corporation. [At that time] smelter workers used to develop their activities without the minimal safety conditions. They did not wear special respirators and therefore they were more exposed to pollution . . . Doe Run, by contrast, has improved those respirators.¹⁸

Doe Run has improved many things [within the smelter] . . . the clothing we wear remains at the “change house” for daily washing. We change clothing daily and are more careful with our personal hygiene. [Because of such positives changes] many smelter workers are still alive. Of course, I cannot deny we might be polluted but not so seriously as to become ill and die, right?¹⁹

While medical studies exposing the effects of pollution on human health in La Oroya greatly contributed to putting environmental health concerns on the agenda of public debate, participants’ responses conveyed contrasting reactions and interpretations of such information. Some of these reactions can be understood as “natural resistance” to embracing the reality of uncomfortable truths, and this resistance can also be the product of confusion and fear. The fact remains, however, that these medical findings were disseminated unevenly. Entities such as the Peruvian Ministry of Health, Doe Run, the Movement for the Health of La Oroya (MOSAO) and the Church put out diverse (and sometimes contradictory) versions and interpretations of the effects of pollution on human health. This explains why the community as whole was unable to develop a robust holistic understanding of the environmental-health problems affecting them. I will return to this issue later in this chapter.

In addition to the historical influences of La Oroya’s inhabitants’ (“*Oroyinos*”) understanding of and response to the problem of smelter pollution, other factors might

¹⁷ Interview with MC 47 (20 December 2010), Lima, Perú.

¹⁸ Interview with MC 43 (16 December 2010), La Oroya, Perú.

¹⁹ Interview with MC 38 (2 December 2010), La Oroya, Perú.

have also played a pivotal role in shaping people's perceptions and willingness to deal with such a problem effectively. The following sections deal with such factors.

5.2.2 Social Conversion Factors

Migration and Collective Identity

As economic dependency on the smelter increased, particularly during the years of Centromin, so did the immigration of inhabitants from the surrounding provinces seeking job opportunities in the La Oroya smelter. This was reflected in my participant sample. Twelve of my participants indicated that they were born outside of La Oroya (i.e. Concepción, Tarma, Cerro de Pasco, Yauli and Masmajauca). Job-hunting was reported as the main reason for men to migrate, and for women, it was to follow their partners.

A constant wave of migration has turned La Oroya into a distinctive multicultural space, or a “cosmopolitan town,” as many participants refer to it.²⁰ One participant eloquently described the current composition of La Oroya:

True *Oroyinos* wanting to continue with agricultural and livestock husbandry activities have left the town. The smelter absorbed another bunch of them. Additionally, there are citizens from other towns living in La Oroya. So now, we practically have residents of *todas las sangres*²¹ [diverse blood].²²

Responses of participants indicate that newcomers and their descendants have not fully succeeded in socially and culturally integrating. This becomes readily apparent in the expressed views of participants from the first and third subgroups—environmental health advocates and moderates—who for the most part viewed migration in strongly negative

²⁰ For an account of how such waves of migrants led to the formation of a proletarian class in La Oroya during the last century, see Chapter 2.

²¹ In the context of Perú, the reference to a mixed diversity of identities in terms of *todas las sangres* stems from the 1964 novel of the same title by Peruvian writer and anthropologist, Jose Maria Arguedas.

²² Interview with MC 17, *supra* note 3.

terms. They mentioned migrants' lack of willingness to remain in La Oroya, and their limited commitment to community progress. The following are a few examples:

[H]ere people have a transitory stability . . . people [who migrate to La Oroya] do not remain here permanently . . . They are only a sort of long-time “renters.”²³

[L]a Oroya depicts a “circumstantial” territory. That is, La Oroya is not a town where people want to develop their life and want their children to progress here. La Oroya is thus only a “temporal station” [in the life of people] because of employment needs.²⁴

Other participants went even further to distinguish between what they described as “authentic residents” versus “circumstantial residents.” This distinction, broadly speaking, conveys two contrasting ways of valuing a sense of community. “Authentic residents” were described as people who were born in La Oroya or were direct descendants of original residents, called *comuneros* or *Oroyinos netos*. Authentic residents are thus commonly associated with a livelihood based on agriculture and animal husbandry or appreciate such activities as being representative of their ancestral traditions. My talks with the descendants of “authentic” residents of La Oroya also revealed “indigeneity” as a characteristic of being native to the community of La Oroya, a fact that is often overlooked or subverted because of their vocation as farmers or peasants. For instance, four participants proudly defined themselves as being Aboriginal or of Aboriginal descent (MC 3, MC 9, MC 10 and MC 29). The change from

²³ Interview with MC 8, *supra* note 8.

²⁴ Interview with MC 14, *supra* note 7.

“indigenous” to “peasant” or “farmer,” one participant indicated, only represents a modification of the label.²⁵

In terms of community affiliation, the perception is that authentic residents, or their descendants, are more engaged in resolving the problems La Oroya confronts as a community. It is particularly revealing that they considered themselves to be more sensitive to environmental health issues. In addition, authentic residents consider themselves to be in the minority, compared to migrants, which helps them to explain the limited possibilities that the “authentic residents” have of voicing concerns and exercising influence or acting as mediators in current power struggles in La Oroya. The following quotes are particularly remarkable in this regard:

La Oroya is inhabited by migrants . . . [I]n a communal reunion you would not be able to find more than 70 *comuneros* in comparison to the majority of smelter workers.²⁶

Those who are [authentic] residents of La Oroya identify themselves with the community in contrast to those who come from outside. They [migrants] usually come, take their money and leave the town. They are often the ones who mistreat the rest of the community and do not care about the environment.²⁷

This weak sense of community values is manifested in limited solidarity and little interest in dealing with La Oroya’s social problems, which, aside from pollution, encompass alcoholism, prostitution, family violence, lack of infrastructure, and poor quality of social services. These were, to some extent, the reported characteristics of “circumstantial residents,” “migrant birds,” or inhabitants who had come to La Oroya

²⁵ Interview with MC 29 (16 November 2010), La Oroya, Perú. With “modification on the label,” my participant refers to the legal framework of the agrarian reform (via Law Decree No. 17716) that took place during the Juan Velasco Alvarado government (1968-1975), in which the term “Indians” was replaced by “peasants” because it was argued the former had a derogatory connotation.

²⁶ Interview with MC 24 (15 November 2010), La Oroya, Perú.

²⁷ Interview with MC 33 (30 November 2010), La Oroya, Perú.

seeking employment opportunities rather than a place to call home. Participant responses brought to the fore the issue of identity in their propensity to draw a line between “authentic” and “circumstantial” residents—the latter strongly perceived as embracing a weak sense of collective identity. When sharing his view, a participant noted,

Current inhabitants in La Oroya are not natives who fight for preserving their identity. In many cases they are not even interested in the social, cultural and economic situation of this town. They simply seek to gain economic resources.²⁸

One participant advanced a more nuanced view, seeing insensitivity of “circumstantial residents” as the product of recent social conflicts in La Oroya:

There are some migrants rooted in the community who feel and act as though they belong here; however, there are other migrants who have lost their sensitivity to the community. To a great extent, this is due to the division between smelter workers and the rest of the population promoted by the company [Doe Run].²⁹

Similarly, another participant highlighted the arrival of Doe Run as a turning point in the social fragmentation currently experienced in La Oroya:

Due to the problems with Doe Run, the community split. On the one hand, you find smelter workers and their families who defend their source of employment; and on the other hand, you find people who are interested in protecting human health. We are not against the value of employment, but we believe preserving job opportunities needs to be compatible with preserving people’s health.³⁰

Drawing on these last two views, I suspect that the residents of La Oroya—both authentic and circumstantial—have not always expressed such negative opinions about migration. It seems likely that, despite their cultural differences and diverse places of origin, the inhabitants of La Oroya peacefully cohabited for many years before the privatization of the smelter and the subsequent unveiling of environmental health

²⁸ Interview with MC 27, *supra* note 11.

²⁹ Interview with MC 31 (28 November 2010), Lima, Perú.

³⁰ Interview with MC 23 (15 November 2010), La Oroya, Perú.

problems. The smelter worker exodus, reported after the 2009 Doe Run suspension of smelting activities, clearly reinforced the “transitional” characterization of migrants, intensifying the perception of their detachment from the community.³¹ People who remained in town mentioned the negative effects the exodus had on local commerce and other economic activities, and were resentful of the fact that smelter workers fled to their places of origin at the first sign of trouble with the smelter operator. It is not surprising that “circumstantial citizens” are perceived as having a sense of belonging, loyalty and identity with the smelter operator rather than with the community. As a participant noted,

[What identifies La Oroya] is the town’s relationship with the transnational corporation. Such a relationship blurs the very notion of what it truly means to live in a community and has turned people into more individualistic beings.³²

More radically, some participants indicated that La Oroya lacks any identity whatsoever, while others suggested that La Oroya’s definition as “a community” can only be sustained on paper, not in reality. This illustrates the tangible nature of the lack of a sense of community. Nonetheless, participants advanced such critical views precisely to reclaim the need to work towards a more cohesive community and build a collective sense of identity for La Oroya:

³¹ As soon as smelting activities were suspended in June 2009, masses of smelter workers were reported to have left La Oroya to return to their hometowns. Under a collective agreement, Doe Run continued depositing 70% of their salaries; however, workers were not compelled to remain in La Oroya. The so-called exodus prompted the Peruvian media to call La Oroya a “ghost town.” See, for example, Raul Mayo, “Cierre de Doe Run: La Oroya se convierte en un pueblo fantasma” *Diario el Comercio* (03 September 2010), online: El Comercio <<http://elcomercio.pe/peru/633182/noticia-junin-panamorama-oroya-mas-ano-cierre-doe-run>>; in a similar vein, see David Gomez Fernandini, “La Oroya, pueblo fantasma” (report aired on the television program “Prensa Libre”, Channel 4, Lima, Perú) (14 December 2010), online: YouTube <<http://www.youtube.com/watch?v=G-2nKprxWxk>>. By October 2010, Doe Run had changed the conditions of salary payment, requiring that workers remain at the work place, prompting their return to La Oroya.

³² Interview with MC 4 (27 October 2010), La Oroya, Perú.

La Oroya seems to not have an identity, and because of that our problems are worsening. If we had a common identity, they [smelter workers] would not act as they act; they would have defended what is right and not what is wrong.³³

When I asked a participant what to do to improve the quality of life of La Oroya residents, he replied,

In principle, there is a need to foster a sentiment of “local community,” meaning that people identify with La Oroya. If you do not embrace such an identity—whether you were born in La Oroya or not—it would be difficult to see things differently.³⁴

Another participant also stressed the need to promote the values of love and identity in the community:

[I]t is true that the La Oroya community is predominantly seen as a source of job opportunities; thus, it seems to lack a common identity. This problem has been exacerbated by scant education in values such as love for the community. Nonetheless, our current problems, in a way, are giving us the opportunity to strengthen the integration between authentic *oroyinos* who were born in this land, and those who proclaim themselves “*oroyinos* at heart.” By this I mean residents who, despite living outside La Oroya, have maintained the linkage to the community. We do not see La Oroya only as a source of work because here also rest our memories, our life, our friends.³⁵

As these participants suggest, advancing positive changes in La Oroya crucially depends on a sense of community affiliation, preceded by the development of a collective sense of identity. It is presumed that by doing this, people in La Oroya—whether “authentic *oroyinos*,” “circumstantial *oroyinos*,” or “*oroyinos* at heart”—could more effectively deal with community problems, such as smelter pollution, and contribute to a solution beyond seeking personal gains. Nonetheless, as will be discussed

³³ Interview with MC 26 (16 November 2010), La Oroya, Perú.

³⁴ Interview with MC 20 (14 November 2010), La Oroya, Perú.

³⁵ Interview with MC 44 (16 December 2010), La Oroya, Perú.

next, there are other aspects to be considered that may turn the process of developing such a collective identity into a daunting one.

Structuring Inequalities: Socio-Economic Status, Access to Services, and Gender Roles

As previously noted, employment opportunities at the smelter in La Oroya were coveted largely because of the many social and economic benefits workers received. This planted the seeds of economic dependency, which, in turn, created the foundation for the structuring of inequalities in La Oroya. These inequalities, which can be traced back to the first two administrations of the smelter, remained unchallenged for a long time. However, after the privatization of the smelter to Doe Run and the ensuing social conflict in La Oroya, social cleavages—most notably associated with socio-economic status, access to services, and gender roles—became more visible.

In the interviews, participants from all subgroups acknowledged the existence of such inequalities. Nonetheless, the environmental-health subgroup responses suggested a greater consciousness of existent inequalities—or, perhaps, they acknowledged their intensification as a result of recent experiences of mistreatment and discrimination. The following quotes illustrate such a reality.

There has been a permanent tension between smelter workers and the rest of the population because smelter workers have always had better salaries, better clothing, better access to health care and educational opportunities. Those who do not work for the smelter company are often discriminated against.³⁶

There is a problem of discrimination in La Oroya . . . [S]melter workers and their wives have always treated us with disdain because they receive higher incomes.³⁷

³⁶ Interview with MC 28, *supra* note 15.

³⁷ Interview with MC 31, *supra* note 29.

Participants from the subgroup defending employment opportunities at the smelter are not indifferent to this situation, as the following quote demonstrates:

We ourselves have created the current indifference of our own neighbours, perhaps as a result of our socio-economic status . . . When our wives go grocery shopping they often buy a whole chicken while other people can only afford part of one. Situations like this are what have ultimately generated the historical divorce between smelter workers and the rest of the population.³⁸

Interestingly, the higher socio-economic status of smelter workers above is related more to the higher income and occupational prestige given to smelter workers within La Oroya than to a higher level of education. From the total sample, encompassing the three subgroups, only eight participants reported having any university education. Of those eight, only one was a participant from the subgroup defending job opportunities at the smelter. Most of the participants, irrespective of gender, reported having a college education (18 participants) or secondary school education (17 participants); two participants indicated having only finished primary school, and another did not respond to the question. Although information about income was not directly collected, the general understanding (as noted in the above quotes) was that smelter workers earn the highest salaries in town. For example, two participants indicated that while a school teacher's salary ranges roughly between S/. 800-1,200 soles,³⁹ a smelter worker's may be double or triple this amount (MC 12, MC 17). Another participant whose partner works as a bricklayer indicated that he earns S/. 15 soles per day, at best.⁴⁰

³⁸ Interview with MC 39 (2 December 2010), La Oroya, Perú.

³⁹ Interview with MC 32 (29 November 2010), La Oroya, Perú. This is equivalent to CAN \$308.00-462.00.

⁴⁰ According to Supreme Decree No. 011-2011-TR, the basic wages for Peruvian workers subject to the private labour regimen is set at S/. 675.00 soles per month (approximately CAN \$270.00). It should be noted that La Oroya is composed of a great number of independent merchants and business people, whose incomes may or may not be close to those of smelter workers. Yet, smelter workers have job stability and social benefits (e.g. health care, unemployment insurance and pension plan, etc.), which independent workers and merchants do not easily have access to.

Aside from having permanent decent salaries, smelter workers have access to housing and better social services, such as health care and education. This also contributes to the perception of smelter workers and their families as “petit bourgeoisie,” in the words of one participant.⁴¹ While an important segment of the population works in commerce or under temporary contracts, the latter supplying people with an income that hardly covers their basic needs (excluding social services), current smelter workers’ labour contracts include the provision of services such as health care and even housing. For instance, participants included in the subgroup defending employment stability reported that they own property in La Oroya or an additional property in either their place of origin or in the capital of Lima. Despite this, in some cases, the smelter provides housing. In the other two subgroups, although some participants reported owning property, these individuals more commonly report sharing accommodations with relatives or renting a single room where the entire family cooks, eats, and sleeps together.

In terms of education, children of smelter workers were reported to attend private schools in La Oroya and even private universities outside La Oroya, which are not normally accessible to non-smelting families in the community.⁴² Access to health care is secured under employment contracts in the case of smelter workers (Essalud).⁴³ In the other two subgroups, most participants indicated access to health care was not fully

⁴¹ Interview with MC 12, *supra* note 13.

⁴² There are no public or private universities in La Oroya. Education at the university level requires migrating to other provinces or to the capital. Younger participants in the study complained about the lack of access to university education. Some of them mentioned that a lack of economic means and family values precluded them from studying away from home.

⁴³ Peru has a two-tier health care system of private clinics and the public system. The latter is composed of three different providers: “Essalud” is sustained through the contributions of independent workers and those in the public system; hospitals of the Ministry of Health and the Integral System of Health (“SIS” in Spanish) exist to service people with low incomes.

covered. Those with temporary jobs have access to health care (Essalud) only during the terms of their contracts; the rest reported using either the public system (hospitals of the Ministry of Health) or the Integral System of Health (health insurance for the poor). Long wait lists, lack of specialization, lack of coverage for some treatments, and the frequent need to make out-of-pocket payments for prescriptions were listed as reasons that kept participants from these subgroups from using the latter two options.

Although participants asserted that unequal access to a range of social services originated and were entrenched during the last two administrations of the smelter, they brought particular attention to the inequalities in access to education. For instance, participants sharing their views recall,

In the case of children attending the *escuela fiscalizada* [private schools], their parents enjoy a monthly salary, food and school supplies; the rest of children whose parents have temporary jobs do not enjoy the same socio-economic conditions. The former had an elitist education.⁴⁴

The metallurgic sector had [free] access to the *escuela fiscalizada* . . . those of us without a labour linkage with the smelter company had to pay [for our children] to have access to such schools. This situation changed during the 1990s, when such services were absorbed by the state.⁴⁵

As discussed in Chapters 1 and 2, the smelter operator's responsibility for administrating and providing social services was reduced after the privatization of the smelter during the Fujimori regime. Yet, private schools that once provided free access to smelter workers' children, most notably the Mayupampa School, continued operating after privatization. Because smelter workers' incomes allow them to pay for private education, they continue sending their children to such schools. Thus, despite breaking

⁴⁴ Interview with MC 17, *supra* note 3.

⁴⁵ Interview with MC 8, *supra* note 8.

the paternalistic role of the smelter after privatization, the perception and the inherent reality of existent socio-economic differences were not fully erased.

As La Oroya is a smelter town and since smelting activities are perceived as male-oriented, it is not surprising to observe a sharp division between traditional gender roles in this community. Males are seen as the breadwinners; meanwhile, the majority of women are housewives. Only 12 female participants—from among the environmental-health advocates and the moderates—reported having paid jobs or owning businesses. Six of these participants are single and one is a single mother. This trend seems to suggest that being a married woman in La Oroya likely limits the possibility of developing a career or maintaining a full-time paid job. A female participant, who attempted to reinsert herself into the labour market twelve years after finishing a technical degree in nursing, reflected on how being a woman in the Peruvian central highlands undermines her opportunities:

Here in the highlands exists a chauvinist culture that relegates women to being housewives and assumes men should be the breadwinners. Two years ago I started to participate in technical training and empowerment workshops with other women, which is making me realize that I am capable of returning to the labour market . . . [T]he process is still daunting; even when a woman expresses her desire to work, in the context of this chauvinist culture, she might be relegated to doing the so-called women's jobs such as cooking, washing clothes or cleaning.⁴⁶

In accordance with this, this study found that when wives of families not linked to the smelter contribute to the family income, they do so through part-time jobs. Such jobs include selling food in the local market or hand-washing clothes for more affluent members of the community. These types of job not only perpetuate traditional gender roles, they reinforce socio-economic status differences. One participant, for example,

⁴⁶ Interview with MC 19 (14 November 2010), La Oroya, Perú.

considers that community members not connected to the smelter can always benefit indirectly from those who work in the smelter. Although a chain of economic dependency is an undeniable fact in La Oroya, this dependency is problematic when it blinds people to the socio-economic subordination it reinforces, especially in the case of women. The following quote illustrates this problem:

There are people who, although they do not directly benefit from the company [Doe Run], do so indirectly; for instance, by washing our clothes . . . [S]ome people often say that the economic advantages of smelter workers do not benefit them whatsoever, but that is not true—there is a trickle-down benefit.⁴⁷

Despite the sharp division of gender roles in general, and the social and economic relegation of poor women to “womanized” types of jobs in particular, women do not remain silent in La Oroya. In fact, it is particularly remarkable that women have assumed leading roles in defending community interests, both in support of their husbands’ struggles to preserve job opportunities in the smelter or as local activists defending the community’s environmental health. Additionally, it is not uncommon to find diverse civil society organizations/groups or neighbourhood committees built and led by women working to improve their community’s well-being. Nonetheless, those contributions are often made on a voluntary basis. A female participant leading some of these committees proudly describes herself as a “self-enterprising woman”; however, as much as she loves being a leader, she admits to not being completely satisfied because of the lack of economic reward for her efforts. When asked what she would need in order to enhance her satisfaction in life, she did not hesitate to respond:

[In order to be completely satisfied with my life] I need to have a job suited to my capacities, that is, a paid job that would be more compatible with my role as a community leader. I came to terms with the fact that being a leader is my vocation,

⁴⁷ Interview with MC 41 (10 December 2010), La Oroya, Perú.

right? I have been working on this over the past years. I would like to continue working at the institutional and political levels for my community.⁴⁸

Whether she and other female participants will be able to develop the capacities they value remains uncertain, especially in the context of a community that has historically mainstreamed (male) job opportunities at the smelter and remains blind to the possibility of expanding into more gender inclusive economic activities.

In short, the structuring of inequalities has had a threefold effect on the current context of La Oroya. First, it has influenced people's perceptions that job opportunities at the smelter are the only pathway for achieving a better quality of life. Second, it has distorted the perception of subordination of smelter workers in relation to the company. Smelter workers perceive themselves as being in a superior situation or as having a significant advantage over the rest of the community members, who are essentially being "doubly subordinated" to the power of the smelter company and to that of the group represented by smelter workers. Third, this restructuring has historically defined and deeply reinforced the division between gender roles, blurring the capacity of women to develop non-conventional "non-womanized" jobs or integrating into the community with economic independence.

Uncertainty about the Health Impacts of Smelter Pollution

Along with historical and structural factors, my study also found that concrete circumstances—such as the lack of epidemiological studies providing scientific evidence of the effects of pollution on human health and the absence of visible symptoms of

⁴⁸ Interview with MC 42 (16 December 2010), La Oroya, Perú.

illness related to pollution—have reinforced uncertainty about the severity of environmental hazards in La Oroya. In this regard, participants have adopted different understandings of the effects of pollution on health, depending on the source and quality of the information they have.

In particular, one of the most striking findings from my visit to La Oroya was participants' constant reference to people dying from cancer in the town, while at the same time being unable to find official information about death rates from cancer. This situation is of special concern when one considers that certain types of cancer are scientifically proven to be caused by prolonged exposure to toxic metals such as arsenic and cadmium.⁴⁹ The following quote is revealing in this regard:

In the last few years, many people have passed away because of cancer in La Oroya [Antigua]. However, people do not want to acknowledge such high mortality rates. If an investigation of this nature had occurred, then you would now know how many people have died of cancer in this area.⁵⁰

Participants also indicated that building an index of mortality rates from cancer was not only daunting, but perhaps impossible. They pointed out that the lack of adequate cancer treatment facilities in La Oroya was the impetus behind people leaving the town for Lima or Huancayo. Because the terminally ill ultimately die in those cities, these deaths are not registered in La Oroya. Reflecting further on this issue, a participant maintained,

Studies do not exist on the issue [that demonstrate a causal relationship between pollution and death from cancer in La Oroya]. It would be good if, when a resident of La Oroya passes away, relatives authorize an autopsy to determine the real cause of death. To my knowledge, there has been the intention to study medical records in

⁴⁹ Anita K. Patlolla, Paul B. Tchounwou & Jose A. Centeno, "Carcinogenic and Systemic Health Effects Associated with Arsenic Exposure: A Critical Review" (2003) 31 *Toxicologic Pathology* 575; Gary G. Schwartz & Isildinha M. Reis, "Is Cadmium a Cause of Human Pancreatic Cancer?" (2000) 9 *Cancer Epidemiology, Biomarkers & Prevention* 139.

⁵⁰ Interview with MC 12, *supra* note 13.

the hospital of Chulec and also Essalud hospital, where La Oroya residents used to be treated. Nonetheless, in all cases, such records only demonstrated general causes of death, making it impossible to determine with absolute certainty whether such deaths were in fact a direct result of pollution.⁵¹

As might be expected, the absence of epidemiological studies demonstrating a causal relationship—or at the very least suggesting a positive correlation between smelter pollution and a higher persistence of diseases such as cancer in La Oroya compared to non-mining/smelting communities—has created a great deal of uncertainty, confusion, suffering, and even hostility towards those who attribute the deaths to the effects of pollution. In the midst of tears, a participant whose family members have died of cancer shared a very emotional story:

When I received the results of my daughter's analysis reporting high levels of arsenic in her blood, I came to realize the reason why she suddenly passed away. I was devastated by her loss . . . [Y]et, members of my own extended family did not believe that pollution is to blame for my daughter's loss. They badly mistreated me [when I begged for the truth].⁵²

Confusion is intensified when “uncertainty about causation” is coupled with a “certainty about no body damage.” This situation was clearly observed in the legal strategy advanced by the Peruvian state during the March 2010 hearing before the Inter-American Commission on Human Rights regarding human rights violations in La Oroya. When the legal representative of the Peruvian Ministry of Health made her arguments, she emphasized that “medical evaluations indeed have evidenced high levels of toxic exposure but no symptomatology or damage to an organ body has been proved.”⁵³

⁵¹ Interview with MC 20, *supra* note 34.

⁵² Interview with MC 11 (8 November 2010), Lima, Perú.

⁵³ *Community of La Oroya v. Peru*, Case 12.718 and PM 271/05 (Hearings on Precautionary Measures, 23 March 2010), Inter-American Commission on Human Rights, online: Aida-Americas <http://www.aida-americas.org/project/laoroya_en>. The petition signed by 65 citizens of La Oroya was to pressure the Peruvian state to comply by providing medical diagnosis and appropriate treatment for this population.

Participants who prefer to deny the problem of pollution often reproduce these kinds of arguments.

An understanding in La Oroya of health as the mere “absence of disease”⁵⁴ challenges the reasonable presumption of some participants that their minor ailments are caused by pollution. Thus, it is understandable that some citizens of La Oroya remain sceptical about the consequences of smelter pollution when there are no visible effects of illness. In my first interview, a participant alerted me to this:

[V]ery few people want to know [about the effects of pollution]. Generally, people tell you: I have lived here for more than 50 years and nothing wrong has happened to me. Then I point to their constant issues with allergies and stomach pain, but they attribute them to food poisoning.⁵⁵

Near the end of the interviews, another participant expressed a similar understanding of pollution:

I have been working in the smelter for almost 30 years. You can see me now; if I had been polluted then I would not be able to talk to you. Neither of my children are affected, otherwise they would not have been able to study and finish their university degrees.⁵⁶

By contrast, when people can actually “feel” the effects of pollution on/in their own bodies, they tend to have a different understanding of pollution. One participant confessed that he was diagnosed with pneumoconiosis:⁵⁷

Having lead in your body makes you feel heavy and mentally tired. I do not agree with those mothers that claim “I’d rather die by lead poisoning than die by hunger”.

⁵⁴ The understanding of health as the absence of disease has been challenged by the definition of health advanced by WHO, for whom health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” See WHO, “Preamble” to the *Constitution of the World Health Organization* as adopted by the International Health Conference, New York (19-22 June 1946), and entered into force on April 7, 1948.

⁵⁵ Interview with MC 1, *supra* note 10.

⁵⁶ Interview with MC 38, *supra* note 19.

⁵⁷ Pneumoconiosis is commonly known as an occupational disease affecting the lungs. It is caused by long-term inhalation of minerals or metallic dust.

How can they talk in such a way? Don't they value their lives? Just for preserving their jobs they go to such extremes.⁵⁸

Another consequence of such a narrow understanding of health is that parents refrain from testing their children's blood to discover if toxic metals are present. When participants were asked about their children's health or whether their children had been tested, some referred to their children's ages and place of residence as impediments to having the testing completed.⁵⁹ Other participants, mainly located in the subgroup defending job opportunities at the smelter, simply did not consider such tests necessary:

I have never brought my children to be blood tested because I see them to be normal. My sense is that the most affected children have been those living in La Oroya Antigua but my family and I have always lived in La Oroya Nueva.⁶⁰

The company [Doe Run] and the Ministry of Health implemented a health program for children to be tested. I refused to test my children because I thought that if my children were sick then they would not look as healthy as they do. I do not think my children have lead poisoning, because otherwise they would not be normal people and they actually perform really well at school.⁶¹

While the "invisibility" of illness has greatly contributed to establishing the politics of denial and reinforced an artificial distinction between normal vs. abnormal human bodies in La Oroya, other factors have further complicated this problem, the consequences of which have been suffered mostly by specific groups. The next section reports on this problem.

⁵⁸ Interview with MC 27, *supra* note 11.

⁵⁹ This refers to the implementation of the Convenio MINSA-Doe Run, which benefited by doing blood lead level testing and treatment only for a limited segment of the La Oroya population (see Chapter 1).

⁶⁰ Interview with MC 26, *supra* note 26.

⁶¹ Interview with MC 30, *supra* note 9.

Access to Information, Responsibility for Illness, and Stigma against the Poor

La Oroya is the only extractive community in Perú about which a widespread series of studies of blood lead level (BLL) and other toxic metals in children's blood have been produced. In the absence of epidemiological evidence, studies indicating the presence of toxic metals in blood alert us to the *potential* effects this might produce on human health. My study found that information about such potential effects has been disseminated through two sources: (1) the MOSAO and the (Catholic and Evangelical) Church; and (2) officials implementing the cooperation agreement between the Peruvian Ministry of Health and Doe Run. These two channels of information have emphasized different strategic goals that have been presented in opposition rather than as complementary. This has led the community to embrace two contrasting interpretations of the problem. The most notorious and unfortunate effects of this are the reinforcement of a politics that “blames victims” for the causes of pollution and the subsequent stigmatization of the less affluent members of La Oroya for speaking out about their afflictions.

The MOSAO and the Church—labelled by some participants as environmental NGOs—have played a significant role in informing parents about the range of potential consequences of lead poisoning in children. In reviewing a series of documentary videos,⁶² including those produced by national and international journalists, and contrasting them with participants' comments, I noticed that journalists and activists stress the potential neurological effects and the possible brain damage in children. These

⁶² See, for instance, “House of Lead: A Story of Greed – La Oroya, Peru”, online: YouTube <<http://www.youtube.com/watch?v=Kpwu8DOmzoU>>. Also see CNN. “Planet in Peril: La Oroya”, report aired worldwide 11 December 2008, online: YouTube <<http://www.youtube.com/watch?v=ne0aPXzBHfQ&feature=related>>. “La Oroya: Reportaje especial de telemundo, Los Angeles 2009”, online: YouTube <<http://www.youtube.com/watch?v=g3FTvIyI2mw&feature=related>>; “La Oroya: Globalization We Can Grasp”, online: YouTube <<http://www.youtube.com/watch?v=hy1xend3PFQ>>.

would result in a limited capacity to lead normal lives in the future. This information was used strategically to promote human rights activism pressuring the Peruvian state to target the main source of pollution: the smelter. Participants located within the environmental-health subgroup expressed a special appreciation of this information, without which, they argued, it would not have been possible to understand the dramatic situation in which they live or to take actions to improve it. Acknowledgement and feelings of gratitude were manifested as follows:

I am grateful to the NGOs that have provided me with information through which I acquired more knowledge and avoided being manipulated.⁶³

I learnt what it means to be a leader thanks to the training provided by the MOSAO, the Catholic Church and the NGOs. Such training helped me to be free, to make my own decisions.⁶⁴

Participants from the subgroup that primarily defends job opportunities at the smelter displayed a less sympathetic and receptive stance towards the informational role of the “environmental NGOs”:

There have been some NGOs that have planted the seed of partial truths for the sake of their own economic benefits.⁶⁵

[E]nvironmentalist NGOs do not acknowledge that there are improvements [in terms of reducing pollution].⁶⁶

I also noticed that the focus on lead-poisoning effects on children’s intellectual development prompted negative reactions among many participants defending job opportunities at the smelter. For these participants, accepting that their children suffer from lead poisoning is to accept that they are “mentally retarded,” a condition that is seen

⁶³ Interview with MC 21, *supra* note 5.

⁶⁴ Interview with MC 3 (27 October 2010), La Oroya, Perú.

⁶⁵ Interview with MC 39, *supra* note 38.

⁶⁶ Interview with MC 47, *supra* note 17.

as abnormal or negative. In an unfortunate and often derogatory tone, participants expressed negative reactions in the following ways,

There are fewer educated people who live in conditions of poverty, which are obviously going to make them sick from the same conditions in which they live in, right?⁶⁷

If contamination were as strong as people say, then the children would not be smart and committed to their studies. There is a boy from La Oroya who has won a national competition in mathematics, so how can people affirm that children from La Oroya are mentally retarded?⁶⁸

It is strongly presumed that such reactions are, by and large, the product of the joint campaign promoted by the agreement between the Peruvian Ministry of Health and Doe Run (the Convenio MINSA-Doe Run) to test and treat children affected by lead poisoning. The strategic emphasis of these organizations was to highlight the link between better personal hygiene and nutritional habits and overcoming environmental pollution. For instance, a participant, recalling to a public conversation between mothers and the first coordinator for implementing the Convenio MINSA-Doe Run, stated, “Your children are not mentally retarded as the NGOs say. Not if you provide them with proper nutrition.”⁶⁹ Another participant recalled hearing the same coordinator embracing a double discourse, one in La Oroya and a different one in Lima, regarding the causes and responsibilities for pollution:

The doctor [coordinator of the joint agreement] stated in public events in La Oroya that people from La Oroya have become immune to pollution. Furthermore, he challenged us to demonstrate who has died in La Oroya because of pollution . . . Then, in a different tone during an event in Lima aimed at discussing strategies to clean the air in La Oroya, the same doctor indicated that health problems in La Oroya are basically the result of irresponsible parents who, instead of being

⁶⁷ Interview with MC 30, *supra* note 9.

⁶⁸ Interview with MC 18 (14 November 2010), La Oroya, Perú.

⁶⁹ Interview with MC 1, *supra* note 10.

concerned about the health of their children, are concerned about maintaining their own jobs and incomes.⁷⁰

Another participant whose children were tested under the agreement shared a similar story:

The doctor told us, your children's blood lead levels are going to be reduced when you clean your rooms better, clean your children toys, regularly clean your own children, and also drink a lot of milk and orange juice.⁷¹

Although nutrition and hygiene are undeniably important steps in cases of toxic metal exposure, scientific evidence indicates that they are insufficient measures to promote better health if the main source of pollution is not also addressed (see Chapter 1). In the case of La Oroya, a drastic reduction in smelting air pollution and soil contamination are also required—not simply better nutrition and hygiene. This is why a doctor's suggestion to a participant that her hygiene habits during pregnancy were to blame for her daughter's lead poisoning prompted deep indignation:

As soon as I received the diagnosis [of high lead levels in my daughter's blood], doctors asked me where I lived. More specifically, where did I live while pregnant? . . . Then they suggested, "Maybe your house is not hygienic." I quickly replied saying, "Excuse me, but I clean my house every day" . . . I am telling you, [lack of] hygiene is not the reason behind my daughter's lead poisoning; rather, this is the product of contamination. I am sure of it, despite my husband working in the smelter, right? I have always taken care of my little girl; I have always taken good care of her nutrition.⁷²

As noted in this comment, an immediate consequence of focusing on hygiene and nutrition alone is to place blame on parents, making them responsible for reversing the effects of pollution. As parents are typically in charge of providing nutrition and personal care for their children, having a child who suffers from lead poisoning in La Oroya is

⁷⁰ Interview with MC 21, *supra* note 5.

⁷¹ Interview with MC 35 (1 December 2010), La Oroya, Perú.

⁷² Interview with MC 42, *supra* note 48.

likely to be seen as evidence of a failure to be a good parent. This assumption is clearly reflected in the ongoing stigmatization and negative judgment of poor families with children affected by lead poisoning (usually called the *emplomados*), who struggle to provide better nutrition despite limited resources.

The socio-economic divide became more readily apparent in this context. Families of smelter workers seek to draw a line between themselves and the rest of the population, arguing that the media often err by generalizing that all children from La Oroya suffer from lead poisoning. They argue that the media should clarify that only some of the children are affected—those of the less affluent and “less responsible” families.⁷³

5.2.3 Personal Conversion Factors

Individuals' Values and Needs

The themes discussed above have unpacked—through the voices of participants—the different things that residents of La Oroya value; and, more concretely, enough light has been shed on the reasons why they value such things. Whether they value a healthy environment, guaranteed employment opportunities, access to information, freedom to act without being manipulated, active participation in community life, gender equality, preserving their ancestral legacy, or cultivating a sense of identity within the community, the reality is that there are always reasons or causal

⁷³ My visit to La Oroya coincided with a visit of American lawyers promoting a legal case against the Doe Run parent company in Missouri, USA, on behalf of affected children from La Oroya. Lawsuits were filed in the Circuit Court of the State of Missouri, 22nd Judicial Circuit. In a public presentation, lawyers explained the content and recent outcomes of such legal demands. At the end of the presentation, a couple of wives of smelter workers showed their irritation at the universal way lawyers refer to children from La Oroya. Again, they insisted not *all* but just *some* children are affected, and lawyers should take note of such a distinction.

forces that influence how and why people from La Oroya uphold such values and establish priorities among them.

In order to better understand the trade-offs between health and work that some residents of this community have made, I posed a concrete question to further scrutinize participants' values and their underlying requirements for a life of well-being. I was curious to know if significant differences exist between the three subgroups of participants in the study. More specifically, I wanted to know whether the values some participants defend are in conflict with other participants' values, and if this is reflected in people's general idealization of a "life of well-being." The following chart summarizes the values and needs participants of each subgroup indicated to be important for a life of well-being in La Oroya.

Table 3: Values/Needs in La Oroya

List of Values/Needs	Subgroup that defends environmental health	Subgroup that takes a moderate stance	Subgroup that defends employment opportunities
Having physical and emotional health	9 participants *	5 participants	1 participant
Living in an environment free of pollution	2 participants	1 participant	---
Having a job	4 participants	1 participant	4 participants *
Having a good salary	---	---	1 participant
Having a fair salary	2 participants	---	---
Having economic stability	4 participants *	3 participants	1 participants
Having economic independence	1 participant	2 participants	---
Having a house	2 participants	---	3 participants
Having access to education	---	3 participants	3 participants
Having access to food	---	1 participant	1 participant
Being connected to God	2 participants	4 participants *	2 participants *
Having rights respected	1 participant	---	1 participant
Having authorities that apply the laws	1 participant	---	---
Enjoying family and community unity	3 participants	2 participants	1 participant
Being respectful and honest with the community	1 participant	2 participants	1 participant
Living in a peaceful environment	---	2 participants	---
Having love and sympathy	---	1 participant	---
Enjoying gender equality	1 participant	---	---
Enjoying freedom of mobility	1 participant	---	---
Enjoying equality of opportunities for all	---	1 participant	---
Developing leadership capacities	---	---	1 participant
Being able to exercise capacity for resistance	---	---	1 participant
Giving children the opportunity to progress in life	---	---	1 participant
Developing own business	---	---	1 participant

* Some participants ranked this item first over other values. It should be noted that participants often indicated more than one value/need on the list without necessarily indicating a priority among them. Each list has been formulated entirely based on participants' responses.

At first glance, some remarkable commonalities and differences are noticeable.

Let me start by analyzing the two most contested values/needs in La Oroya: "health" and

“work.” As anticipated, “having physical and emotional health” was ranked higher in the subgroup that defends environmental health than in the other two subgroups. In addition, while respondents from the first subgroup embraced a holistic notion of health that encompasses physical and emotional aspects, the other two subgroups linked the meaning of health either to only physical aspects (subgroup taking a moderate stance) or defining it as a matter of being “well-nourished and clean” (subgroup defending employment opportunities). It seems reasonable to assume that past events of hostility and verbal aggression experienced by participants campaigning for the protection of the right to health may explain their tendency to understand health in a more encompassing manner. For instance, one participant reflected on the extent to which her activism negatively affected her social relationships, which in turn affected her source of subsistence, her emotional stability, and that of her children.⁷⁴ This participant mentioned her restaurant—which provided food to smelter workers at lunch time—and described how, overnight, customers stopped coming to eat there. This resulted in the closure of her business and the loss of her main source of income. Furthermore, such hostile behaviour against activists was translated into creating an atmosphere of “guilt” among children. The same participant recalls a public Christmas event at which toys donated by Doe Run were distributed among community children. When it was her son’s turn to receive a gift, the person in charge told him, “You are one of those complaining about lead poisoning (*“tu eres un emplomado”*); thus for you there are no gifts.”

Contrary to a holistic understanding of health, the only participant valuing “health” in the subgroup defending employment opportunities referred to health as a

⁷⁴ Interview with MC 31, *supra* note 29.

matter of nutrition and hygiene habits. As widely discussed earlier in this chapter, such a narrow understanding of health has been largely promoted by Doe Run and the Peruvian state, and has influenced how some community members in La Oroya construct the meaning of health. Interestingly, only two participants from the subgroup defending environmental health mentioned valuing “living in an environment free of pollution,” and only one participant from the moderate subgroup indicated the same. None of the participants from the subgroup defending employment opportunities at the smelter referred to the environment.

The need for “having a job” was equally valued by employment opportunity defenders and environmental health defenders. However, many of the people in the first subgroup mentioned the value of having a “good” salary, whereas participants in the latter subgroup were more likely to value a “fair” salary. The latter response encompasses the case of school teachers, who represent the few who hold a university degree in La Oroya, even though their salaries are lower than those of some smelter workers. Age was the main distinguishing feature of those who indicated valuing “economic stability” as opposed to “economic independence”—the youngest participants were more concerned with the latter.

The value of having material things or meeting basic needs—such as having a house and a job, enjoying economic stability, and access to education—was seen as important in all three subgroups. This is not surprising given the socio-economic conditions and past history of the community; what was surprising was that the three subgroups also mentioned the value of “being connected to God,” as such a value did not clearly emerge in any of the above-mentioned themes. On the one hand, this could

explain the involvement and positive reception of the evangelical and Catholic churches in campaigning to defend the human right to health for children in La Oroya; on the other hand, it could reflect that religion is valued for its function as an emotional pillar. It is possible that residents of La Oroya enhance their strength and cope with adversity with the assistance of religion, as one of the participants suggested,

[What I value the most] is to believe in God above everything because my faith is the best thing I have. When I ask God with faith to protect me, I feel I have everything. I have my health, I have a job, and I have my daughters.⁷⁵

In general, participants did not advance a hierarchy or priority among the things they value, with the following exceptions. Within the subgroup defending environmental health, four participants put a value on health first because “with health you can always work”;⁷⁶ “with health I can have a job to support my family”;⁷⁷ “without health I would not be able to work”;⁷⁸ and finally, a participant indicated that health should be a priority “about which we need education and information.”⁷⁹ In the same subgroup, only one participant indicated valuing economic stability first, arguing that with economic stability at least “you can ensure the means to pay for your health.”⁸⁰ Among the moderate subgroup one participant indicated that having a strong connection with God should be a priority.⁸¹ In the subgroup defending employment opportunities, one

⁷⁵ Interview with MC 44, *supra* note 35.

⁷⁶ Interview with MC 15 (13 November 2010), La Oroya, Perú.

⁷⁷ Interview with MC 13 (13 November 2010), La Oroya, Perú.

⁷⁸ Interview with MC 23, *supra* note 30.

⁷⁹ Interview with MC 21, *supra* note 5.

⁸⁰ Interview with MC 37 (1 December 2010), La Oroya, Perú.

⁸¹ Interview with MC 24, *supra* note 26.

participant prioritized “having a job and a house first, [and] to then protect my health”;⁸² the rest of the participants in this group did not even mention the value of health, with the exception of one participant who valued “being well-nourished, clean and healthy.”⁸³ Other valued (non-material) things mentioned by the three subgroups encompass being respectful and honest with the community, enjoying family unity, and having love and sympathy.

Despite the significant presence of human rights activists campaigning for the defence of environmental health in La Oroya, only two participants mentioned “having my rights respected” as something valuable. This provides interesting nuances about what people value for their well-being and the extent to which they frame such values in terms of human rights. In fact, many of the values/needs mentioned by participants are directly related to various sets of human rights legally recognized in international covenants, national constitutions and further defined by jurisprudence and legal doctrine. Consequently, the fact that only two participants made use of the language of “human rights” should not be interpreted to mean that few people in La Oroya value their rights being respected; rather, it may suggest that what people value in their everyday lives already speaks to what “experts” and practitioners frame under the discourse of human rights.

In short, results from the reporting on what diverse people value in La Oroya provide useful insights to further the ongoing debate among capability scholars over the selection of valuable capabilities. While challenging the pertinence of advocating for an

⁸² Interview with MC 39, *supra* note 38.

⁸³ Interview with MC 38, *supra* note 19.

idealistic universal list of capabilities, as proposed by Martha Nussbaum, the La Oroya case also suggests that having some suspicions about the process of “public reasoning,” as proposed by Amartya Sen, is a better option (see Chapter 3). The next chapter of this dissertation will discuss this issue further.

5.3 La Oroya from the Perspective of Human Rights Activists and Public Servants

The previous chapter introduced the diverse steps necessary to develop a “contextualizing strategy” to scrutinize the context of unfreedom that shapes the quality of life and influences value judgements and choices of community members in La Oroya. In this section, I deal with one of the above-mentioned steps, which consisted of 15 open-ended interviews collected from various human rights activists and public servants who were directly or indirectly involved in decision-making in the La Oroya case. On-the-ground experiences and insights from these two groups of participants are particularly important in enriching our knowledge about La Oroya in order to fairly judge complex decisions and actions taken by La Oroya residents. Such rigor in elaborating our judgments is a minimal requirement in demonstrating the legitimacy required to reproduce the story of this community. A participant eloquently reflected on this as follows:

The history of La Oroya is a history of people whose difficult decisions should not be judged outside the frameworks and contexts in which they originated. It is not easy for any family to accept a situation of strong dependency on a particular economic activity; nor is it easy to accept living in a place where your children’s health is being jeopardized. The central concern about La Oroya is the unwillingness of the Peruvian state to give priority to resolving the problems of this community in a timely manner.⁸⁴

⁸⁴ Interview with Ivan Lanegra, Vice Minister for Interculturality, Ministry of Culture; formerly Director of Environment, Public Services and Indigenous Peoples of the Peruvian Ombudsman’s Office (22 December 2010), Lima, Perú.

Findings from this group of interviews have been summarized around four themes: (1) economic dependency and power; (2) the state's leniency towards Doe Run's environmental obligations; (3) the Peruvian model of economic development; and (4) the institutional fragility of the discourse of human rights. These themes are presented as conveying institutional conversion factors.

5.3.1 Institutional Conversion Factors

Economic Dependency and Power

One of the most defining characteristics of La Oroya distinguishing it from other extractive communities in Peru is an entrenched relationship between residents and the smelter, resulting from a long history of dependency, domination, and paternalism. Residents often underscore the fact that people depend directly or indirectly on the smelter in La Oroya. This reality expresses the power that the smelter operator has over the community. Human rights activists, most notably, indicated that such economic dependence was used by Doe Run to manipulate smelter workers and their families to blindly support the company⁸⁵ and to instil an environment of fear among the rest of the community in order to minimize actions against the company's environmental malpractices. Confronting a reality in which the state, rather than acting on behalf of the best interests of its citizens, aligned itself with Doe Run's interests, transnational human rights activism acted as an counteracting force defending the human rights of La Oroya residents. In response, Doe Run started a campaign aimed at discrediting the work of

⁸⁵ Smelter workers and their families rarely admit such a reality. For instance, from my interviews with community members, only one participant (MC 26, *supra* note 33) discussed openly how the company influenced not only smelter workers but also the media and ordinary people in the community to act as an information-gathering "intelligence service." Another participant (MC 42, *supra* note 48) expressed regret that residents in La Oroya receive economic support from Doe Run to defend the company's interests. This participant gave the media as an example, indicating that "Radio Carisma" receives economic sponsorship from Doe Run and, as a consequence, transmits pro-company information.

human rights activists, while indirectly promoting hostility against community members that supported them (see Chapter 1).

According to mining and conflict expert Juan Aste, the power of Doe Run was manifested on two fronts: at the local level, by gaining the support of union leaders and co-opting local authorities and the media; and at the national level, by receiving a favourable treatment from the Ministry of Energy and Mines.⁸⁶ At the local level, Doe Run strategically built its own social network to counteract emerging human rights activism in the community. By spreading a rumour about the potential closure of the smelter—and the consequent loss of jobs—if the Peruvian government did not extend the deadline for the compliance with Doe Run’s PAMA, the company rapidly garnered the support of large portions of the population of smelter workers in La Oroya. Local authorities and the local media were also enlisted as powerful supporters of the company; the latter was a key actor in the campaign to discredit individuals who raised concerns about smelter pollution. Environmental activist Raul Chacón indicates that activists, while anticipating that smelter workers would react against them, never imagined that the reaction would turn into episodes of gross psychological and physical aggression against other residents.⁸⁷ Chacon mentions that local activists and supporters fell victim to the environment of fear propagated by Doe Run and suggests that this environment jeopardized efforts to advance peaceful solutions for the community. The Archbishop of Huancayo, Mons. Pedro Barreto, pointed to Doe Run’s campaign of fear as the reason his suggestion to form a “dialogue

⁸⁶ Interview with Juan Aste, Advisor, Committee on Mining, the Environment and Indigenous Affairs, Peruvian National Congress, and former member of the technical support group of the MOSAO (29 October 2010), Lima, Perú.

⁸⁷ Interview with Raul Chacón, Sociologist and Media Communicator, former member of the technical support group of the MOSAO (12 December 2010), Lima, Perú.

table” among all stakeholders in order to move the conflict “from protest to proposal” was unsuccessful.⁸⁸

The economic power of Doe Run also extended to the political level, seen in the company’s close relationship with key bureaucrats in the Peruvian Ministry of Energy and Mines. Given the antecedents of corruption during the privatization process (see Chapter 2), human rights activists pointed to such a relationship as deeply suspicious. The next theme deals with this issue.

The State’s Leniency towards Doe Run’s Environmental Obligations

Former managers of Centromin Peru, who participated in the design of both the privatization contract and the La Oroya PAMA, were hired as directors of the National Office of Mining and the National Office of Environmental Mining Affairs in the Peruvian Ministry of Energy and Mines. This generated great suspicion about possible corruption. These senior government officers were later in charge of supervising Doe Run’s compliance with its environmental obligations. This conflict of interest would have been less egregious if these bureaucrats had not acted with such leniency with regard to Doe Run’s environmental obligations.⁸⁹ A former public servant of the Ministry of Energy and Mines (FP02) acknowledges that the ministry granted favourable treatment to Doe Run,

⁸⁸ Interview with the Archbishop of Huancayo, Mons. Pedro Barreto (19 October 2010), Lima, Perú.

⁸⁹ To be precise, names such as Julio Bonelli, Luis Alberto Sánchez, César Polo and José Mogrovejo were mentioned as former functionaries of Centromin Perú who later occupied leading roles in the Peruvian Ministry of Energy and Mines. Furthermore, José Mogrovejo, former National Director of Environmental Mining Affairs, resigned from his position directly after the first extension of Doe Run’s compliance with its environmental mitigation plan. Subsequently, he assumed the corporate vice-presidency of Environmental Affairs at the Doe Run Company. See Juan Aste, *El futuro del complejo metalúrgico de La Oroya* (Lima: Grupo Andes, 2005).

facilitating the company's continual delay in complying with its environmental responsibilities under the PAMA—a fact that greatly affected fairness and impartiality in the supervisory process.⁹⁰

The presence of former Centromin functionaries in the Ministry of Energy and Mines and Doe Run may have also played a role in the so-called manipulation of smelter workers. Physician Hugo Villa—former director of the Hospital of La Oroya and former member of the MOSAO—reflected that “[the functionaries] knew about the life and sentiments of smelter workers. They knew how to manipulate such sentiments and they moved towards defending the company [Doe Run].”⁹¹

The favourable treatment that Peruvian governmental authorities granted to Doe Run reached exponential levels when the former Prime Minister and President of the Council of Ministers for Perú, Jorge del Castillo, was reported to be lobbying in favour of the company. Along with the testimonies of human rights activists, a local newspaper made public a letter that del Castillo sent to the US ambassador in Perú, in which he argued that any legal demand initiated in the US against Doe Run relating to children suffering from lead poisoning should be resolved in the Peruvian courts.⁹² One might wonder why the President of the Council of Ministers was so interested in a particular judicial case when, in accordance with principles of impartiality and independence, judges are the ones to decide if they have jurisdiction to evaluate a case.

⁹⁰ Interview with FP 02, former functionary of the Ministry of Energy and Mines (7 December 2010), Lima, Perú.

⁹¹ Interview with Dr. Hugo Villa, former president of the technical support group of the MOSAO (6 November 2010), Lima, Perú.

⁹² Letter published in the local newspaper *La Republica* (16 January 2008), online: Conflictos Mineros <<http://www.conflictosmineros.net/contenidos/19-peru/4103?format=pdf>>. Del Castillo's intervention was directly related to a series of lawsuits filed in the Circuit Court of the State of Missouri against Doe Run/the Renco Group to legally respond to the health damages against 107 children from La Oroya.

The neutrality of the Peruvian State in dealing with the La Oroya problem was also called into question by the signing of the Convenio MINSA-Doe Run agreement between Doe Run, the Ministry of Health, and the Regional Government of Junín aimed at testing and treating children affected by lead poisoning. Ivan Lanegra, former Manager of Natural Resources and the Environment in the Regional Government of Junín, sustains that the Peruvian state should have preserved its autonomy in dealing with the public health crisis in La Oroya: the Peruvian government's participation in the joint agreement sent the message that "the state [is] giving a concession to favour the company."⁹³ In a similar vein, former Mayor of La Oroya, César Gutiérrez, took issue with the agreement. Because Doe Run acted as the principal funder, Gutiérrez argues, the company significantly influenced the design and objectives of the agreement, which resulted in targeting only a small sample of the La Oroya population.⁹⁴

Public servants from the Ministry of Health evinced both apathy and discomfort when I contacted them for interviews to discuss the La Oroya case. I contacted both the head of the office in charge of implementing a "National Health Strategy to Provide Treatment to People Affected by Toxic Metal Contamination" (The National Strategy) and the director of the hospital in La Oroya who was also in charge of the implementation of the agreement. Interviews were refused in both cases; thus, written information was formally requested in accordance with the *General Law for Access to Public Information*, Law No. 27806 (02 August 2002). A brief written response was received from public functionaries in charge of The National Strategy, in which they

⁹³ Interview with Ivan Lanegra, *supra* note 84.

⁹⁴ Interview with César Gutiérrez, former Mayor of La Oroya (16 December 2010), La Oroya, Perú.

stated that there are currently no plans to conduct epidemiological studies in La Oroya due to budgetary restraints. Regarding medical attention and treatment, they indicated that “between 2008 and 2009 there were 338 and 409 medical attentions, respectively, the targeted population being 64 residents from La Oroya. In those cases, manifestations of diverse ailments were found, but not damage to body organs” (see Appendix 3).

This response raises a particular concern, as medical follow-up in a community with long-term exposure to toxic metals is absolutely necessary to be able to gauge the effects on community health. This is especially true given that many of the participants stated that their children did not receive any treatment or medical follow-up after they were diagnosed with lead poisoning.⁹⁵ In addition, it seems that a “national strategy” is going against its own directives, which were to advance “health prevention to reduce mortality, morbidity and disability rates in population[s] exposed to toxic metals.”⁹⁶ Indeed, it seems that the Ministry of Health is not seriously concerned with working towards health prevention in La Oroya, but rather is waiting until serious illness (organ damage) is manifested to advance actions.

Unlike other ministries, the Peruvian Ministry of Labour showed a more committed and responsive attitude towards the complex problems in La Oroya. Given the potential permanent closure of the smelter, the Labour Ministry drafted a proposal containing recommendations for providing short-term training for smelter workers to enhance their employability elsewhere. The idea was to match the demands of the market

⁹⁵ My assertion is based on testimonies of the following participants: MC 3, MC 4, MC 6, MC 8, MC 12, MC 13, MC 24, MC 31, MC 34, MC 35, MC 37 and MC 42.

⁹⁶ “The National Strategy” was created in 2008 through Ministerial Resolution No. 425-2008-MINSA. The main goal, as defined on its official website, is to formulate intersectoral and intrasectoral actions to prevent and control environmental pollution and ameliorate mortality, morbidity and the disability of people facing toxic metal exposure. See online: MINSA <http://www.minsa.gob.pe/portada/est_san/cmposq.htm>.

with what workers could be expected to do. However, smelter workers did not accept the ministry's proposal.

Union leaders reacted against this proposal, arguing that they already had jobs and that they just needed the government to facilitate the re-opening of the smelter. In this regard, FP01—a bureaucrat with the Ministry of Labour—explained that, given the urgency of the situation in La Oroya and the particular characteristics of smelter workers, a proper “Reconversion Plan” was not feasible for the smelter workers.⁹⁷ FP01 suggested that issues of age and level of education in La Oroya made thinking about alternative employment problematic. For instance, 300 smelter workers are 25 to 39 years old; 850 are 40 to 49 years old; and 1,100 of them are above 50 years old—close to retirement age. On the other hand, only 41% of smelter workers have completed secondary education; 21% have incomplete secondary education; and only 7% have technical training. FP01 then wondered,

In the context of such a reality, what kind of training are we able to offer them, if the majority hold a minimal amount of secondary education and almost half are over 50 years old? . . . [W]e do not deny that over the years they have developed specific skills, so what we want to offer them is only an opportunity to develop more capacity.

While smelter workers remain uninterested in the Labour Ministry's proposal, there are other groups within La Oroya whose needs are still being neglected in terms of capacity-building and training: these are women and youth. A youth community member participant stated, “I have studied accounting because it was my only option and I did not want to live far away from my family.”⁹⁸ She then explained that there is only one technological institute in La Oroya and it only offers a narrow range of career vocations,

⁹⁷ Interview with FP 01, public functionary at the Ministry of Labour (15 October 2010), Lima, Perú.

⁹⁸ Interview with MC 33, *supra* note 27.

such as accounting, nursing, and computer programming. As previously noted, La Oroya also has a large number of self-enterprising women seeking opportunities to contribute to community life. Targeting youth and women to participate in the capacity-building programs offered by the Ministry of Labour could greatly contribute to the promotion of gender equality in La Oroya and progressively begin to erase the gender divide present in the community.

The Peruvian Model of Economic Development

The La Oroya case, as argued by some participants, illustrates the negative effects of the Peruvian model of economic development. In response to the often celebrated “economic growth” in Perú, Juan Aste suggests that a cost-benefit analysis is necessary to reveal the real contribution of the extractive industry to the Peruvian economy. He wonders, “What would be the result if one also factored into the [development] equation economic losses in terms of the consequences of social conflicts and environmental degradation?” He then goes on to criticize the misleading assumption that Perú is *only* a mining country:

This is not true. Perú is also a pluri-cultural and multiethnic country. Unfortunately, our country resembles a divorce between two countries: one in the interior embracing a different type of knowledge; the other, in Lima, transformed by modernization and globalization. We have to understand that Perú is not only Lima and the extractive industry; this is a mega-diverse country holding many other possibilities.⁹⁹

⁹⁹ Interview with Juan Aste, *supra* note 86.

Furthering Aste's view, social science researcher Martin Scurrah¹⁰⁰ argues that cases like La Oroya should invite us to think in terms of post-extractive societies, by which he means sustainable societies rooted in social justice principles and capable of confronting the unavoidable reality of the depletion of non-renewable resources. In rethinking the politics of development in Perú, he suggests, we should bear in mind the legacy we want to leave for future generations. He also asks how Perú plans to deal with a potential future drop in mineral prices. The goal of a post-extractive society might seem like a daunting transition in the context of the current dependence on the large-scale mining industry in Perú. As discussed in Chapter 2, since the beginning of last century, the mining industry has developed a powerful and strategic presence in Perú's economy. This provides a stage where economic and political actors converge to maximize mutual benefits, resembling ancient colonial relationships of power and domination. Such dominant relationships motivated FP02 to metaphorically sustain that, "In Perú, viceroys have not left yet. There is an enormous economic power mirroring the structure of a viceroyalty."¹⁰¹ In the case of La Oroya, FP02 continues, this neocolonial-type relationship was readily evident in the fact that "Doe Run's environmental malpractice did not effectively stop it from continuing to operate, because the Peruvian state made them comply with environmental regulations; rather, the suspension of smelting activities by Doe Run was the consequence of an unpaid debt to its creditors: a group of mining companies owned by the Peruvian oligarchy."¹⁰²

¹⁰⁰ Interview with Martin Scurrah, social science researcher and former Regional Director for Oxfam America in Peru (15 December 2010), Lima, Perú.

¹⁰¹ "Viceroys" and "viceroyalty" refer to the Spanish colonial administration in Perú established from the 16th century to the mid-19th century.

¹⁰² Interview with FP02, *supra* note 90.

If, under the current political scenario, transforming Perú's national economy towards a post-extractive society (from the top-down) seems a rather idealistic goal, re-imagining local economies appears to be a more feasible option, which in turn may provide a strategic transition towards broader changes at the macro level.¹⁰³ Interestingly enough, this issue became readily apparent in the context of La Oroya, although few observers, if any, were able to "see" it because of the widely held assumption that La Oroya would not be able to survive economically if the smelter ceased to function. My interviews with women and youth, as mentioned above, disclosed the often ignored local need to diversify La Oroya's economy. To some degree, the need to break economic dependencies was also present in my interview with former Mayor of La Oroya, César Gutiérrez.¹⁰⁴ While concerned about the future of smelter workers, Gutiérrez also reflected on the need to become more creative in developing new economic activities that are inclusive of the independent labour force in La Oroya.

The Institutional Fragility of the Human Rights Discourse

The human rights discourse and, more concretely, human rights activism, has played a significant role in exposing the environmental and public health problems in La Oroya, although not always with fully satisfactory results. Insights collected from human rights activists suggest that, aside from the inherent difficulty in counteracting the politico-economic power of Doe Run, limitations of human rights discourse are related to two other factors. One limitation points to the operational pathways along which the

¹⁰³ See for instance, J.K. Gibson-Graham, *A Postcapitalist Politics* (Minneapolis: University of Minnesota Press, 2006).

¹⁰⁴ Interview with César Gutiérrez, *supra* note 94.

discourse is brought to life at the institutional level. A second limitation is related to the inherent malleability of the discourse, which has evolved diverse and even conflicted meanings.

Eliana Ames, former technical advisor of the MOSAO, argues that the Peruvian institutional system seems to be designed “to ultimately serve the interest of super powerful entities, making the real fulfillment of human rights unattainable in practice.”¹⁰⁵ She maintains that this was made evident in the case of La Oroya by the institutional weakness manifested in the process of supervision and sanction of environmental malpractices of the Doe Run Company. At the judicial level, the Constitutional Tribunal of Perú, although granting a judgment in favour of protecting community health in La Oroya, also revealed serious limitations in making such judgments fully operational. Ames remembers the frustration of winning a judgment recognizing specific obligations to be fulfilled by the Peruvian Ministry of Health that, in fact, were never fulfilled; in spite of this, no-one reprimanded the ministry for its lack of compliance.

Reflecting upon her experiences working on the La Oroya case at the international level, environmental lawyer Astrid Puentes points out that information dissemination is critical for providing people with the opportunity to defend their rights. Along with the violation of the right to live in a healthy environment, the right to access to information was also undermined, Puentes affirms. It was a very common situation that “information [about health consequences of pollution] was not properly disseminated or, when it was, it arrived misrepresented. In many cases, for instance, after taking medical tests, people

¹⁰⁵ Interview with Eliana Ames, environmental lawyer and former technical advisor of the MOSAO (14 December 2010), Lima, Perú.

did not receive their diagnoses nor were they offered medical follow-up.”¹⁰⁶ Her testimony confirms what several participants in this study also mentioned.

Equally problematic is the inherently malleable nature of the human rights discourse, which allows it to be used to sustain circumstances that people are trying to change. HR03 recollects an episode in which smelter workers manipulated information on a radio program to blame human rights activists for threatening their labour stability. When asked to correct such information, they argued it was their “right” to express their concerns. In light of this misrepresentation of human rights, HR003 sustained that it “largely depends on when and how you use the discourse [of human rights]. There are moments in which the discourse becomes crucial to achieve positive outcomes, but there are other moments when it can also play a contrary role.”¹⁰⁷

Another issue worth reflecting upon deals with the aftermath of human rights activism in La Oroya. I include in the category of “activism” the collaboration of researchers and international media. This is not an issue raised by human rights activists themselves, but one I was prompted to reflect upon as a result of my fieldwork observation generally and because of stories shared by my interviewees more specifically. First, I was intrigued by the attention that the La Oroya case received from transnational human rights activists and the minimal efforts made to investigate and raise public awareness about other communities with similar histories of environmental health problems in the central Andes—most notably, the mining community of Cerro de

¹⁰⁶ Skype interview with Astrid Puentes, environmental lawyer and Associate Director of AIDA-Americas (15 December 2010), Lima, Perú.

¹⁰⁷ Interview with HR 03, human rights activist (16 November 2010), La Oroya, Perú.

Pasco.¹⁰⁸ La Oroya and Cerro de Pasco are linked by the same history of socio-economic transformation and pollution. Both cities were operated by the same companies (Cerro de Pasco and Centromin Perú) up until the process of privatization in the 1990s, after which the La Oroya smelter was sold to a foreign company (Doe Run), whereas Cerro de Pasco became the property of a local private company (Volcan). In terms of prompting activism to overcome environmental pollution, such a difference would seem to be irrelevant; however, it did play a pivotal role when it came to mobilizing the network of transnational human rights activism. To succeed in the “naming and shaming” strategy and challenge the scant attention the La Oroya case was receiving at the national level, it was crucial to connect human rights activism in Perú with that in the US, where Doe Run’s headquarters are located. That the city of Herculaneum, Missouri, where Doe Run’s parent company operates a smelter, faced the same problems of pollution as La Oroya was also fundamental in disclosing Doe Run’s reputation for environmental malpractice. Without such activism—including international media coverage, legal actions at the Inter-American Commission of Human Rights, and legal claims before the circuit court of Missouri to compensate the families of affected children—the La Oroya case would not have been made visible. On the other hand, it seems an ethical contradiction of the discourse of human rights to ignore the problem of lead intoxication among children in Cerro de Pasco (and other communities in the central Andes) that is

¹⁰⁸ As noted in Chapter 2, both cities formed the system of mines and the smelter that Cerro de Pasco Corporation, and then Centromin, operated in the central Andes, Perú. As in the case of La Oroya, but with significantly less local and international media coverage, the city of Cerro de Pasco is facing the ravages of historical pollution. A 2009 medical study concluded that four out of five children from the communities of Champamarca and Quiulacocha in Cerro de Pasco suffer from lead intoxication. Additional findings reported that the majority of the tested children were chronically malnourished; 23% had anemia; and 5.9% had mental retardation. See John Astete, *et al.*, “Intoxicación por plomo y otros problemas de salud en niños de poblaciones aledañas a relaves mineros” (2009) 25:1 Rev. Peru Med. Exp. Salud Publica 15.

generally linked to the same historical antecedents as in La Oroya. This situation prompts reflection about the underlying motivations of human rights activists in choosing a “case” in order to advance social mobilization. Is it really the fundamental goal of activism to positively transform the lives of affected populations? Or is it the strategic importance of the selected “case” in advancing political and ideological goals that ultimately makes people’s stories of human rights violations instrumentally relevant in prompting activism? The urgent need to reflect on these questions becomes even more relevant when we observe that after the 2009 suspension of smelter activities, human rights activism in La Oroya virtually disappeared. The smelter’s suspension of activities in June 2009 does not mean that pollution ceased to be a problem in La Oroya. As noted in Chapter 1, it occurred because of a bankruptcy procedure initiated by one of Doe Run’s creditors—and not because the problem of environmental contamination was resolved. Indeed, construction of the sulphuric acid plant that was to reduce air pollution was halted with the suspension of smelter activities; the problem of soil remediation is yet to be fully addressed; and the medical follow-up of affected children remains a necessity. Thus, there is no reason to turn our eyes away from this community yet.¹⁰⁹

Another problem I observed, which deserves careful attention, is related to the unfulfilled expectations created by the presence of human rights activists among community members in La Oroya. Some of my participants mentioned, for instance, that they were interviewed without knowing how the information they provided was being used (MC 19). Others mentioned cases in which interviewees asked for anonymity but later saw their children’s faces in the media, exposing them to the hostility of other

¹⁰⁹ My concerns about this matter further increased after listening to one of my participants commenting that in academic/activists forums, the “La Oroya case” is no longer being treated as “strategic” but is now considered an “emblematic” case.

members of the community (MC 1). One participant was surprised when I mentioned reading his testimony in a book published by a Peruvian research centre. When I mentioned my source, he told me he did not know about the existence of such a book and asked me to please provide him with a copy (MC 17). Another participant confessed she profoundly missed being in contact with the activists with whom she collaborated, calling them “sisters.” This participant made an emotional statement:

Please, don't feel upset for what I have to say. Many people have come and offered me too many things, especially so that they will not forget me. I only asked them to help me to get a dignified job. I don't want them to give me money, just the opportunity to work so I can raise my daughter. They just left—like you are doing now—their personal cards, which I often read and I said to myself: why don't they call me if they have my number? Well, maybe they just wanted my testimony so they can benefit from it but I ask you/them with all my heart, never forget the poor. If someday you achieve your goals, then return to us, return to listen how we are doing.¹¹⁰

The comments of these participants call for a more careful articulation of actions and promises when spreading the good will of activism. Some of my participants broke down with grief when talking about the psychological harm they suffered campaigning to defend the health of children in La Oroya. While activists outside La Oroya have now returned to their normal lives and working routines, many of my participants have yet to deal with depression and the deterioration of their community relationships, and have no adequate psychosocial support to deal with the aftermath of conflict.

In the context of a community that had to learn how to deal with environmental health problems and the overnight influx of observers, researchers, and media reporters, the words of the above cited participants invite us to reflect upon the ethical dimensions of our work, the expectations we create, and the need for respect and accountability

¹¹⁰ Interview with MC 11, *supra* note 52.

when doing research in fragile communities such as La Oroya. I highly recommend a monitoring and evaluating program to assess the positive and negative impacts of human rights activism for this type of case.

5.4 Discussion: What Do These Findings Tell Us about Unfreedom in La Oroya?

The themes behind the socio-environmental conflict in La Oroya describe a common scenario in communities exposed to toxic pollution.¹¹¹ Similar to cases in other communities, the La Oroya case uncovers issues of uncertainty due to “medical invisibility”;¹¹² the politics of institutional denial of responsibility for pollution;¹¹³ the unequal distribution of environmental hazards in society;¹¹⁴ and confrontations among residents due to contradictory interpretations about pollution.¹¹⁵ While all these issues may certainly convey a recurrent pattern of how affected communities cope with and respond to pollution, the La Oroya case suggests that a deeper investigation of the

¹¹¹ See, for instance, Michael R. Edelstein, *Contaminated Communities: Coping with Residential Toxic Exposure* (Oxford: Westview Press, 2003).

¹¹² Henry M. Vyner, *Invisible Trauma: The Psychosocial Effects of Invisible Environmental Contaminants* (Lexington, MA: Lexington, 1988). The notion of medical invisibility is built upon two foundations. The first, “latency invisibility,” refers to the period of time between the exposure to and the diagnosis of a disease, which often makes it difficult to empirically prove a relationship of causality; the second, “etiological invisibility,” refers to the reality that recurrent disease or disease symptoms in a polluted area cannot be attributed with absolute certainty to the contaminants that have apparently produced them, as they could also be related to additional causes. These foundations both leave the truth behind the health effects of pollution largely unexamined.

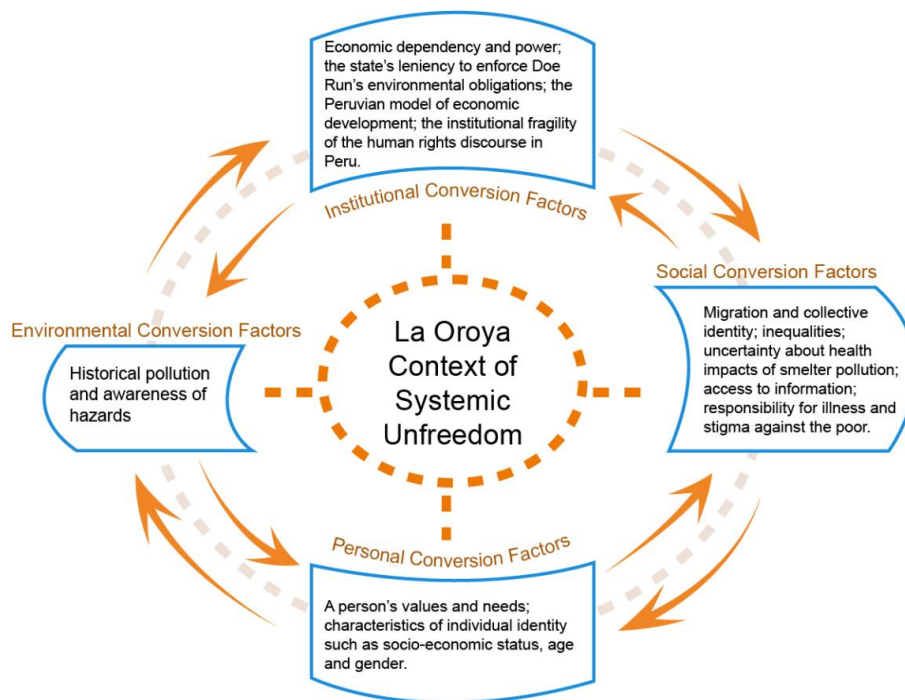
¹¹³ *Ibid.* See also Steve Kroll-Smith, Phil Brown & Valerie J. Gunter, *Illness and the Environment: A Reader in Contested Medicine* (New York: New York University Press, 2000).

¹¹⁴ Raquel Pinderhughes, “The Impact of Race on Environmental Quality: An Empirical and Theoretical Discussion” (1996) 39:2 *Sociological Perspectives* 231.

¹¹⁵ Javier Auyero & Debora Swistun, *Flammable: Environmental Suffering in an Argentinean Shantytown* (Oxford: Oxford University Press, 2009); Javier Auyero & Debora Swistun, “Confused Because Exposed: Towards an Ethnography of Environmental Suffering” (2007) 8:2 *Ethnography* 123. The dilemma of loyalty to the mining/smelter company versus concerns about health has been also reported in cases in which the government and communities deliberate about how to implement lead remediation processes. See Robert W. Elias & Brian Gulson, “Overview of Lead Remediation Effectiveness” (2003) 303 *Science of the Total Env.* 1.

underlying causes of such patterns may reveal a more complex constellation of interconnected factors. The following graphic illustrates this.

Figure 3: The most salient conversion factors generating opportunities (or lack thereof) to achieve freedom and challenge unfreedom.



As can be inferred from this graphic summarizing my fieldwork findings, none of the reported factors are sufficiently self-explanatory *per se*. They need to be located in a broader context that traces the socio-historical roots of a given affected community and delves deeper into the politico-economic dimensions behind the production of environmental hazards. Such a holistic assessment clearly reveals the fundamental interconnections between institutional, social, environmental, and personal (conversion) factors. These mutually reinforce each other, with one factor leading to or stimulating the occurrence of another. An assessment that highlights the interconnectedness of factors provides an eclectic approach to better understand how such factors structure the

lives of people, shape their systems of belief, and influence their actions and responses to threats to human well-being.

Within the framework of interconnected conversion factors (Figure 2), “uncertainty” about the “true” health consequences of pollution—one of the most recurrent issues in environmental conflicts—ceases to be understood *merely* as a matter of insufficient knowledge or contested medical information. As the analysis of “institutional conversion factors” in the La Oroya case shows, governments and companies have political and economic reasons for intentionally maintaining and reinforcing a climate of uncertainty in polluted spaces. Indeed, as noted by Henry Vynner, feelings of uncertainty, confusion, and fear experienced by exposed populations are directly linked to the most troubling aspect of environmental pollution: its medical invisibility. Broadly speaking, this refers to the difficulty in accurately proving direct causation between a disease and the contaminants individuals are exposed to; unfortunately, this means that the truth behind the health effects of pollution are largely unexplored.

Even if we acknowledge that this is a contested issue in medical epidemiology, it is not an argument that should be used to neglect harm in the La Oroya community. Residents from La Oroya are not, and have not been, oblivious to the reality of pollution; they know where pollution has historically come from and how it makes them feel. A review of the “environmental conversion factors” reveals that residents of La Oroya have gone through different stages of awareness about pollution. Particular circumstances manifested in their prioritization of needs, their processes of identity-shaping, and the influence of the ideological discourses of the time, to name a few,

characterize the evolution of these diverse stages.¹¹⁶ Thus, the reality of almost a century of smelter pollution and the existence of abundant medical studies disclosing the multiple effects of lead poisoning and other contaminants in human bodies largely defeats the possibility of suggesting that the health effects of pollution in La Oroya are “unknown.” Through the exercise of what is referred to as “popular epidemiology,”¹¹⁷ a term coined by Phil Brown, participants stated that many people in La Oroya die from cancer, and that children report learning difficulties at school, have strange bumps on their skin, and suffer from aching bones regularly. Yet, neither community members’ everyday life experiences of pollution (lay knowledge-based evidence) nor existent multiple studies reporting that children and adults in La Oroya suffer from lead, cadmium, and arsenic poisoning (scientific knowledge-based evidence) has prompted the state to conduct IQ tests among the entire population of affected children or to build a clinical data base of deaths by cancer in La Oroya.¹¹⁸ These are just a few of the many measures that could be used to reduce uncertainty about health damage in this community. By contrast, the state has adopted a “politics of denial.”

This was motivated by politico-economic reasons mediated by the entrenched relationship the state maintains with the extractive industry, which is sustained and

¹¹⁶ In Chapter 2, I provided a fully developed historical account of La Oroya that complements the information provided in this chapter in terms of “environmental conversion factors.”

¹¹⁷ Phil Brown, “Popular Epidemiology Revisited” (1997) 45:3 *Current Sociology* 137. According to Brown, popular epidemiology describes two related phenomena; on the one hand, “a form of citizen’s science in which people engage in lay ways of knowing about the environment and technological hazards . . . [and on the other hand], a type of social mobilization which increasingly plays a major part in modern political culture.”

¹¹⁸ Since the first blood lead level (BLL) study conducted in children from La Oroya to date, the Peruvian Ministry of Health has primarily focused its interventions on testing and re-testing blood lead levels in the affected population. Suggesting that a reduction in BLL is a sign of health improvements is deceiving. It is widely known by the medical community that lead in blood often relocates into the bones and that severe toxic exposure may affect children’s neurological development in the long run. Therefore, without a clinical follow-up of the affected children emphasizing the study of their neurological system, the Ministry of Health has little evidence to reassure the population in La Oroya that their health is not at risk.

justified by the Peruvian model of economic development. Such an institutional denial—another common feature in the context of contaminated communities¹¹⁹—was clearly present in La Oroya. This is manifested through the failure of Doe Run and the Peruvian government to acknowledge responsibility for pollution; the unwillingness to conduct epidemiological studies; a health campaign that focuses solely on enhancing hygiene and nutrition to overcome pollution; and, most insidiously, the controversial governmental affirmation that although “children are polluted, there is no evidence of body organ damage.” An affirmation of “no damage” largely obfuscates certainty in this community and, to some extent, contributes to the entrenchment of community social divisions. As noted earlier in this chapter, in an environment of economic dependency and constant threats of losing jobs at the smelter, even if environmental regulation had been enforced, the affirmation of “no damage” completely removed any possibility for smelter workers and their families to freely and publicly express their concerns about the health risks of pollution.

If we now move towards assessing “personal conversion factors,” looking into individual values and needs reported by participants in this study, we can see to what extent politically and economically motivated information about pollution has been internalized in the belief systems of residents of La Oroya. This is most notable in the case of those who support job opportunities at the smelter. The fact that only one participant from this group reported “health” as an important value to defend and human need to fulfill—and, moreover, the fact that this person’s understanding of health was restricted to better nutrition and hygiene—shows how much the information we receive

¹¹⁹ Vyner, *supra* note 112 at 175-191.

from the outside world shapes our beliefs and values, and subsequently influences our actions.

An assessment grounded on the interconnection of factors also sheds light on the fact that, along with maintaining a “culture of uncertainty” in La Oroya, “social conversion factors” explain why the MOSAO did not succeed in coalescing the support of the whole community. Diverse case studies representative of the “environmental justice movement”¹²⁰ and current mining conflicts in Latin America make explicit the centrality of collective identities for the success of political mobilization and resistance.¹²¹ However, this was not the case in La Oroya. Participants in this study agreed that La Oroya lacks a well-defined collective sense of identity. In fact, La Oroya reflects a struggle between two groups of residents: “authentic residents” and “circumstantial residents.” The members of the first group define themselves as descendents of *comuneros* from La Oroya and, because of this, as more sensitive to community values, traditions, and the environment. The second group represents migrant workers, who are perceived as less committed to addressing community problems. Such a distinction seems to have been overlooked by activists and journalists interested in the La Oroya case—and perhaps I would have not been able to observe it if not for my interviews with community members.

¹²⁰ Grassroots environmental justice activism, most notably in the US during the 1980s and 1990s, played a significant role in making visible the geographies and identities of those who predominantly suffer the consequences of environmental degradation. The movement coined the term “environmental racism” to make explicit the extent to which black and Latino communities in the US are the ones most affected in their rights and polluted in their environments. See Robert D. Bullard, ed., *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (San Francisco: Sierra Club, 2005); and Timothy Ingalsbee, “Earth First Activism: Ecological Post Modern Praxis in Radical Environmentalist Identities” (1996) 39:2 *Sociological Perspectives* 263.

¹²¹ Gerardo H. Damonte, *The Constitution of Political Actors: Peasant Communities, Mining and Mobilization in Bolivian and Peruvian Andes* (Saarbrücken: Verlag Dr. Müller, 2008).

The issue of identity in La Oroya is significant, as it simultaneously opens various windows to understanding the social fabric of the community and their responses to conflict. At the outset, the distinction between these two groups of residents speaks about how, in the context of conflict, “authentic residents” recreate their identities in reminiscence of the past.¹²² As noted earlier in this chapter, the so-called authentic residents are the vast majority of those in the subgroup of participants defending environmental health in La Oroya; moreover, many of them are actually members of the MOSAO. If we assess the paradox of “health” vs. “work” through the lens of identity, then we realize that such conflict may express something other than the mere struggle between two socio-economic rights. Rather, this paradox also discloses cultural struggles. This is because to some extent it symbolizes the reformulation of unresolved past abuses—such as land dispossession, the dismantling of peasant traditions, and the imposition of smelter activity—that condemned community members to live in a polluted environment. This brings me to a basic but often forgotten observation: La Oroya is not a homogenous community. This is true not only in terms of diversity of values and attitudes, but also of socio-economics.

When indignant mothers tell the media they should not generalize that all children in La Oroya are affected by lead poisoning, they are right to a certain degree. Historically, environmental pollution has posed health risks to the entire population in La Oroya; however, the recent conflict has revealed that lower income populations are the most vulnerable to the negative consequences of smelter pollution. Within this group

¹²² My assessment draws on a social constructivist approach to identity, according to which individuals develop and recreate their identities based on perceptions of membership in a particular group and influenced by the perceptions of those outside the group. See Rosemary Thorp & Maritza Paredes, *Ethnicity and the Persistence of Inequality: The Peruvian Case* (New York: Palgrave Macmillan, 2010).

are people not directly connected to the smelter activity, including independent workers with temporary contracts; women with little access to employment opportunities; and youth having to conform to narrow economic opportunities. Because people with lower incomes often live in harsh conditions and have limited access to healthy food, clean water, and sanitation, they undoubtedly face the highest risk of being polluted. Such vulnerability is exacerbated in the context of a two-tier health care system, which prevents those with lower incomes from timely access to quality medical care. And yet, low-income individuals are the most stigmatized within the community if their children are polluted (tagged as irresponsible parents) and when undertaking legal action to defend their children's rights (accused of looking for economic rewards). Social discrediting of such legal claims obfuscates the pursuit of justice in the goal for better health in La Oroya, and it therefore also stigmatizes the work of human rights activists contributing to the legal framing of such claims.¹²³ I noticed this stigma in the derogatory manner of some residents when referring to *las ONGs ambientalistas* (the environmental NGOs). As Link and Phelan argue, stigma is often accompanied by elements such as stereotyping, status loss, and discriminatory practices; fundamentally, stigma is the exercise of social, economic, and political power.¹²⁴ All these predicaments were found in La Oroya. This, in turn, explains how disadvantages affect some groups more than others within this community.

¹²³ Some researchers call this effect "associative stigma" or "courtesy stigma." Those who have a professional relationship with stigmatized individuals suffer this type of stigma. See Rachel Phillips, "Courtesy Stigma: A Hidden Health Concern among Workers Providing Services to Sex Workers" (Ph.D. Dissertation, University of Victoria, Department of Sociology 2010) [unpublished].

¹²⁴ Bruce Link & Jo Phelan, "Conceptualizing Stigma" (2001) 27 *Ann. Rev. Sociology* 363.

From the vantage point of an analysis that maps the interconnectivity of factors, I came to see that the environmental health problem in La Oroya is rooted in and cannot be separated from an assessment of inequality. Historically, compared to the rest of the country, the territory of the Mantaro Valley in which La Oroya is located has suffered major environmental damage due to the mining industry. Additionally, within La Oroya the consequences of this damage have been distributed unevenly. The government and the smelter operator, in unison, deny the severity of environmental health consequences, put job stability at risk in town, and provide partial or biased information to maintain a climate of uncertainty in order to further political and economic goals—and, in doing so, induce members of the community to discriminate against and stigmatize each other. By doing all this, they are promoting the institutionalization of “environmental health inequity” in La Oroya. As a result, some community members resign themselves to their predicaments while others are further disempowered as they realize that they have little chance of effectively challenging such predicaments.

What do these factors tell us about the context of systemic unfreedom in La Oroya? Broadly speaking, “conversion factors” refer to the enabling/disabling conditionings determining the extent to which a person can generate the necessary opportunities or capabilities to achieve a life of well-being. As demonstrated in the case of La Oroya, “conversion factors” tend to spread out in waves, reinforcing and creating new conditions of disadvantage from the past to the present, from the global to the local. Such interconnection of factors—structuring the life of residents of La Oroya and trapping them into a continuous cycle of disadvantages—sustains what I have described as a “context of systemic unfreedom.” This is a context that reduces the development of

human capabilities and the possibility to “live well together” and jeopardizes the maximum realization of human rights. Given the deep interconnectivity and mutual reinforcement of the “conversion” factors, they also resemble “convergence factors.” The latter, I argue, best illustrate, on the one hand, the manner in which such factors form and reproduce unfreedom in a given context, and, on the other hand, that factors influencing individuals’ well-being are inextricably connected to the community’s well-being.

5.5 Conclusions

This chapter has introduced the findings from a set of interviews conducted with La Oroya community members, human rights activists, and public servants who have actively participated in decision-making in the La Oroya community. Drawing on the capability approach, I have presented my findings around the following themes: *environmental conversion factors* (historical pollution and awareness of hazards); *institutional conversion factors* (economic dependency and power, the state’s leniency towards Doe Run’s environmental obligations, the Peruvian model of economic development, the institutional fragility of the human rights discourse); *social conversion factors* (migration and collective identity, structuring of inequalities, uncertainty about pollution, access to information, responsibility for pollution, and stigma against the poor); and *personal conversion factors* (a person’s values and needs, characteristics of individual identity such as socio-economic status, gender, and age). Such “conversion factors” are often defined by the literature as the enabling/disabling conditionings that determine the extent to which a person can generate the necessary opportunities or capabilities to achieve a life of well-being. This study has found that, in the case of La

Oroya, such factors are deeply interconnected and mutually reinforce each other, perpetuating and creating new conditions of disadvantage in La Oroya. Accordingly, *conversion factors* act in fact as *convergence factors* shaping the “context of systemic unfreedom” in La Oroya.

By advancing such an analysis and making the voice of participants central in this study, this chapter has also provided a glimpse of who the residents of La Oroya are and how they see themselves in terms of similarities and differences. La Oroya is not a community that brings together naturally selfish individuals versus more compassionate and committed ones. By reading my fieldwork findings in this chapter in tandem with Chapter 2, in which I traced the historical roots and politico-economic dimension of unfreedom in La Oroya, one realizes that what residents from La Oroya value, how they think, and what motivates their actions and decisions in life are highly determined by the circumstances in which they live.

A “context of systemic unfreedom” has several consequences for the development and expansion of human capabilities and for the possibility of human rights realization. An assessment of the context of unfreedom in La Oroya provides the grounds to better understand the human rights trade-offs between “health” and “work” that community members of La Oroya were pushed into. The next chapter further elaborates this issue by responding the central questions of this dissertation.

Chapter 6

Human Capabilities and Human Rights: Examining the Trade-Offs between “Health” and “Work” in La Oroya

6.1 Introduction

I began this study by following a basic intuitive premise about the La Oroya smelter town. I suggested that to fully grasp the underlying causes behind the paradox between “health” and “work” in La Oroya, we must understand this paradox as the result of living in a context of systemic unfreedom. This is a socio-historically shaped and politico-economic reproduced context of abuse, a context that not only affects individuals’ ability to expand their choices to lead meaningful lives, but also diminishes people’s ability to challenge and transform the policies and social arrangements that sustain their realities of unfreedom.¹

While my dissertation journey has led me to reaffirm such a premise, I have also learned that the precise contours and components of such a *context of systemic unfreedom* in La Oroya are far more complex than I imagined. By tracing the socio-historical roots of La Oroya, delving deeper into the political-economic dimension behind the human rights violations in this community—especially through the knowledge and living experiences of community members—I came to terms with the constellation of factors

¹ To put it differently, human rights violations and the recent socio-environmental conflict in La Oroya respond to both immediate (visible) and entrenched (invisible) causes. Immediate causes point to the joint failure of the Peruvian State and Doe Run to comply in a timely manner with environmental legal obligations as stipulated in the privatization contract and PAMA. Entrenched causes—which I have also labelled the “causes of the causes”—refer to the complex structural processes that have allowed Doe Run to continually commit human rights abuses in La Oroya and that explain the alarming inaction of the Peruvian state regarding such abuses. The second inquiry is what led me to examine the context of systemic unfreedom in La Oroya.

that converge from the past to the present and intersect the macro, meso, and micro levels sustaining such a “context of systemic unfreedom.” As discussed in the previous chapter, these factors tend to spread out in waves, reinforcing and creating new conditions of disadvantage within the community. I began my journey by identifying *environmental conversion factors*, through which I learned that capitalist development in the central Andes leading to the emergence of large-scale mining in Perú made smelter pollution a historical and endemic problem in La Oroya and, arguably, in the basin of the Mantaro Valley as well. Mining and smelter activities were established on the basis of a series of abuses leading to the dismantling of the socio-economic structure of the community, the unjust dispossession of *comuneros* land, and the imposition of a new economic activity that trapped residents from the community into relationships of dependency and domination. Unquestionably, this marked the origins of unfreedom in La Oroya, in which people’s choices to pursue alternative ways of living became constrained to what has been imposed and is available to the community at present.

Institutional conversion factors allow us to disclose the politico-economic reasons and relationships of power shaping the context of unfreedom and, ultimately, institutionalizing environmental health inequities in La Oroya. The servile state attitude towards foreign investment in the mining sector, and the neutralization of actions of those who oppose and expose the systems of oppression and deprivation spawned by the mining industry, have remained unaltered over time. Although, in the Peruvian context, a wide range of human rights are constitutionally recognized, their practical realization is made possible only to the extent that they accommodate to the existent politico-economic context and model of development. In this scenario, the human rights approach, seen as a

freedom-enabling discourse to maximize people's choices to lead lives of well-being, faces its most difficult conundrums.

By looking at *the social conversion factors*, we come to realize that a politico-economic mediated history of oppression and dispossession has deeply influenced the constitution of a new social fabric in La Oroya. Most notably, the economic monopoly of the smelter has led to the structuring of inequalities in town in terms of access to services, socio-economic status, and gender roles. It has also influenced how residents—both “authentic” and “circumstantial”—see themselves as members of the community and build (or indeed, refrain from building) a collective sense of identity. While all these factors might have always been present in La Oroya, they have unquestionably been exacerbated by the socio-environmental conflict that unfolded in the aftermath of the sale of the smelter to the US-based Doe Run, turning La Oroya into a fragile, vulnerable, and ultimately fragmented community. Furthermore, recent conflict has made it apparent that while living under unfreedom affects the community in its entirety, some residents are doubly vulnerable to its perils.

By assessing the *personal conversion factors*, I realized that aside from personal attributes of birth or characteristic of identity (such as gender, age and socio-economic status) determining access to opportunities (or lack thereof) in La Oroya, personal values, and the bundle of things people deem important to lead meaningful lives, also influence their responses to conflict. Regardless of whether such things are conceptualized as the expression of human capabilities or human rights, what is important to stress here is the process by which people endorse values, give content to them, and make priorities among them. They do so based upon information from the outside world and their relationships

with others. Distribution of information is also mediated by the exertion of power. In other words, relational individuals—and not individuals alone—shape the direction of their lives.

In short, the eclectic approach advanced by an analysis that stresses the interconnection of factors discloses the operation of an historically, politically, and economically shaped context of systemic unfreedom in La Oroya, determining people's potential to choose, aspire, and transform their realities of unfreedom. Primarily, such an analysis makes obvious that individual lives are deeply interconnected to their social context, meaning that individual actions and decisions often transcend the individual personal sphere to also affect the community's well-being at large.

Drawing on such findings, this chapter will deal with the overarching question of this dissertation: To what extent does a context of systemic unfreedom relate to the conundrum faced by La Oroya residents, who were placed in the difficult position of having to weigh employment opportunities in the smelter against sacrificing the protection of their human right to health? By responding to this question, I will reflect upon how living under systemic unfreedom in La Oroya diminishes people's opportunities (capabilities) to lead a life of well-being, bars them from—individually or collectively—transforming the sources that cause unfreedom, and makes them susceptible to suffering human rights abuses and acquiescing to their adverse results.

I will flesh out my proposed analysis in two parts. The first section of this chapter will further elaborate on the notion of human capabilities and what it means to live in La Oroya in terms of developing capabilities to achieve well-being. I will focus, in particular, on the two most needed—and contested—human capabilities in La Oroya: the

capability to achieve health and the capability to work. I will argue that the narrow scope and quality of these two human capabilities have not only made individuals susceptible to acquiesce to trade-offs, it has constrained their ability (agency) to resist such trade-offs. I will also point to the role of collective actions—and for the same matter, collective capabilities and collective agency—in fostering the enjoyment and quality of these two capabilities. I will appraise the working of the MOSAO and unions and, in light of this, will further interrogate the interactions—and tensions—between the individual and collective spheres in fostering the goal of expanding human capability.

In the second section of the chapter, I will further elaborate on the relationship between the notions of human capabilities and human rights discussed in Chapter 3. Based on my findings about La Oroya, I will reaffirm my initial assumption that capabilities and rights are not, or should not, be reified as identical concepts. Rather, they should be understood as acting in a symbiotic relationship. I will then proceed to reflect upon the real possibilities for a “capability-oriented model of human rights” to challenge a context of unfreedom in light of the Peruvian context.

6.2 Understanding Human Rights Trade-offs in the Context of Systemic Unfreedom in La Oroya

I have stated that the main goal of this dissertation is to shed more light on the underlying causes of the human rights trade-offs between “health” and “work” in La Oroya. To this end, I employed an integrated framework that built upon structural approaches to human rights in tandem with a politico-relational interpretation of the capability approach. As noted in Chapter 3, this integrated framework means that we go “deeper and wider” into investigating, on the one hand, the contours and components of a context of systemic unfreedom in La Oroya, and, on the other, the extent to which living

under such a context affects both the development of human capabilities and the realization of human rights. Through such an in-depth investigation, I suggested, we can better grapple with the complex socio-historical roots and politico-economic dimensions behind the “health” and “work” paradox.

The previous chapter elaborated upon the first stage of this investigation by providing a fully-fledged account of the constellation of factors that sustain a context of systemic unfreedom in La Oroya. Throughout this chapter, I seek to unpack the implication of living under such a context of unfreedom in terms of human capabilities development and human rights realization, which will ultimately lead to “untying the knot” of the seemingly intractable paradox of protecting both the right to health and the right to work in La Oroya. In the next section, I will start my analysis by discussing the consequences of living under unfreedom in terms of the development of human capabilities in La Oroya, in particular, the capability to achieve health and the capability to work.

6.2.1 Revisiting the Notion of Human Capabilities

Prior to discussing the implication of living under unfreedom proposed above, I need to revisit the notion of human capabilities. In Amartya Sen’s capability approach, the notion of human capabilities is described as a set of potentials—often called freedom-opportunities—that people have or should have in order to be able to choose among different ways of living. This rather abstract definition, I sustain, needs to be refined to keep pace with the complex reality in which the notion of human capabilities acquires meaning. In this sense, Nuno Martins argues that the abstraction exposes Sen’s lack of explicit ontological analysis of the notion of human capabilities, an analysis that would

lead us to conceptualize capabilities as “causal powers” to achieve well-being.² Given that such causal powers or capabilities arise, according to Martins, “in virtue of the way that reality is structured, [it] implies that the means to broaden human potential powers and capacities is structural transformation.”³ Building upon Martins’ ontological presupposition of capabilities and complementing it with insights from my empirical study of La Oroya, I suggest recasting the notion of human capabilities in the following manner.

Capabilities, in terms of freedom, are personal endowments, the realization of which depends on the exercise of internal human power as much as on the existence of an enabling/empowering environment that allows for such endowments to be translated into effective and tangible realities of well-being. The process is relational, or bi-directional. An enabling environment provides the necessary socio-institutional support and the socio-economic conditions to nourish internal power. On the other hand, our internal power has the potential to transform disabling environments in new positive directions. In both cases, the role of information, knowledge, and education is significant. These constitute powerful sources through which we learn to understand the context in which we live and develop our expectations for a future life. We become conscious (or unconscious) of our position as part of the collective reality in which our lives are structured, and we are then able to begin cultivating (or distorting) the values that make us socially responsible human beings. It is because of the lack of information or biased information that we become blind to our own perils. By contrast, it is due to access to information that we are better able to understand our reality of unfreedom and take the

² Nuno Martins, “Capabilities as Causal Power” (2006) 30 Cambridge J. Econ. 671.

³ *Ibid.* at 682.

lead to change it. Access to information has been facilitated (or restricted) by a wide range of sources throughout history. Through our families, traditions, cultures, neighbourhoods, social groups, schools, media, workplaces, activist roles, power relationships, and so on, we are constantly exposed to different ways of knowing and thinking that will ultimately inform our own thoughts, values, perceptions, decisions and life choices. In short, this is how our internal power and the context in which we live mutually interact in facilitating or constraining the development of our human capabilities and the exercise of both our individual and collective agency—and, ultimately, in determining the kind of life we come to value. The analysis provided next will draw upon this refurbished notion of capabilities.

6.2.2 Developing the Capability to Achieve Health and Work in a Context of Systemic Unfreedom

If the ethical foundations of the capability approach prescribe that human development and social progress is about the expansion of human capabilities so that people can lead lives of well-being, then, we can safely conclude that since La Oroya's transformation into an smelter town, people's potential to aspire to and enjoy human development in this community have been restricted in varied ways. As discussed throughout this dissertation, in La Oroya, a history of systemic unfreedom is behind the reduced range of possibilities for people to develop their own potentials or capabilities to ultimately lead the meaningful lives they value. This history has bounded individuals generationally, and is likely to reproduce existing disadvantages in the future. In order to justify my claim, it suffices to look for now at the development of two of the more disputed capabilities in this community: the capability to achieve health and the capability to work.

The Human Capability to Achieve Health

In the capability approach, health-capability is regarded as a multidimensional concept, the core components of which are best determined in the context of the population under assessment.⁴ The evaluative focus is not only on the expected health outputs (i.e. being effectively healthy) but, foremost, on the process of generating health.⁵ This focus mirrors the model of the new discourse on the social determinants of health promoted by the World Health Organization (WHO),⁶ which focuses on how the social conditions in which people grow, live, work, and age positively or negatively affect the health of people.⁷ Tracing back to my discussion on the constellation of factors sustaining systemic unfreedom in La Oroya, one realizes that the manner in which the life of the inhabitants of La Oroya has been historically structured has had a negative impact on the process of generating health, at both the individual and the community levels.

As it happens, smelter pollution arose as the most visible, although not the exclusive, threat posed to achieving health in La Oroya. Smelter pollution has historically affected water resources, air, and soil in La Oroya, which, along with sanitation, nutrition, health care, and access to information are essential to maintaining healthy life standards. In a previous chapter, I demonstrated that the persistence of smelter pollution in La Oroya is inextricably related to other factors—such as social and politico-economic

⁴ Proochista Ariana & Arif Naveed, “Health” in Séverine Deneulin & Lila Shahani, eds., *An Introduction to the Human Development and Capability Approach: Freedom and Agency* (London: Earthscan, 2009).

⁵ *Ibid.* at 234.

⁶ World Health Organization, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health*, Commission on Social Determinants of Health – Final Report (Geneva: World Health Organization, 2008).

⁷ Michael Marmot, “Achieving Health Equity: From Root Causes to Fair Outcomes” (2007) 370 *Lancet* 1153.

ones—that together have ended up institutionalizing environmental pollution and, thus, health inequities in this community.⁸ The politics of denying the severity of the problem, the distribution of biased information on the effects of pollution, and the favouring of economic and labour demands over health demands are clear manifestations of the continuous reinforcement of health inequities in La Oroya. This context has prevented inhabitants of La Oroya from developing robust value judgements about the real health risks of living under pollution.

In brief, it is indisputable that the “capability to achieve health” has become troublingly limited in La Oroya, if at all attainable. Objective and subjective considerations further illustrate this claim. The former refer to scientific evidence about the many health risks of living under pollution; and the latter refers to the extent to which people from La Oroya appreciate the value of health.

From an objective viewpoint, the diminishing of a capability to achieve health in La Oroya is demonstrated by the studies reporting blood lead levels in children higher than the 10ug/dl threshold as stipulated by the WHO, and evidence that the whole community has been exposed to other dangerous contaminants, such as arsenic and cadmium (see Chapter 1). People from La Oroya, most notably children, living in proximity to the smelter are exposed to the following health risks: neurological system damage, poor intellectual performance, gastrointestinal and respiratory diseases, cancer,

⁸ My reflection draws on the ethical principle of “equity in health” as defined by Braveman and Gruskin, who refer to it as the absence of systemic disparities in health between groups with different levels of underlying social advantage/disadvantage (i.e. wealth, power, or prestige). Accordingly, inequities in health in La Oroya point to the historically shaped and politically and economically reproduced disparities that exist within the community and between La Oroya and other non-smelting communities in Perú. Paula Braveman & Sofia Gruskin, “Defining Equity in Health” (2003) 57 *J. Epidemiology & Community Health* 254.

and even early death.⁹ Recent studies on high levels of childhood lead exposure have expanded the potential outcomes by including alterations in brain volume in adults and the postulation that lead exposure is a risk factor for antisocial behaviour (criminal activity).¹⁰ Thus, suffering from lead poisoning not only *directly* poses serious risks to children's health, it also *indirectly* jeopardizes their human capacity to fully perform in diverse activities as adults. On a broader scale, the consequences of lead poisoning in La Oroya are potentially determinants of the entrenchment of social disadvantages in this community. Exposure to arsenic is associated with a wide range of systemic health effects in both organ and tissue systems, which include the skin, liver, kidney, bladder, gastrointestinal tract, and the respiratory and hematopoietic systems.¹¹ Arsenic exposure is also related to adverse effects on the reproductive system, as it is associated with increased spontaneous abortions and infant mortality.¹² In terms of its carcinogenicity, arsenic is strongly associated with skin, lung, liver, kidney, and bladder cancers.¹³ Likewise, exposure to cadmium has been linked to pancreatic cancer, a risk that is higher for individuals living in the vicinity of smelters or solid waste deposits.¹⁴ In light of the

⁹ T.I. Lidsky & J.S. Schneider, "Adverse Effects of Childhood Lead Poisoning: The Clinical Neuropsychological Perspective" (2006) 100:2 *Env. Research* 284; David C. Bellinger & Andrew M. Bellinger, "Childhood Lead Poisoning: The Tortuous Path from Science to Policy" (2006) 116:4 *J. Clinical Investigation* 853.

¹⁰ John Paul Wright, Danielle Boisvert & Jamie Vaske, "Blood Lead Levels in Early Childhood Predict Adulthood Psychopathy" (2009) 7 *Youth Violence & Juvenile Justice* 208; K.M. Cecil, *et al.*, "Decreased Brain Volume in Adults with Childhood Lead Exposure" (2008) 5:5 *PLoS Med.* 112; J.P. Wright, *et al.*, "Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood" (2008) 5:5 *PLoS Med.* 101.

¹¹ Anita K. Patlolla, Paul B. Tchounwou & Jose A. Centeno, "Carcinogenic and Systemic Health Effects Associated with Arsenic Exposure: A Critical Review" (2003) 31 *Toxicologic Pathology* 575.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Gary G. Schwartz & Isildinha M. Reis, "Is Cadmium a Cause of Human Pancreatic Cancer?" (2000) 9 *Cancer Epidemiology, Biomarkers & Prevention* 139.

aforementioned evidence, and by applying the WHO arsenic factor¹⁵ to the air quality in La Oroya, researchers Anna Cerderstav and Alberto Barandiaran concluded that many of the people residing in the areas close to the La Oroya smelter would likely develop lung cancer due to environmental arsenic exposure.¹⁶

Now, from a subjective appreciation of the value of health, we can also conclude that the capability to achieve health in La Oroya is jeopardized. Often, the value people grant to states of being, such as being healthy or enjoying health, is crucial in informing social attitudes and personal behaviours geared towards achieving such states of being, which includes demanding of governments the proper social conditions and institutional systems to enable such achievements. Unfortunately, La Oroya is a community where appreciation of the intrinsic value of health, or even the endorsement of the instrumental value of health as being linked to the idea of overall well-being, is not shared by all. This fact makes it challenging to defend health as a human capability. Moreover, such a reality creates a problematic dilemma when looking at the capability approach's *telos*, which promotes that people should lead the lives they have reasons to value. Does this mean we should respect personal choices even when they result in the undervaluation of health? My very short response is negative. Not only because, objectively speaking, health is an essential capability we require to perform well in different domains of our lives, but foremost because we cannot take for granted the relevance of people's values without evaluating how such values are shaped. In other words, when looking at the relevance

¹⁵ The WHO considers the lifetime risk factor of developing cancer from arsenic exposure to be 4×10^{-3} , which means that for every 1,000 people who breathe air containing 1 ug/m³ of arsenic, four are expected to develop cancer during their lifetimes.

¹⁶ Anna Cederstav & Alberto Barandiaran, *La Oroya Cannot Wait* (Lima: Inter-American Association for Environmental Defense (AIDA) and Peruvian Society for Environmental Law (SPDA), 2002).

people grant to certain values, we must identify the powerful “drivers of values” influencing their decisions and actions in that context.¹⁷ This type of critical analysis led to a more careful assessment and understanding of whether personal life choices in La Oroya are the result of genuine free deliberation, unavoidable circumstances, or unjust power structures.

The Human Capability to Work

Let us now turn to evaluate the development of the capability to work in La Oroya. The idea of the “capability to work,” as I interpret it, encompasses different components: a non-discriminatory working system; safe working conditions; respect of gender equality; reconciling of work time and private time; decent wages; the ability to choose among different income-generation alternatives for one that best suits your life goals and strengths. The La Oroya case shows that in a context of systemic unfreedom, the human capability to work, described in such terms, is severely limited.

Indeed, in a local economy dominated by smelter activity, any source of livelihood and subsistence will likely be oriented towards sustaining the existent path of economic dependency (e.g. jobs in commerce and local entrepreneurs indirectly benefited by the smelting activity, public services, banking, etc.). The human capability to work thus becomes restricted. To begin with, as noted in the previous chapter, the lack of a more inclusive and diversified economy, coupled with a chauvinistic culture and conditions of poverty, has most notably affected the capabilities of young residents and

¹⁷ Séverine Deneulin, “Advancing Human Development: Values, Groups, Power and Conflict” in Valpy FitzGerald, Judith Heyer & Rosemary Thorp, eds., *Overcoming the Persistence of Inequality and Poverty* (Basingstoke, UK: Palgrave Macmillan, 2011) 127. According to Deneulin, drivers of values shaping people’s behaviours and policies in the world include global markets, capitalist economies, and groups such as religious organizations, trade unions, and environmental activists.

women to work. The La Oroya context of unfreedom narrows the range and quality of alternative employment opportunities for these two groups and, in turn, disables them from breaking historical patterns of dependency and socio-economic and gender inequalities. This unfortunate scenario is often overlooked because of the misleading assumption that the capability to work in La Oroya can be satisfied only through securing job opportunities at the smelter.

The La Oroya case exposes a very challenging scenario—and one similar to that of the capability to achieve health—when capability to work *at the smelter* is defended as a valuable way of living resulting from a rational decision and free choice. Of course, this is not to deny the value that some residents from La Oroya may place on such an activity; rather, my concern lies with the obtuse defence of this choice as if it were autonomous, trumping other valuable components of individual and community well-being. If one carefully examines the historical development of La Oroya as a smelter town—as I have done in this dissertation—the argument of “free choice” becomes deeply problematic. To be sure, the history of oppression and domination underpinning the smelter activity in La Oroya darkens what is thought by some to be a free choice. As it happens, present choices in La Oroya are not the product of autonomous decisions: resident’s actions and ways of thinking leading to their choices have to a great extent been historically structured. Such choices therefore cannot be understood outside of their historical context. La Oroya’s historical narrative demonstrates that working in the mines of the central Andes and in the smelter of La Oroya was not a matter of genuine free choice. The abusive system of labour recruitment (*enganche*), the absorption of a mass of migrant workers leading to the formation of a proletarian class, and the recent conflict in

which smelter workers were induced to act against their own well-being all demonstrate that the “choice” to work at the smelter—namely, to defend the value of such an activity *at all costs*—was not exercised naturally or spontaneously. Rather, such choices are best explained as the result of living under the systemic unfreedom that has historically bound residents in La Oroya and is often invisible to those who have been affected by it. Following David Harvey, we can also argue that such a context of unfreedom has turned smelter workers—and those who depend on their wages—into the instruments of a continuous process of capitalist accumulation. The stages are clearly illustrated: accumulation by dispossession (of *comunero* land); accumulation by exploitation (of landless proletariat workers); and the re-emergence of accumulation by dispossession (through neoliberalism and privatization).¹⁸ In such a context of unfreedom, depicting relationships of domination and exploitation, the claim of “free choice” as a substantive element of a capability to work must be carefully scrutinized.

The above discussion leads back to the issue of “adaptive preferences,” discussed in Chapter 3, which provides another reason to be suspicious of the authenticity of “free choices” and critical about the process and forces shaping people’s values. Adaptive preferences refers to situations when people conform to or become content with their realities of deprivation—and accept trade-offs between essential aspects of their human well-being—due to lack of alternatives or resignation. At first glance, this description strongly resonates with the La Oroya case. However, the La Oroya case also highlights the issue of power, which is not necessarily made explicit by the notion of “adaptive

¹⁸ David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003).

preferences.”¹⁹ In this sense, what makes residents in this community susceptible to acquiescing and sacrificing essential aspects of their well-being is best captured by the notion of “power as domination” (the “third dimension of power”) elaborated by Steven Lukes.²⁰

According to Lukes, the realities of unfreedom some people may face are not only the result of *external* coercion or socio-economic constraints on people’s capacity to choose among different ways of living. Unfreedom can also mirror the imposition of *internal* constraints on people. This means that “[d]omination can work against people’s interests by stunting, diminishing and undermining their powers of judgment and by falsifying, distorting and reducing their self-perceptions and self-understanding.”²¹ In this sense, the exertion of power as domination points to “[t]he capacity to secure compliance to domination through the shaping of beliefs and desires, by imposing internal constraints under historically changing circumstances.”²² The working of power, in Lukes’ terms, has been a key element in shaping values, beliefs, and choices in La Oroya. Indeed, from the absorption of “authentic residents” and a migrant mass, to the praising of the smelting activity and normalizing of the issue of pollution, to the recent conflict in which the spread of fear of losing jobs at the smelter prompted workers to blindly defend Doe Run despite its environmental malpractices—all these states of affairs demonstrate the degree

¹⁹ Steven Lukes, *Power: A Radical View*, 2d ed. (New York: Palgrave MacMillan, 2005). See also John Gaventa, *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley* (Oxford: Clarendon Press, 1980).

²⁰ Lukes, *Ibid.*

²¹ *Ibid.* at 123-124.

²² *Ibid.* at 144.

to which La Oroya residents have been historically exposed to power as domination in order to mislead their thinking and force them to acquiesce.

Within such a scenario, in which people from La Oroya are deemed vulnerable to domination and, therefore, to the inducement of beliefs and choices, how can we possibly identify the real or legitimate interests of residents of this community? Moreover, as also noted by Lukes, how can we speak of real interests if reality shows that people's interests are diverse and often ambiguous?²³

I am particularly conscious that in trying to provide an account of what the legitimate interests of residents in La Oroya are, I may end up imposing my own view of what such interests should be. In this regard, I have to admit that my vision of the world, my knowledge of the La Oroya case, and the knowledge imparted to me by participants of this study have already blended to form my current understanding of how things operate in La Oroya. In this sense, I find it problematic to disentangle my "pure" assessment of La Oroya from what I have learned from participants in the field. Thus, my assessment of the real interests of La Oroya residents should be read as the result of a process of evaluation, in which my understanding of this community is informed and enriched by the narratives shared by the study's participants. This, I contend, gives me more leeway to advance an appreciation of what the interests of La Oroya residents would have been had they not been induced to acquiesce to domination. Furthermore, the merging of these different sources of knowledge and reasoning will ultimately guide my elaboration upon the underlying causes of the human rights trade-offs between health and work in La Oroya.

²³ *Ibid.* at 147.

6.2.3 Making La Oroya Residents Susceptible to Accepting Human Rights Trade-Offs

While the discussion of the previous section indicates that living under unfreedom in La Oroya increases individual's vulnerabilities and, thus, their risk of acquiescing to trade-offs among essential components of human well-being, I contend that we must go further to unpack additional layers in the dilemma between health and work. To be sure, while it is indisputable that a narrow set of human capabilities tends to act as a predictor for people to *accept* trade-offs, we must further evaluate the extent to which living under unfreedom weakens people's ability or agency to transform their realities of unfreedom and *resist* such trade-offs. This latter assessment demands an account of the interaction—and possible tensions—between the individual and collective spheres in fostering the enjoyment and quality of individual's capabilities.

As should be recalled, my capability-oriented model of human rights builds upon a relational-political interpretation of the capability approach, with the following implications. In addition to acknowledging “relational individuals” or “socially embedded individuals” with a focus on moral evaluation, as proposed by Sen,²⁴ my model also endorses the proposal of Séverine Deneulin, who extends the evaluation to “structures of living together”—that is, the social structures that enable or disable individual's and groups' overall well-being. This latter view, as Deneulin suggests, means that we must pay attention to the role of collective capabilities and the notion of socio-historical agency, rather than focusing on individual agency alone. Collective capabilities refers to those capabilities “[a]ttained by virtue of [individuals'] engagement in a collective action or [by] their membership in a social network that helps them

²⁴ Amartya Sen, “Symposium on Development as Freedom: Responses to Commentaries” [2002] 37:2 *Stud. Comp. Int'l Dev.* 78.

achieve the life they value.”²⁵ Socio-historical agency refers to “[t]he [individual and collective] ability that human beings have to bring about certain achievements given the particular socio-historical reality in which they are living.”²⁶

It should be noted that some capability scholars, including Sen, are naturally wary about a forceful defence of the intrinsic value of collective capabilities and groups in promoting development as freedom. This is because of the potential risk of overriding individual interests—in particular, the interests of those with less power—by group domination. In response to such concerns, it needs to be clarified that Deneulin’s proposal—and those sharing similar views—does not entail replacing ethical individualism with a kind of methodological collectivism. Rather, the value granted to “structures” and “collective” spheres is primarily for evaluative and transformative purposes. Capability scholars undertaking this line of research are not oblivious to the risks highlighted by Sen and sympathizers, nor do they deny the potential, and often inevitable, tensions between the individual and collective organization of our lives. Yet, driving our attention away from such tensions will not resolve them. As Frances Stewart astutely indicates, “The point is not that all effects [of groups and collective organizations] are positive, but that they are important, for good or ill—since people are essentially social their social networks form an important part of their total well-being.”²⁷ And so, just as groups and collective organizations may risk undermining individual interests, they can also have a positive effect on overall individual well-being. Certainly,

²⁵ Solava S. Ibrahim, “From Individual to Collective Capabilities: The Capability Approach as a Conceptual Framework for Self-help” (2006) 7:3 J. Hum. Dev. 397.

²⁶ Séverine Deneulin, *The Capability Approach and the Praxis of Development* (New York, Palgrave Macmillan, 2006).

²⁷ Frances Stewart, “Groups and Capabilities” (2005) 6:2 J. Hum. Dev. 185.

in some circumstances—namely, in the case of less privileged groups—enlarging individual capabilities may also require exercising collective capabilities and collective actions.²⁸ Furthering this claim, Peter Evans argues that

[o]rganized collectivities—unions, political parties, village councils, women’s groups, etc.—are fundamental to “people’s capabilities to choose the lives they have reason to value.” They provide an arena for formulating shared values and preferences, and instruments for pursuing them, even in the face of powerful opposition . . . [F]ostering the expansion of such means of collective action is central to the expansion of freedom . . . [T]hey are also central to the development of our identities, values, and goals.²⁹

The La Oroya case, indeed, provides reasons for seconding an evaluative focus on collective capabilities and collective agency to promote social transformation. As suggested earlier, the context of systemic unfreedom in La Oroya not only diminishes people’s individual capabilities, making them vulnerable to trade-offs, it also weakens the collective capabilities and collective agency necessary to resist accepting such trade-offs in the first place. The importance of such collective spaces is especially true in the context of polluted communities, where it is difficult to imagine that individuals alone would be able to counteract the effects of environmental health injustices.³⁰ And again, this is not to deny the importance of empowering individuals or of fostering individual agency in its own right, but to acknowledge that given the concrete circumstances of systemic unfreedom in La Oroya, collective organizations are a more effective catalyst

²⁸ Peter Evans, “Collective Capabilities, Culture, and Amartya Sen’s *Development as Freedom*” (2002) 37:2 *Stud. Comp. Int’l Dev.* 54 [Evans, “Collective Capabilities”].

²⁹ *Ibid.* at 56-57.

³⁰ As noted in my discussion in the previous chapter, collective actions advanced by the environmental justice movement are of special significance in the context of polluted communities in counteracting the widespread effects of pollution, which often relates to structures of inequality and oppression.

for bringing shared values and common interests into the political sphere. As such, collective spaces are an important means to securing individual well-being.

Now, the challenge of the La Oroya case is not so much that it is a conflict between individual interests and groups. Rather, it is a conflict between two groups with ethical-political claims related to two essential components of individual and community well-being. I am referring here to the work of the movement for the health of La Oroya (MOSAO) and smelter workers' unions.³¹

If, as discussed above, collective spaces are deemed important as contributors to the expansion of individual and community well-being at large, then how are we to understand the divergence between these two groups when both claims are undeniably essential for the overall well-being in La Oroya?³² This question is particularly puzzling if one considers that in the past—as noted in the literature and participant's testimonies—the union's demands showed some signs of solidarity with former peasant communities and their environmental demands. For instance, Alberto Flores Galindo notes that in 1971, in a conflict between the 15 unions of the Cerro de Pasco Corporation, workers demanded “the purification of the Mantaro River, which in the past gave life to

³¹ There are three unions in La Oroya: the Union of Metallurgical Workers of Doe Run Peru, the Union of Employees of Doe Run Peru, and the Union of Workers of the Industrial Square.

³² Some may argue, however, that the claims do not have the same weight in the overall well-being of La Oroya. While unions defend interests that would only benefit workers and their families, the MOSAO campaign encompasses the interests of the entire community—given that pollution affects everyone's health. This assertion is partially true. First, participants in this study and municipal authorities indicate that suspension of smelter activities has indeed affected the local economy (e.g. less purchasing power for consumption of goods and services), which shows that job security at the smelter has broader implications for the community at large. Second, my position that both demands are equally essential for the community's well-being is not only based on the question of who moves forward such claims (or under what kind of interests), but on the fact that one claim affects the realization of the other. In La Oroya, demands for job security largely condition the realization of environmental health, meaning that it is difficult to treat both demands in parallel without considering how they are connected in their impact on the community's well-being overall.

our grandparents of the central region and now represents death because of its polluted waters by the Cerro de Pasco mines and smelter.”³³

The previous chapter has already looked at the diverse factors explaining unions’ shift in discourse in the aftermath of the privatization era. Yet, it is important to stress here two factors sustaining a context of unfreedom in La Oroya: the socio-economic inequalities within the community and the lack of a collective identity. Both are central when it comes to the formation—or dismemberment—of collective organizations. In the first case, important studies on group conflicts point to horizontal inequalities—defined as differences in access to economic resources and/or political power—as a central source of conflict.³⁴ Although the La Oroya case is primarily identified as a “socio-environmental conflict,” my study demonstrates that socio-economic cleavages are also a fundamental part of such conflicts—and, to some extent, these inequalities are a distinctive feature of individuals composing the MOSAO and members of smelter workers’ unions.

In terms of identity, a notorious correlation can be found between the post-privatization era and the near disappearance of class-identity in La Oroya, which has had important implications in the development of La Oroya’s socio-environmental conflict.³⁵ Indeed, as it should be recalled, the privatization of the 1990s nearly brought about the

³³ Alberto Flores Galindo, *Obras Completas* (Lima: Fundación Andina, 1993) at 51.

³⁴ Frances Stewart, ed., *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (New York: Palgrave Macmillan, 2008).

³⁵ In Chapter 2, I noted that the weakening of unions and class identity was a consequence of several factors, most notably the debilitation of the Peruvian Communist Party and the internal war on terrorism. The privatization of the 1990s and the creation of a modernized system of production resulted in a significant reduction of the labour force, further affecting the strength of the few surviving unions.

disappearance of unions throughout the country,³⁶ only a few of them, including those in La Oroya, remained latent. Nevertheless, although unions in La Oroya undoubtedly contributed to increasing living standards for workers and generally neutralizing abuses of “*la patronal*” before the privatization of the smelter to Doe Run, the inherent role of unions as guarantors of equitable distribution of profits and as balancers of power was overtly distorted during the reign of Doe Run. To be sure, it seems as if the privatization of the La Oroya smelter may have caused a reversal of ascribing to such a class identity, as workers’ loyalty and affiliation are now expressed in relation to the smelter.

Yet, the vanishing of class-consciousness in La Oroya is not an isolated phenomenon. In fact, as recently argued, in the current capitalist society, demands grounded on class politics have receded while cultural politics have increased due to the prominence of other dimensions of identity, such as ethnicity, gender, sexual orientation, and environmental issues.³⁷ What the La Oroya case adds to such an analysis is evidence on the negative outcome of withdrawing completely from a class-identity discourse, as workers become more vulnerable to co-optation and less interested in social solidarity in the civic sphere.³⁸ Indeed, none of the participants of this study belonging to the subgroup defending job security at the smelter referred in any way to a condition of class oppression and domination, which had been present in collective bargaining and strikes

³⁶ In Lima, the Peruvian capital, the percentage of union affiliation dropped from 22% in 1990 to only 4% in 2007. See Fernando Cuadros Luque & Christian Sánchez Reyes, “El rol del Estado en la negociación colectiva” in *Libro del III Congreso Nacional de la Sociedad Peruana de Derecho del Trabajo y de la Seguridad Social* (Lima: 2008).

³⁷ Michael Hechter, “From Class to Culture” (2004) 110:2 *Am. J. Sociology* 400.

³⁸ A recent comparative study between Perú and Bolivia on indigenous social mobilization points to the development of strong class and ethnic ties in the latter case as contributing to success in finding representation on political platforms. See Gerardo H. Damonte, *The Constitution of Political Actors: Peasant Communities, Mining and Mobilization in Bolivian and Peruvian Andes* (Saarbrücken, Germany: VDM Verlag Dr. Müller, 2008).

of the past (see Chapter 2). By contrast, as noted in previous chapter, smelter workers acknowledged and praised their socio-economic superiority in town and their role in contributing to Perú's economic growth.³⁹ The latter claim, indeed, is often stressed to pressure the Peruvian government to speed the re-opening of the smelter, shuttered since June 2009, a demand in which the issue of environmental health is made less relevant or is completely erased. In this new context of smelter workers' values, priorities and perceptions of well-being—which, to some extent, are more aligned to the current discourse of economic growth—it is not difficult to understand the lack of resistance to the spread of fear, pressure, and manipulation exerted by Doe Run during the recent socio-environmental conflict.⁴⁰ This may explain why union leaders and smelter workers, who only three decades ago were somehow sympathetic to issues of pollution, became blind, through coercion or acquiescence, to their own perils.

With the co-optation of this important and powerful collective institution, which would otherwise be capable of counteracting unfreedom in La Oroya, not only did the community lose a bastion for offsetting power imbalances, but the unions became instruments to reinforce social inequalities. They became both the artificers and victims of new forms of domination in the aftermath of privatization. In such terms, the recent conflict in La Oroya can be read as an attack on the very nature and freedom of unions.

³⁹ Their so called role in contributing to Perú's economic growth also explains why the union's claims were more effectively heard in the political sphere than were the MOSAO's demands.

⁴⁰ Mimicking the *modus operandi* of Cerro de Pasco Corporation, which exerted a system of total domination in La Oroya (see Chapter 2), Doe Run employed hidden informants and watchdog social workers, controlled the media, and kept a "black list" of workers (*soplones*) to repress free speech. The company ultimately harassed not only workers, but also local activists and anyone who dared to complain about pollution.

While changes in ideological discourses and socio-historical circumstances have had a profound impact on smelter workers' unions' freedom to exercise their collective agency, such new circumstances—and more concretely, evidence of the health effects of smelter pollution in La Oroya—also led to the constitution of the MOSAO, a group that made possible, to a great extent, the unifying of health concerns in this community. As noted in Chapter 1, The MOSAO campaign significantly contributed to the international and local recognition of environmental health injustices in La Oroya. In the long run, however, this campaign did not fully succeed in bringing about changes in the overall behaviour of Doe Run, nor in the favourable treatment the Peruvian Ministry of Energy and Mines granted to the company.⁴¹ Since the suspension of smelting activities, the MOSAO has significantly reduced its presence and the level of its interventions in La Oroya. Although, it goes beyond the purpose of this dissertation to appraise the overall impact of the MOSAO coalition in fostering health improvements in La Oroya, I would like to highlight this group's positive role in channelling environmental health concerns (which otherwise would have been overlooked) and in empowering individuals. Participant's testimonies demonstrate that the MOSAO arose as a collective to foster social solidarity, affiliation, and identity, and it provided a platform for individuals to develop capabilities to lead and actively participate in community life. In doing this, the collective space of the MOSAO nourished the development of individual capabilities, fostered the generation of collective capabilities, and strengthened a sense of collective agency.

⁴¹ Martin Scurrah, Janet Ligan & Rosa Pizarro, "Case Study: Jobs and Health in Peru" in Jeff Atkinson & Martin Scurrah, eds., *Globalizing Social Justice: The Role of Non-Government Organizations in Bringing about Change* (New York: Palgrave Macmillan, 2009).

However, the intense campaign of discrediting the MOSAO, the problem of misinformation, the legacy of socio-economic inequalities, and, most significantly, the lack of a collective identity in town were significant barriers to MOSAO ability to support the entire La Oroya community. Paradoxically, while the lack of a strong sense of collective identity was a crucial factor in the divergence of the MOSAO and smelter union's campaign, the same factor points to the need to re-create a "supra local identity" in order to unite residents of La Oroya for political action in the future. Certainly, recent empirical studies suggest the re-creation of new identifications as an alternative solution to community rifts and conflicts and the goal of "unity across difference."⁴² In a similar vein, contemporary appraisals of the role of unions suggest thinking about unions beyond immediate bargaining concerns and member interests and seeing them as agents of social solidarity.⁴³ Within this framework, which conveys new and broader forms of unionism, job security and environmental health equity concerns in La Oroya would have been put forward to the state and the company as a single necessity for the overall well-being of individuals in La Oroya. In an ideal scenario, a local alliance and coordinate strategies between unions and MOSAO would have advanced more effective results for the community at large.

To sum up, a context of systemic unfreedom in La Oroya relates to the trade-offs of health for work in two mutually connected ways. First, this context has diminished the scope and quality of the capability to achieve health and the capability to work, and, in

⁴² Jane Wills, "Identity Making for Action: The Example of London Citizens" in Margaret Wetherell, ed., *Theorizing Identities and Social Action* (London: Palgrave Macmillan, 2009).

⁴³ Gillian Lester, "Beyond Collective Bargaining: Modern Unions as Agents of Social Solidarity" in Gay Davidov & Brian Langille, eds., *The Idea of Labour Law* (Oxford: Oxford University Press, 2011).

doing so, has made individuals more vulnerable to acquiescing to trade-offs. Because of the level of individual vulnerability in these contexts, collective actions and groups are more capable of enhancing individual well-being. In light of this, I have argued that a second effect a context of unfreedom has on the health–work paradox is that it weakens the community’s collective agency to resist such trade-offs in a unified manner. The persistence of socio-economic inequalities and a lack of collective identity have negated the possibility of any coalition forming between smelter workers’ unions and the MOSAO that would be capable of advancing the political demands of health and work as one single, rather than a contested, goal.

6.3 Transforming Contexts of Unfreedom: The Promise and Limitations of a Capability Oriented Model of Human Rights

In light of the analysis developed above, this section elaborates on what I see as a symbiotic relationship between the notions of human capabilities and human rights.

In Chapter 3, I introduced a capability oriented model of human rights, appealing to pragmatic, contextual and strategic reasons to ground my model in the integration of the notions of human capabilities and human rights. I argued furthermore that epistemological reasons refrain me from providing a fully-fledged normative explanatory account of how these two concepts could or should operate in actuality. To be sure, I argued that the capability approach’s *telos* of enhancing freedom so that “people can lead the lives they value” contains an epistemological component geared towards a bottom-up investigation of people’s values, beings, and doings. This implies that rather than defining the relationship between human rights and capabilities exclusively from an expert-based top-down perspective, as I read it, it is imperative to also incorporate the knowledge of those our research is focused on. Having undertaken such exploration in

the La Oroya case, I now come back to further elaborate, first, the manner in which I see the integration between human capabilities and human rights, and second, the possibilities for and limitations of a capability-oriented model of human rights to challenge a context of systemic unfreedom in practice.

Based upon my assessment of the La Oroya case, I recognize that capabilities and rights are not—or better, should not—be reified as identical concepts. Rather, they should be understood as acting in a symbiotic relationship, which sustains the idea of what I have labelled a “capability-oriented model of human rights.” In such a relationship the notion of human capabilities is constructed to refer to the bundle of internal powers necessary for people to lead lives of well-being—that is, meaningful lives, autonomously designed and therefore free from oppression, inequality, and domination. On the other hand, the idea of human rights makes the goal for capability expansion (to lead such lives of well-being) an ethical-political demand. The integration of these perspectives, then, directs the investigation of the structural causes of unfreedom and calls for their removal.⁴⁴ In this way, a capability-oriented model of human rights—understood as freedom-enabling discourse—plays the role of a *conversion factor* aimed to positively transform contexts of systemic unfreedom as a matter of social justice.

There are two *interrelated* mechanisms through which we can transform a context of unfreedom into an expansion of freedom.⁴⁵ The first resides in the design of public policies and the stimulation of social arrangements aimed at removing the constraints that

⁴⁴ It should be recalled that my integrative framework draws on structural approaches to human rights and a relational political interpretation of the capability approach. If I had adopted alternative perspectives in borrowing from these two concepts, I would perhaps have arrived on different shores.

⁴⁵ Amartya Sen, *Development as Freedom*, 1st ed., (New York: Knopf, 1999) [Sen, *Development as Freedom*].

jeopardize the possibility of leading a life of well-being. From a capability-oriented model of human rights, this would mean making capability expansion the central objective in implementing international covenants, national constitutions, public policy, legislative innovation, and judicial interpretation. The second way to challenge unfreedom is to exercise agency to influence and transform unjust social arrangements and public policies. Actions enabling freedom from this perspective include collective actions of social movements, participatory action research, self-help, and community-based economic initiatives.

Capability scholars predominantly imagine rights-capabilities integration in terms of expanding capabilities from the top-down (i.e. legislative and public policy design). Notably, the work of Martha Nussbaum advances an applied framework to illuminate social arrangements and guide public policy implementation so that capability expansion becomes the central objective of human rights.⁴⁶ Rights protection, as she sees it, becomes more than simply concretizing legal recognition in tangible state actions aimed at ensuring access to a universal set of capabilities (Nussbaum's "capability list").⁴⁷ Her universal list is defined as open-ended and sensitive to cross-cultural specification.⁴⁸ Without access to such fundamental capabilities as benchmarks for a just society, she claims, no human being can possibly flourish in dignity.⁴⁹ In her proposal, the content of

⁴⁶ Martha C. Nussbaum, "Capabilities, Entitlements, Rights: Supplementation and Critique" (2011) 12:1 J. Hum. Dev. & Capabilities 23 [Nussbaum, "Capabilities, Entitlements, Rights"].

⁴⁷ Nussbaum's most recent account of 10 central human capabilities that must be secured to all people on earth includes: life, bodily health, bodily integrity, sense, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment. See Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (London: Belknap Press of Harvard University Press, 2011) [Nussbaum, *Creating Capabilities*].

⁴⁸ *Ibid.*

⁴⁹ Nussbaum, "Capabilities, Entitlements, Rights", *supra* note 46.

such capabilities as *species* of rights are determined by a combination of legislative and judicial deliberation.

A large body of scholarship has engaged with Nussbaum's work and criticized her proposal of a cross-culturally sensitive universal list of capabilities on various fronts. Despite her desire for a less paternalistic and more context-sensitive universalism, it is argued, Nussbaum assumptions are still embodied in a modernist idea of the world, and as a result, her proposal remains ethnocentric.⁵⁰ Direct implications of such bias are manifested in her uncritical reliance on the state as an institution promoting freedom and the fact that in her view, social justice mainly becomes a technocratic implementation of her capability list.⁵¹ Within such an over-optimistic approach, Nussbaum misses the opportunity to engage with questions such as "Why, under what circumstances, and according to whose interests does the state regulate?"—questions that would lead her to further interrogate the structures of power and oppression that impede the achievement of capabilities in the first place.⁵² As noted earlier, in her most recent account of capability-rights integration, Nussbaum defends such a relationship as a way of going beyond purely nominal or legal recognition. Nonetheless, her characteristically "de-politicized" approach, as Nivedita Menon eloquently puts it,⁵³ blinds her to the real political

⁵⁰ S. Charusheela, "Social Analysis and the Capability Approach: A Limit to Martha Nussbaum's Universalistic Ethics" (2009) 33:6 Cambridge J. Econ. 1135. The author refers to "modernism" as a social vision that includes a liberal-democratic nation-state, an industrial capitalist economy, and a series of other specific institutions of public life and "civil society," requiring a particular mode of interaction between individuals, individual and state, and individual and society. In addition, the author argues, a modernist approach uses a traditional/modern split to organize analysis of social institutions.

⁵¹ *Ibid.*

⁵² Shelley Feldman & Paul Gellert, "The Seductive Quality of Central Human Capabilities: Sociological Insights into Nussbaum and Sen's Disagreement" (2006) 35:3 Econ'y. & Soc'y 423.

⁵³ Nivedita Menon, "Universalism without Foundations?"(2002) 31 Econ'y & Soc'y 152.

difficulties of the project of making capabilities attainable in a changing, complex, and fundamentally unequal world.

In line with the arguments outlined above, I also take issue with Nussbaum's proposal on the grounds of evidence from my study of La Oroya. As I hope to have demonstrated so far, the problem of capability deprivation and disempowerment in this community is not so much about the implementation of a capability list—as important as that may be—but about dismantling the structures of inequality, dependency and domination underlying existent social disadvantages. Addressing such structural problems, indeed, remains a complex and messy enterprise, but certainly Nussbaum's proposal would have been little help in pinpointing them.

Revealed through the issue of identity, La Oroya portrays a *hybrid community* of, on the one hand, inhabitants who endorse individual values aligned with the modern culture of accumulation and economic growth and, on the other hand, inhabitants who appreciate different ways of living, have different conceptions of well-being, are more harmonious with a sense of community in connection with the environment. Yet, as became apparent in the recent conflict in La Oroya, the state does not treat both of these stances with the same respect. An implicit hierarchy privileges the former over the latter. My study has exposed the historical legacy behind this uneven treatment, revealing that behind the health vs. work controversy—which features primarily material demands—is a complex interplay of culture and structural power.

In the broader context of Perú—namely, in terms of the current issue of mining and conflicts—proposals like Nussbaum's may divert attention away from what is at the core of such conflicts. In particular, we may fail to identify instances when and reasons

why state governments (a) impose Western/imported formulas that reduce rather than enhance freedom (e.g. in the case of Aboriginal/largely agrarian communities); (b) neglect alternative lifestyles that oppose the state model of economic development and social progress (e.g. economic growth based on extractive activities vs. agriculture); and (c) act in alliance with socio-economically powerful groups, thus entrenching oppression and inequalities (e.g. the state-mining industry partnership in Perú).

Unlike Nussbaum, Sen is reluctant to endorse a universal over-encompassing list of capabilities. Rather, the type of capabilities deemed important for human well-being should be implemented through a process of deliberative democracy and collective participation.⁵⁴ Although a sensible proposal, this still engenders some problems. Let me elaborate further. Sen's endorsement of the democratic process as the best means to determine a context-based list of capabilities leads him to defend the notion of "public reasoning."⁵⁵ Sen firmly believes that through participatory reasoning in the public sphere, people can critical reflect on their diverse personal beliefs and preferences, confront their biases, and negotiate among their differing opinions regarding particular situations.⁵⁶ Sen is optimistic that in this way, conflicting positions can be accommodated and disagreement can be removed—just as unreflective prejudice, or what he refers to as "bad reasoning," can be overcome.⁵⁷ The scenario of La Oroya however, shows that in circumstances of systemic unfreedom, "reasoning" falls disastrously short of being effective in reaching agreement, and what is more, the appeal to reasoning may end up

⁵⁴ Feldman & Gellert, *supra* note 52 at 436-41.

⁵⁵ Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

dangerously privileging those are more powerful. In addition, the appeal to “reasoning” presupposes that rational and autonomous minds will converge harmoniously to convene on the best solutions for all. This is far from the reality of La Oroya, in which power as domination is exerted to influence people’s decisions, actions and preferences.

Finally, Sen’s proposal seems to fall into the same naivety as Nussbaum’s with his assumption that states are neutral institutions that, in any process of participation and deliberation, will grant the same value to diverse individuals and collective life projects. Here again, the context of mining and conflict in Perú illustrates the problems with this view. During the writing of this chapter, another mining conflict arose in Perú, this time against the Conga gold mining project in Cajamarca, in the north highland. The Conga project, expected to be the biggest mining investment in Peruvian history, involves transporting the water from four lakes into artificial reservoirs the Yanacocha Company plans to build.⁵⁸ Thousand of protesters have taken to the streets to strike until the government declares the project unfeasible. Protesters legitimately fear the replacement of the lake with reservoirs will pollute the environment and destroy the water supply needed for agriculture and livestock, thus adversely affecting the ecosystem as a whole. In the rise of violent protests and serious questionings of the “environmental impact assessment” that resulted in the project’s approval, the Yanacocha Company, in response to a government request, suspended the execution of the project until the conditions for dialogue were more favourable. Upon the continuation of “dialogue” between central government authorities and regional authorities of Cajamarca, it has become apparent that any process of “reasoning” or public consultation remains a mere formality: primarily, it

⁵⁸ See BBC News Latin America & Caribbean, “Protests in Peru Halt Newmont Gold Mine Project” (30 November 2011), online: BBC <<http://www.bbc.co.uk/news/world-latin-america-15956429>>.

is a mechanism through which the central government aims to convince—or ultimately impose—a view in favour of the Conga project. For inhabitants in Cajamarca, the issue seems to be straightforward: they do not want the Conga project to be implemented in their territory because they value different ways of living. However, the central government is framing the solution to the conflict by enhancing the environmental impact assessment to ensure the minimization of environmental damages. In this context, the state is clearly not acting as a neutral entity, but rather is behaving in line with the historical pattern of state–private investment partnership with the mining sector, which, by and large, encourages the “economic colonization” of our own citizens (see Chapter 2).

Although the debate over a list of capabilities and the best mechanism to generate it is appropriate in the academic theorization of justice, I argue it becomes futile and redundant when integrating the idea of human capabilities with that of human rights. Lists of human rights, of all variety, already abound in international legal treaties and covenants, as well as in national constitutions. When making capabilities the cornerstone of human rights, as Nussbaum proposes, I do not think there is a need for more lists.⁵⁹ Instead, the need is for articulation and interpretation of both human capabilities and human rights in terms of a “freedom enabling discourse” from the *bottom-up*—as I propose in this dissertation. Arguably, many of the capabilities people value or may value already correspond with various constitutional rights. This is precisely the case in Perú—a country that has subscribed to a wide variety of international human rights treaties and

⁵⁹ I imagine that for Western scholars (e.g. in the United States, Canada or Great Britain)—whose constitutions or human rights acts all too often refuse to recognize socio-economic rights and reject the binding force of international treaties—pushing the constitutional recognition of capabilities might be a worthwhile enterprise.

covenants, that constitutionally recognizes both civil/political rights and cultural/socio/economic rights, that receives significant technical and economic support from the United Nations Development Programme (UNDP), and that has signed onto the Millennium Declaration to end poverty by 2015. Still, in spite of this wide range of legally recognized rights, countries like Perú fail to protect human rights. And even when the fulfilment of rights is attainable, it is conditioned to what is possible within the current politico-economic system.

In short, from a *top-down* perspective—which draws on the view of rights-capabilities fulfilment as advanced by Nussbaum and Sen—it seems that the transformative possibilities for a “capability-oriented model of human rights” to become freedom enabling discourse are rather limited. This is because actions for change that are advanced reaffirm—rather than address—the politico-economic systems that sustain the structures of oppression and domination in Perú and beyond. My assertion might sound unfair given the commitment of these authors to decentre the discourse of economic growth in order to make “people’s valuable livings” the goal of development. Thus, I need to be more explicit in this claim. The problem I have encountered, upon reflection about the La Oroya case, is that the referred shift from economic development to human development has been thought primarily to make us aware that an exclusive focus on the first has led us to *mis-measure* our lives.⁶⁰ Such an enterprise leaves unscrutinized the grounds and relationships of power sustaining and directly benefiting from the politics of economic growth. Avoiding such a critical analysis is troublesome both in the context of systemic unfreedom like that in La Oroya, and in the analysis of the larger mining issues

⁶⁰ See, for example, Joseph E. Stiglitz, Amartya Sen & Jean-Paul Fitoussi, *Mis-measuring Our Lives: Why GDP Doesn’t Add Up* (New York: The New Press, 2010); Nussbaum, *Creating Capabilities*, *supra* note 47; Martha Nussbaum & Amartya Sen, *The Quality of Life* (Oxford: Oxford University Press, 1983).

and conflicts in Perú. In this latter case, the model of economic growth arises, paradoxically, as the main threat/cause of unfreedom for some individuals and groups, as illustrated in the recent conflict over the Conga mining project.

Amartya Sen's ideological appreciation for human freedoms, in which he includes "freedom of exchange," means he stands up in favour of a market-based capitalist economy as an engine of economic growth, and as an important means to enhance living standards—and thus, human development.⁶¹ This is not to deny, he argues, the fact that markets can be counterproductive; but potential failures can be overcome with strong regulation.⁶² In any case, the freedoms promoted under a market economy (e.g. free labour contract or unrestrained physical movement as opposed to labour bondage in a pre-capitalist economy) are some reasons to value the role of the market in promoting development.⁶³

The historicity of La Oroya alludes to the context Sen has in mind when arguing in favour of a market-based economy for enhancing the freedom of labour contracts, among others things. As it should be recalled, during the pre-capitalist development in central Andes, mining and smelter workers were subject to a system of *enganche* and indebtedness. No one would deny their oppressive and abusive roots (see Chapter 2). While the situation of smelter workers in today's La Oroya does not compare to that level of absolute unfreedom, can we safely say that capitalist development has made smelter worker more substantively free today? The analysis of a capability to work in La Oroya, discussed earlier, will hardly bring us to agree with Sen in this regard. Capitalist

⁶¹ Amartya Sen, *Development as Freedom*, *supra* note 45.

⁶² *Ibid.* at page 26.

⁶³ *Ibid.* at page 29.

development in the mining sector originated the economic dependency and domination that have brought smelter worker of La Oroya to acquiesce to well-being trade-offs. Furthermore, the market-based economy that led to the privatization process in Perú brought about massive lay-offs. This subsequently prompted a labour reform that resulted in major flexibility and informality of labour contracts, the negative impacts of which are still felt.⁶⁴ We may wonder then: If Sen were prompted to reflect upon the case of La Oroya, or of mining and conflicts in Perú, would he continue to uphold his uncritical defense of the virtue of a capitalist market economy? Facing this challenge, he would perhaps, after revisiting his position, finally persuade those who still see his capability approach as “[i]nstrumentalist rather than as an alternative to the neoliberal development project.”⁶⁵

In face of such an unpromising dominant politico-economic scenario, what real changes are needed for a “capability-oriented model of human rights” to promote social transformation in a context of systemic unfreedom. My claim is that a new agenda for such a view of human rights in the context of Perú would best be advanced from a bottom-up perspective that combines the efforts of collective actions, social movements, and academia. By the latter, I refer in particular to a major critical engagement of legal scholars in interdisciplinary conversations to shift the passivity and conformity of current formal constitutionalism into a more demanding and transformative constitutionalism responsive to our urgent local demands (e.g. the challenges that the human rights

⁶⁴ Organización Internacional del Trabajo (OIT), *Documento de Trabajo No. 124: Estudios sobre la flexibilidad en el Perú* (Lima: OIT, 2000).

⁶⁵ Shelley Feldman, “Social Development, Capabilities, and the Contradictions of (Capitalist) Development” in Stephen L. Esquith & Fred Gifford, eds., *Capabilities, Power and Institutions: Toward a More Critical Development Ethics* (University Park, PA: Pennsylvania State University Press, 2010).

discourse faces in the context of development in Perú). Fostering social transformation is about a permanent process of counteracting power and conflict in the organization of our lives. And academic debates and collective actions are important tools in the political process of negotiating and re-negotiating the design of our societies. In this light, a capability-oriented model of human rights should be seen as a freedom enabling discourse that promotes a different way of thinking about human rights in tandem with the idea of human development. This discourse will be more critical and reflective about the legacy of colonization and the persistence of inequality and domination. As a discourse for action and change, a capability-oriented model of human rights should consequently promote a set of values that responds to Perú's multicultural reality and attends to the different living projects and conceptions of well-being that this complex reality entails.⁶⁶ Fundamentally, a capability-oriented model of human rights, acting as a conversion factor, should make explicit the constraints impeding people from leading the lives they value, and call for their removal.

Now, what kind of rights are promoted by a capability-oriented model of human rights discourse: individual or collective? An important body of literature has devoted extensive attention to the interactions and tensions between the concepts of individual and collective rights. Debates have interrogated the claims upon which collective rights are grounded and justified,⁶⁷ the nature of such collective entities,⁶⁸ and how to avoid, if

⁶⁶ I draw on Tony Evans' conceptualization of discourses as the meeting process of power and knowledge, in which particular categories of thought and sets of values and beliefs are promoted. See Tony Evans, "International Human Rights Law as Power/Knowledge" (2005) 27 Hum. Rts. Q. 1046.

⁶⁷ Steven Wall, "Collective Rights and Individual Autonomy" (2007) 117 Ethics 234.

⁶⁸ Carol Gould, *Globalizing Democracy and Human Rights* (New York: Cambridge University Press, 2004).

possible, intra-group differences.⁶⁹ And indeed, similarly to the debate between individuals vs. collective capabilities, one of the most pressing objections to collective rights lies in the problem that, by defending collective rights, we may end up promoting that the interests of groups override the interests of individuals.⁷⁰

It goes beyond the purpose of my dissertation to address the multiple concerns—and unresolved questions—that remain latent in this line of literature. It suffices for now to assert that a capability-oriented model of human rights discourse, which endorses a social constructivist notion of human rights, can uphold the value of both individual and collective rights. The latter—grounded on claims of self-determination; self-development; cultural survival of language; religion; education; or struggles about identity—arose as a valuable entity to enhance the political power and common interests of individuals. In other words, following Cindy Holder, “[g]roups rights are justified as an instrument of policy because the best means to secure individual well-being is to secure a high salience for public or collective concerns to individual decision-making.”⁷¹ This means, as I read it, the state and society have the responsibility to protect, promote, and respect the collective spaces through which individuals can make heard their voices more effectively—voices that otherwise would be silenced in the political arena.

⁶⁹ Cindy Holder, “Groups, Rights, and Methodological Individualism: In Defense of Collective Rights” in Cheryl Hughes & Yeager Hudson, eds., *Cultural Integrity and World Community* (New York: Edwin Mellon Press, 2000).

⁷⁰ *Ibid.*

⁷¹ *Ibid.* at 316.

6.4 Conclusions

In this chapter, I have dealt with the overarching question of this dissertation: To what extent does a context of systemic unfreedom underlie the conundrum faced by La Oroya residents? These have been placed in the difficult position of having to weigh employment opportunities in the smelter against sacrificing the protection of their human right to health. My exploration of the La Oroya case suggests that a context of unfreedom resulting in capability deprivation in La Oroya has indeed diminished the scope and quality of the capability to achieve health and the capability to work, and in doing so, has made individuals more prone to acquiesce to their trade-offs. In this kind of context, given this level of individual vulnerability, individual well-being is more likely to be enhanced by more prominent collective actions and groups. Unfortunately, the context of unfreedom relates to the health and work paradox in a second way—and that is to weaken the community's collective agency to resist such trade-offs in a unified way. The persistence of socio-economic inequalities and the lack of collective identity have precluded any formation of a coalition between the smelter workers' union and the MOSAO that would be capable of advancing the political demands of health and work as one single, rather than a contested, goal.

In assessing the real possibility that a capability-oriented model of human rights framework can transform a context of unfreedom, I have suggested that we conceive of it as a freedom enabling discourse, one that promotes thinking about human rights in tandem with the idea of human development. This discourse is more critical and reflective about the legacy of colonization—the persistence of inequality and domination—and, in turn, seeks to advance values that respond to the multicultural reality of Perú. As a discourse for change, it will focus on the different living projects and

conceptions of well-being that this complex reality may entail. A capability-oriented model of human rights mirrors the role of a conversion factor. Its goal is not only to reveal the constraints that keep people from leading the lives they value, but to remove them.

The mining industry plays a dominant role in Perú's economic growth model; and at the institutional level, the realization of human rights and aspirations to local well-being are possible only to the extent that they accommodate this model. Given these facts, I have argued that in the context of Perú, a "capability-oriented model of human rights" offers more promise from a bottom-up perspective—that is, through the working of collective action, social movements, and academics. Debate and actions in these spheres can create social awareness of the extent to which models of development and social progress benefit some citizens to the detriment of others. Accordingly, these actions will have a more effective political impact in the continual negotiation and re-negotiation of the design of our societies.

Chapter 7

Conclusion

7.1 Lessons from La Oroya's Narrative of Systemic Unfreedom

Throughout this dissertation, I have aimed to show that the seemingly intractable human rights trade-offs between “health” and work” in La Oroya, made visible during the socio-environmental conflict that peaked between 1999 and 2009, are *more* than just the immediate consequences of Doe Run’s failure to fulfill, and the Peruvian state’s failure to enforce, national environmental obligations. I have argued that structural causes converging from the past to the present and intersecting at the macro, meso and micro levels have shaped a context of systemic unfreedom in La Oroya—a context that creates the conditions in which such trade-offs can occur. Moreover, this broader context of unfreedom predicts the continuous incidence of human rights abuses in this community, of which the health versus work paradox represents only the most recent episode, although it is deeply interrelated with a history of entrenched domination, inequalities, and economic dependency.

As discussed in the preceding chapter, a context of systemic unfreedom often features a scenario of capability deprivation, which, in turn, has an impact on individual and collective agency to challenge or transform the powerful forces (e.g. unpromising public policies and social arrangements) sustaining and reproducing it. In other words, in a scenario of systemic unfreedom, individuals and communities are essentially trapped in a vicious cycle of disadvantage. Unfreedom makes them more susceptible to being abused and more likely to acquiesce to adversity, thus reducing the possibilities of breaking this disadvantageous cycle. This was demonstrated through the case in La

Oroya, where the predicament of capability deprivation—specifically in terms of the capabilities to achieve health and to work—explains why individuals acquiesced to trade-offs between these two essential components of human well-being. Furthermore, systemic unfreedom has also had negative effects on the community’s collective agency to resist these trade-offs in a unified manner—that is, through a coalition between MOSAO and the La Oroya unions capable of advancing health and work demands as a single goal, rather than as opposing goals.

This exhaustive investigation of unfreedom in La Oroya and evaluation of its role in the systemic production of human rights abuses was undertaken with the lens of a capability-oriented model of human rights. This model builds upon structural approaches to human rights and a relational-political interpretation of the capability approach. As suggested in Chapter 3, a capability-oriented model of human rights proves more effective than the predominant perpetrator-victim-remedy model when it comes to investigating and fostering awareness of the underlying causes of human rights abuses in complex cases such as La Oroya. In terms of actions and responsibilities, such a model clarifies that, in addressing the injustices embedded in human rights abuses, we need to go beyond immediate short-term remedies and redress, to propose long-term structural transformations. This model, however, is not without limitations. In the following final pages, I will reflect upon the most salient advantages and shortcomings of using a capability-oriented model of human rights in light of this study of La Oroya.

In highlighting the advantages of this model, I will first point to the prominence it places on investigating “conversion factors” to disclose the circumstances and processes that enable or disable the opportunities to achieve freedom and challenge unfreedom. By

going “deeper and wider” in identifying the following conversion factors, I have uncovered and clarified the explanatory layers that lie beneath the conundrum of this human rights trade-off: *environmental conversion factors* (historical pollution and awareness of hazards); *institutional conversion factors* (economic dependency and power, the state’s leniency towards Doe Run’s environmental obligations, the Peruvian model of economic development, the institutional fragility of the human rights discourse); *social conversion factors* (migration and collective identity, structuring of inequalities, uncertainty about pollution, limited access to information, assignment of responsibility for illness to individuals, and stigma against the poor); and *personal conversion factors* (individual values and needs, characteristics of individual identity). These factors are deeply interconnected and mutually reinforcing, perpetuating or creating new conditions of disadvantage in La Oroya—conditions that largely explain people’s vulnerability and acquiescence to the trade-offs between health and work.

The role of conversion factors is frequently mentioned in the capability approach literature because of their importance in conditioning individual freedoms;¹ but the analytical potential of such factors remains, in my view, downplayed within this line of scholarship. In my study, not only has the identification of conversion factors provided me with the bones for my capability-oriented model of human rights, but through this process, I have been able to dispute the common suspicion, discussed in Chapter 3, that “capabilities” cannot be adequately assessed. Such evaluation is certainly possible. It all depends upon the epistemological and methodological lenses we use in our

¹ Ingrid Robeyns, “The Capability Approach: A Theoretical Survey” (2005) 6:1 J. Hum. Dev. 94; Ingrid Robeyns, “Sen’s Capability Approach and Feminist Concerns” in Flavio Comim, Mozaffar Qizilbash & Sabina Alkire, eds., *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008).

investigations. Admittedly, I would perhaps have been unable to grasp the analytical benefits of identifying conversion factors if I had not come across Séverine Deneulin's relational-political interpretation of the capability approach.² As I hope to have demonstrated in this study, "conversion factors" represent more than simple isolated factors impacting individual lives. They fundamentally speak to how such lives are historically, politically, and economically structured. Further, they illustrate the extent to which La Oroya's social embeddedness mirrors Deneulin's notion of "structures of living together"—that is, how one's self is entangled with other selves through history and mutual interactions. Accordingly, results from my study to a large extent confirm Deneulin's claim that if our concern is structural transformation, we must focus our analytical attention not only on individuals but also on "structures of living together." More than this, however, my results suggest that Deneulin's stand constitutes a more sound and responsive proposal for the Latin American reality than that of Amartya Sen³—at least when it comes to assessing the context of mining and conflicts.

Methodologically, another advantage of using a capability-oriented model of human rights is that it includes the voices of those whose human rights are affected as a source of knowledge. This project provides space for people's narratives to be listened to transcending pure romanticism. The rationale behind this model is greatly influenced by 1) structural approaches to human rights, which critique an ethnocentric top-down understanding of human rights; as well as by 2) the epistemological component

² Séverine Deneulin, "The Capability Approach: A Note on Two Interpretations" (2011) [unpublished draft, cited with permission of the author].

³ It should be noted that while the empirical research providing Amartya Sen with the background for his capability approach comes predominantly from India, Séverine Deneulin's own contribution has been inspired by the reality of two Latin American countries: Costa Rica and the Dominican Republic. See Séverine Deneulin, *The Capability Approach and the Praxis of Development* (New York: Palgrave Macmillan, 2006).

underlying the capability approach's *telos* of enhancing freedoms so that people can lead the lives they value, which I argue gears us towards a bottom-up investigation of people's values, beings and doings. In the case of La Oroya, for instance, this premise entailed asking not only how researchers, the media and human rights activists look at and interpret the complexities of the La Oroya case but foremost, ask how members of the community understand their own realities, namely, why they think and act in the way they do. In short, a capability-oriented model of human rights relies upon diverse sources of data, but primarily on a qualitative design. Such a design has provided a unique perspective on how living under systemic unfreedom directly affects community members of La Oroya in the interplay of their individual and collective lives.

The added value of using personal testimonies—those of individuals about their experiences of unfreedom, as well as of human rights activists and public servants who worked on the La Oroya case—becomes more noticeable when we compare them with the information provided in Chapters 2 and 5. These two chapters make up the exploratory phase of this study. Chapter 2, using predominantly historical literature, traces back to the historical roots and politico-economic context of La Oroya, providing the ground for further elaboration upon the idea of a “context of systemic unfreedom,” and Chapter 5 presents the results of my qualitative interviews. In this way, Chapter 5 not only reaffirms the central arguments advanced in Chapter 2 but deepens them by revealing additional, crucial components that sustain a context of unfreedom in La Oroya. Most notable of these are: the fragility (or absence) of a collective identity; the structuring of inequalities in terms of gender, access to social services, and socio-economic status; the shaping of individual values and needs; and the pervasive denial of

pollution by governmental authorities (which ultimately led to the institutionalization of health inequities). None of this information could have been accessed outside of participants' narratives. Through this new information, I came to realize that, although conflict has been present throughout the historical development of La Oroya as a smelter town,⁴ the recent socio-environmental conflict reveals that the privatization of the smelter led to an intensification of socio-economic inequalities, posing major challenges to those who had less power and were more vulnerable to the health effects of pollution. In addition, as noted in Chapters 5 and 6, I also unveiled that beneath the clash between health (MOSAO) and work (La Oroya unions), the issues distinguishing the claims of each of these two groups were not only about socio-economic inequality, but also about identity—that is, authentic *Oroyinos* versus circumstantial *Oroyinos*.

Furthermore, in investigating the socio-historical formation and politico-economic reproduction of the context of unfreedom in La Oroya—which originated in the emergence of capitalist development and the large-scale mining industry in Perú—my capability-oriented model of human rights highlighted a recurrent pattern in the state-private investor partnership in this industry. To be sure, the mining industry has historically played a strategic role in Perú's economy, grounded in a state-private partnership of mutual politico-economic benefits. Moreover, the state's responses to socio-environmental conflicts in this sector—as seen in the La Oroya case—are largely determined by a servile attitude towards foreign investment, which has become more prominent in the recent context of neoliberalism and sustains the Peruvian model of economic development. This means that the realization of human rights obligations—

⁴ Conflict and the working of power have been always present in the historical formation of La Oroya as a smelter town, from the struggles of peasant communities defending their lands and cattle against the effects of pollution to unions fighting for better wages and living conditions.

recognized in the Peruvian *Constitution* of 1993 and several international covenants endorsed by the country—is possible only to the extent that human rights claims accommodate or align with the goals of this development model. Evidence of this assertion lies in the fact that work security demands—framed as the engine of the country’s economic growth—received more serious attention than health demands in La Oroya’s recent conflict.

Given such an institutional reality, I have argued that in the context of Perú, a capability-oriented model of human rights—acting as a freedom-enabling discourse—is more promising from a bottom-up perspective. That is, collective actions, social movements, and the academy must move forward new ways of thinking that are more critical of the legacy of colonization, the persistence of inequalities, and economic domination. Debates and actions within such spheres, I have argued, can effect widespread social awareness that some models of development and social progress benefit some citizens to the detriment of others.

The La Oroya case suggests that the discourse promoting such a capability-oriented model of human rights will be more effectively advanced by appealing to issues of identity as well as of persistent socio-economic and gender inequalities in territories subject to the mining industry. Contributions from post-colonial and subaltern studies,⁵ along with quantitative evidence on the persistence of inequalities,⁶ will serve to

⁵ Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton, NJ: Princeton University Press, 2005); Boaventura de Sousa Santos, ed., *Another Knowledge is Possible: Beyond Northern Epistemologies* (New York: Verso, 2008); and Pablo Sandoval, ed., *Repensando la subalternidad: Miradas críticas desde/sobre América Latina* (Lima: IEP-Instituto de Estudios Peruanos, 2009).

⁶ As noted before, there is scant data in this regard, which makes the production of research more difficult (see footnote 5, Chapter 1). To my knowledge, the following two publications are the only contributions in terms of providing a poverty index and well-being assessment in mining communities in Perú: Roxana Barrantes, Patricia Zarate & Anahi Durand, *“Te quiero pero no”: Minería, desarrollo y poblaciones locales* (Lima: IEP

conceptually strengthen this discourse. The current environmental movement against the expansion of mining activities in Perú might also be more effective—and politically palatable—if its discourse carried more robust and indisputable evidence of inequalities in the affected population and of the salience of identity.

Despite all of these advantages of a capability-oriented model of human rights, however, this perspective also reveals some limitations. To begin with, as a model tailored specifically to the La Oroya case, I cannot make generalizations beyond this context. One exception to this pertains to the institutional conversion factors (i.e. the Peruvian model of economic development and the institutional fragility of the human rights discourse in Perú): these constitute key features of the macro level context, applying to the entire scenario of mining and conflicts in Perú. Future researchers could apply this aspect of the model in a cross-case analysis to map trends of the most salient conversion factors determining the possibilities (or lack thereof) for enhancement of human capabilities and agency in communities and territories that are subject to mining activities in Perú.

Also, while the issues of identity and socio-economic cleavages have proven to be significant in determining the thick or thin collective responses to the challenges posed by the mining industry for individual and community well-being in La Oroya, the La Oroya case does not address how to effectively reconcile or reconstruct collective identities in deeply fragmented or hybrid communities with contested individual/group

and Oxfam, 2005); José de Echave & Víctor Torres, *Hacia una estimación de los efectos e la actividad minera en los índices de pobreza en el Perú* (Lima: CooperAcción, 2005).

values and diverse aspirations of well-being.⁷ This problem requires further exploration and participatory action research.

Finally, a caveat in using a capability-oriented model of human rights: research on people's values and choices is deeply complex and may lead us into slippery terrain. This is particularly true when we consider that values and choices are not always autonomously shaped. Rather, they tend to be influenced by different sources of information, and they may change over time. I suggest two approaches to address this challenge and reduce the risk of bias and misinterpretations: the first is to incorporate participants' voices, in order to best understand how their values are formed; and the second is to be self-reflexive as a researcher, in order to self-scrutinize assumptions and personal and academic values.

7.2 Recommendation for La Oroya

At the end of each of my interviews with members of the community of La Oroya, I asked them to reflect upon how they would like to imagine living in La Oroya in the near future. Largely, responses revealed the dream of living in a "green" La Oroya, as it was in the past or as it is now in Tarma, one of the closest cities to La Oroya. Others focused on their health concerns—desiring to receive more information about what will happen to them and their children in the future. Some grassroots activists were confident the Inter-American Commission of Human Rights would finally officially acknowledge the violation of their rights. And, there were also those who emphasized that any change in La Oroya should start with the re-opening of the smelter, suspended since June 2009. Captivatingly, one of the youngest participants expressed a wish to finally live in

⁷ For an exploration of the challenges and possibilities of hybrid communities to counteract hegemony in the African context, see Anjali Prabhu, *Hybridity: Limits, Transformations, Prospects* (Albany, NY: State University of New York Press, 2007).

“[u]nity, thinking, reasoning and feeling not only in terms of individual interests, but viewing the needs of others as well.”⁸

On my last day in La Oroya, I felt an enormous sense of gratitude for the uncountable lessons I learned from participants in this study. While I started my journey back to Lima, I myself tried to imagine the changes this community will see in the near future. In the year since I finished my fieldwork in La Oroya, almost everything has remained the same.⁹ The extended silence and governmental inaction not only confirm that human rights violations in La Oroya are, as I posit in this study, a structural problem, but they reaffirm my claim about the institutionalization of health inequities in La Oroya.

The multilayer analysis provided by a capability-oriented model of human rights has revealed a variety of angles that need to be addressed in order to overcome systemic unfreedom in La Oroya (see, Chapter 5 and 6). In this sense, both short-term restorative and long-term transformative measures are required. In terms of short-term measures, the recommendations are as follow:

1. Given the uncertainty regarding the future of the smelter, and given that the construction of the sulphuric acid plant for the processing of copper that would significantly reduce *air pollution* is still pending,¹⁰ it is imperative that

⁸ Interview with participant MC 5 (27 October 2010) La Oroya, Perú.

⁹ Employment stability at the smelter depends now on the safeguards and social benefits the state might offer to smelter workers in light of the recent decision to liquidate the company. While they wait, smelter workers are still receiving 70% of their salaries due to a collective agreement with Doe Run (see Chapter 1). On the other end, the state has shown few signs of serious commitment to resolving the historic environmental health problems in La Oroya.

¹⁰ This is the last project (pre-requisite) for the completion of the Environmental Mitigation and Management Plan (PAMA) for La Oroya (see Chapter 1 for more details). Although in practical terms the liquidation of the company does not necessarily imply the closure of the smelter and the subsequent loss of jobs (e.g. workers can become shareholders or the state as the principal creditor can take over the administration for the smelter), the reality is that the final decision is in hands of all the creditors and that decision may take longer than a year to be reached.

governmental authorities explicitly inform residents of La Oroya in a timely manner how they plan to minimize the hazards and potential health risks of this situation in the mean time.

2. The rationale and main objectives of the *soil remediation* plan, currently being implemented by *Activos Mineros*, needs to be further explained to the population of La Oroya. Some participants in this study mentioned they have not been informed or invited to participate in the design of such a plan. Participants want to know whether this remediation plan will ensure diminished health risks and hazards in the long run—particularly, in La Oroya Antigua—and how the state plans to evaluate the progress towards remediation effectiveness.
3. Given the evidence of misinformation in La Oroya, I strongly advise the constitution of a *task force* to channel different sources of information and to monitor the compliance of both the La Oroya PAMA and the remediation plan to target past contamination. The task force should integrate union leaders, representatives of the Movement for the Health of La Oroya, leaders of other organized groups in the community, local authorities, and independent experts. I recommend that the task force look at successful remediation experiences of other smelter communities as a point of reference and verify if the remediation plan proposed by *Activos Mineros* follows, at least, the recommendations of the International Expert Panel that evaluated the 2006 PAMA extension.¹¹

¹¹ Scott Clark, Eric Partelpoeg & James W. S. Young. *Expert Comments on Exceptional Fulfillment Extension Request for the Sulphuric Acid Plant Project of La Oroya Metallurgical Complex PAMA* (Lima: MEM, 2006). Among the most relevant recommendations advanced by the International Experts Panel that evaluated the 2006 PAMA deadline extension was the implementation of a “continuous improvement cycle” plan for La Oroya. This is a long-term plan consisting of continual monitoring of hazard mitigation and health improvements. It is worth mentioning that the report drafted by the expert panel expressed concerns regarding the lack of planning and technical deficiencies in the implementation of the PAMA.

4. The number of complaints I heard from participants pointing to issues of mistreatment and misinformation from the Ministry of Health governmental authorities was particularly worrisome. This study exposed a number of deficiencies: a lack of specialization in issues of environmental health pollution, poor provision of medical attention, and biased information in terms of the health effects of pollution. The state needs to sensitize health service providers in order to improve the quality of treatment to patients.
5. While the continuation of the campaigns for testing blood lead levels (BLL) is necessary, it is insufficient for a determination of the real impact of pollution on community health. Actions should be oriented to undertake a campaign that evaluates neurological development (e.g. IQ tests) among children, namely, those who were born during the years of Doe Run operations when contamination levels were highest. It is also imperative to build a clinical database of cancer deaths in La Oroya. Moreover, there is a need to compile data in terms of mortality/morbidity rates in La Oroya in comparison to non-mining or non-smelter communities.

With regards to long-term measures aimed at structural transformation in La Oroya -and drawing from the lessons of the La Oroya work-health dilemma bring to the extractive-based model of economic growth in relation to the goal of human development, my recommendations are as follows:

1. At the macro level, structural transformation in La Oroya and beyond implies, first, addressing current patterns of power, economic dependency, and domination. Such changes largely depend upon a significant rethinking of the

state's vision of development and in turn, the recognition of alternative aspirations of wellbeing at the local level. This requires the diversification of Peru's economic activities and, more fundamentally, acceptance that such heterogeneity may well be located at the local level, in the working of community organizations, cooperatives, etc.¹²

2. Additionally, long-term structural transformation also includes –but is not limited to- rethinking the division of jurisdictions in terms of management and environmental regulation between the national, regional and municipal levels in Peru.¹³ Likewise, there is a need to create a system of natural resource governance (e.g. participatory water monitoring initiatives and/or participatory soil remediation plans) in tandem with an impartial process and authoritative independent environmental monitoring and evaluation of mining projects.¹⁴ To this end, the current process of design and approval of PAMAs and Environmental Impact Assessments (EIAs) need to be revisited. Finally, structural transformation at the macro level also requires enhancing the efficiency of the

¹² Along this line, Gibson-Graham suggests we look at the economy not as a singular capitalist system but rather as a space where a multiplicity of economic forms coexist. See: J.K. Gibson-Graham, *A Postcapitalist Politics* (Minneapolis: University of Minnesota Press, 2006)

¹³ I am grateful to Martin Scurrah for bringing this issue to my attention. According to the *Peruvian Decentralization Law* (Law 27783), the *Regional Governments Law* (Law 27867) and the *General Environmental Law* (Law 28611) the design of national public policy –which includes environmental policy- is the exclusive jurisdiction of the national government. In this framework, regional governments must implement their obligations in accordance to national public policies. The ongoing emergence of socio-environmental conflicts in Peru, which make apparent the sharp disconnection between the extractive-based national vision of development and different conceptualization of wellbeing at the local level, provides persuasive evidence to put into question the hegemonic model of policy design at the national level. The current model of distribution of competencies not only is at odds with a robust understanding of decentralization but additionally, diminishes democratic processes and valuable opportunities to have the state become more responsive to society.

¹⁴ See: Anthony J. Bebbington and Jeffrey T. Bury, “Institutional Challenges for Mining and Sustainability in Peru” (2009) 106: 41 PNAS 17296.

current system of income distribution (i.e. distribution of mining royalties, canon minero and participatory budgets at the regional and local level).¹⁵

3. At the meso and micro levels, structural transformation in La Oroya is also about reversing entrenched socio-economic and gender inequalities. One way to go about this is to promote the diversification of economic activities with the aim of facilitating gender equality, and to provide more options for future aspirations of the youth population. Beyond La Oroya, namely, in cases of communities with new mining investments, it is strongly recommended that the State, companies, and communities alike undertake “social impact assessments” as well as “gender impact assessment studies” prior to the commencement of operations to evaluate the potential impact of mining activities in the community life (e.g. in terms of disrupting community relationships and perpetuating gender inequalities).¹⁶
4. Structural transformation at the meso and micro level in La Oroya, also requires the reconstitution of the community’s collective identity and reconciliation of the community’s social relationships. Overall, structural transformation in La Oroya is about dismantling the barriers causing unfreedom—and thus allowing people to be the ultimate designers of their own destinies.

¹⁵ For further discussion, see: Javier Arellano-Yanguas, “A Thoroughly Modern Resource Curse? The New Natural Resource Policy Agenda and the Mining Revival in Peru” (2008) IDS Working Paper 300; Roxana Barrantes, “La Economía de los Recursos Naturales: Escasez, Agotamiento, Regalía, Explotación y otros Conceptos Sujetos a Evaluación Moral (O Redistribución Estatal)” (2008) 56 *Themis: Revista de Derecho* 49.

¹⁶ An innovative example of this is the gender impact assessment framework developed by Oxfam Australia. See, Oxfam Australia, “Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment” (2009), online: <<https://www.oxfam.org.au/explore/mining>>

7.3 Directions for Future Research

Insights from the La Oroya case have opened new avenues of inquiry. My future research agenda includes expanding the application of the “capability-oriented model of human rights” to the analysis of a selective comparative case study between La Oroya, the mining town of Cerro de Pasco and the smelter community of Ilo, Peru. These later two cases share similar antecedents of historical pollution as La Oroya. By comparing these three cases I envision exploring the territorial and social transformation the extractive industry has brought about in these communities, the trade-offs these communities have been forced to make, and the implications they have in terms of development of capabilities for wellbeing. In a broader spectrum, I seek to explore the question with a wider lens of inquiry, that is, if the extractive-based economic growth model functions as a necessary means to finance social programs aimed at social inclusion and inequality reduction in contemporary Peru, what are the implications of such a model in terms of capability expansion locally, regionally and nationally? More concretely, to what extent the extractive-based economic growth model which is aimed at social inclusion and therefore capability enhancement *for all*, is actually resulting in capability gains for some at the cost of capability losses for others? Who, where and which living systems stand to benefit or, by contrast, are harmed by such national policies? In responding to these questions, which invite us to reflect upon the real possibility of reconciling economic growth and social inclusion as currently endorsed by Peruvian President Ollanta Humala (2011-2016), I plan to explore, compare and contrast the

possibilities offered by competing frameworks such as sustainable development, de-growth theories and post-capitalist community-economy alternatives.¹⁷

Another important contribution of the La Oroya case is to illustrate –to some extent- how different discourses throughout the history of La Oroya have emerged as powerful determinants for collective organization, social mobilization and the promotion of social change (e.g. the discourse of class, the discourse of environmental conservation, the economic growth discourse). In this sense, another direction of research will be to look at the emerging resistance movements in the context of mining-based economic development in Latin America, the role of women in such movements,¹⁸ and the discursive potential of such movements to advance social transformation. I am interested in unveiling the commonalities between such discourses and the “freedom enabling discourse” promoted by a capability-oriented model of human rights. In doing so, I will also look at the positive side of conflicts and resistance in that they are creating new opportunities to make visible long-time socially and politically excluded communities, and in turn, to revisit the region’s colonial past and multicultural reality.

Finally, the La Oroya case also prompts us to think about post-conflict interventions which entail an assessment of the legacy of conflict in terms of the impact on overall human wellbeing. This analysis transcends a focus on the health vs. work dichotomy to assess the extent to which conflict in La Oroya, in particular, its

¹⁷ I am thankful to Professor Anthony Bebbington who prompted me to think beyond the La Oroya case, namely, to more carefully reflect upon the multiple trade offs in terms of extraction, development and capabilities being made between different *spaces* and at different *scales* in contemporary Peru.

¹⁸ While as noted in the case of La Oroya, the lives of women are deeply affected as a result of extractive activities. More research on gender and the extractive industry is required. Attention needs to be paid not only to the gender impacts of the industry but also to the crucial role of women in resisting extractive based development in Latin America. A good example is the case of “Mujeres Defensoras de la Pachamama” in Ecuador and “Fuerza de Mujeres Wayuu” in Colombia. See also, International Women and Mining Network, “Women from Mining Affected Communities Speak Out: Defending Land, Life & Dignity” (2010), online <<http://landportal.info/sites/default/files/2010rimmwomenspeakout.pdf>>

consequences in triggering community mistrust, dysfunctionality and fragmentation are deeply affecting individual and community wellbeing. To do this I will take as a starting point Sarah White's definition of wellbeing as a relational concept that connects the material to the subjective and builds over time through relationships in society.¹⁹ My view is that human rights interventions concerned with wellbeing in La Oroya, should not be limited to the health vs. work dilemma. Rather, human rights interventions need to look at such dilemmas as part of broader community contexts that have been historically affected by pollution, economic exploitation and conflict. To enhance La Oroya's wellbeing thus requires a holistic approach that reconnects with and facilitates means to reconcile community relationships. Participatory research and action in wellbeing assesment can open spaces for community members to reflect more carefully upon their collective destiny and aspirations for future generations in La Oroya.

¹⁹ Sarah C. White, "Analysing Wellbeing: A Framework for Development Practice" (2010) 20:2 Dev. in Practice 158.

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Appendix 1

Interview Guide with Group B (Human Rights Activists)

“A Capability-Oriented Model of Human Rights: A Case Study of the Mining Community of La Oroya, Perú”

(*) The questions were tailored to make sense given the different living realities for human rights activists living inside and outside La Oroya.

Respondent # (Anonymous code):

Gender:

Age:

Date:

Start:

End:

Personal Background:

Q1: Where were you born?

Q2: Are you still living in your place of birth? If not, how long have you been living in this new city/town?

Q3: Why did you migrate?

Q4: What is your marital status?

Q5: What does your partner do for a living (If applicable)?

Q6: Do you have children? How many? What are their ages?

Living Situation:

Q7: What is your current living situation?

- a. Rent a house or apartment
- b. Own a house or apartment
- c. Living in the house of a family member
- d. Other, please specify

Q8: How many members of your family live with you?

Education and Training Background:

Q9: What was the highest grade of school that you completed?

Q10: Do you have any other education/training in addition to grade school? If so, why did you choose this particular training or education?

Current Work Situation:

Q11: Are you currently employed? If so, is your current job related to your area of expertise?

Q12: How would you describe your level of happiness or satisfaction with your current job?

- a. Very happy
- b. Mostly happy
- c. Somewhat happy
- d. Somewhat unhappy
- e. Mostly unhappy
- f. Very unhappy

Q13: What portion of your salary contributes (or contributed) to household expenses?

Q14: How many members of your family depend upon you economically?

Your Health:

Q15: In the last 3 years, how would you rate your physical health?

- a. Excellent
- b. Very good
- c. Good
- d. Fair
- e. Poor

Q16: How often have you felt physically, mentally or emotionally unwell?

- a. Never
- b. Not often
- c. Sometimes
- d. Very often

Q.17: When was the last time you used public/private health care services?

Q.18: When you use health care services, do doctors and/or nurses treat you with respect? If not, what actions have you taken to rectify this situation?

Q.19: Thinking about the amount of stress in your life during the last 3 years, would you say that most of the time you are:

- a. Not at all stressed
- b. Somewhat stressed
- d. Quite stressed
- e. Extremely stressed

Q.20: What is your main health concern and priority at this time?

Activism in/for La Oroya:

Q.21: When was the first time you heard about the mining community of La Oroya?

What or who was the source of this information?

Q.22: Why did you or your organization decided to do advocacy work for La Oroya? (i.e. why La Oroya and not a different mining community in Peru?)

Q.23: Did you have any personal motivation to advocate for the case of La Oroya? What is/was your motivation?

Q.24: What was/has been the nature of your involvement in the case of La Oroya? What type of assistance have you provided to this community?

Q.25: From your experience working with this community, what similarities do you see in people who identify themselves as being members of the community of La Oroya? What do you think are some of the differences?

Q.26: Since the date you started your advocacy work for protecting human rights in La Oroya, what are the changes or transformations that you have observed in this community (i.e: increases in social tension, distrust, stigmatization, economic hardship, etc.)

Q.27: If you have provided any support in terms of legal actions to protect human rights in this community:

- a. What human rights have you or your organization identified as being violated in this community? In what way?
- b. What positive concrete changes have these legal actions advanced so far for this community? (i.e: victories at the court room, policy changes, etc.)
- c. If these legal actions have not resulted in substantial positive changes, could you identify and explain the potential reasons for this failure?
- d. What are the long-term expected outcomes that these legal actions will bring to this community?

Q.28: What have been the major challenges you have faced while working within this community?

Q.29: How have you dealt with the challenge of advancing human rights activism that favors the health and environment in La Oroya with the knowledge that a great deal of the population is opposed to these actions? How has this opposition affected your work in this community?

Q.30: Did you ever anticipate the emergence of social fragmentation in La Oroya between those who defend population health/environment and those who defend their job opportunities in mining?

Q.31: What type of safeguards did you or your organization take to prevent people who legally claimed the defense of population health from being socially stigmatized or psychologically affected by those who defended their right to gainful employment opportunities or the opposite?

Q.32: Are you still working for the case of La Oroya? If not, could you explain why?

Q.33: What is your opinion about the level of involvement of the Peruvian Government in the case of this community?

Q.34: How do you see the future of La Oroya in light of the current closure of the Smelter?

Q.35: What are the lessons that the case study of La Oroya has brought to your work?

Q.36: What are the lessons that the case study of La Oroya has brought to your understanding of the meaning of human rights?

Q.37: What are the lessons that the case study of La Oroya has brought to your life and your understanding of being Peruvian?

Q.38: Is there anything else would you like to tell me in relation to the case of this community?

Appendix 2

Interview Guide with Group C (Public Functionaries)

“A Capability-Oriented Model of Human Rights: A Case Study of the Mining Community of La Oroya, Perú”

(*) The questions were tailored to reflect the participant’s role.

Respondent # (Anonymous code):

Gender:

Age:

Date:

Start:

End:

General Questions

Personal Background:

Q1: Where did you were born?

Q2: Are you still living in your birthplace? If not, how long have you been living in this new city/town? Years _____

Q3: Why did you migrate?

Q.4: What is your marital status?

Q5: What does your partner do for a living (If applicable)?

Q6: Do you have children? How many? Ages?

Living Situation

Q7: What is your current living situation?

- e. Rent a house or apartment
- f. Own a house or apartment
- g. Living in the house of a family member
- h. Other, specify

Q8: How many members of your family live with you?

Education and Training Background:

Q9: What was the highest grade of regular school that you completed?

Q10: Do you have any other education/training in addition to grade school? If so, why did you choose this particular training or education?

Current Work Situation:

Q11: Are you currently employed? If so, is you current job related to your area of expertise?

Q.13: In what public or private institutions have you worked in the last 5 years?

Q12: How would you describe your level of satisfaction with your current job?

- g. Very satisfied
- h. Mostly satisfied
- i. Somewhat satisfied
- j. Somewhat unsatisfied
- k. Mostly unsatisfied
- l. Very unsatisfied

Q13: What portion of your salary contributes (or contributed) to household expenses?

Q14: How many members of your family depend upon you economically?

Your Health

Q15: In the last 3 years, how would you rate your physical health?

- f. Excellent
- g. Very good
- h. Good
- i. Fair
- j. Poor

Q16: How often have you felt physically, mentally or emotionally unwell?

- e. Never
- f. Not often
- g. Sometimes
- h. Very often

Q.17: When was the last time you used public/private health care services?

Q.18: When you use health care services, do doctors and/or nurses treat you with respect?
If not, what actions have you taken to rectify this situation?

Q.19: Thinking about the amount of stress in your life during the last 3 years, would you say that most of the time you are:

- a. Not at all stressed
- b. somewhat stressed
- d. Quite stressed
- e. Extremely stressed

Q.20: What is your main health concern and priority at this time?

A) Sample Questions to the Director of the Peruvian Supervisory Board for the Investment in Energy and Mining Projects (a.k.a. "OSINERGMIN" in Spanish)

Q.21: Could you please explain how the process of the supervision of mining activities complies with Peruvian environmental law and regulatory instruments?

Q.22: To what extent does OSINERMING interact with individuals and communities living in mining towns in order to be informed and collect evidence about cases of environmental pollution? Is there any established procedure to be followed for this purpose?

Q.23: What are the positive changes in terms of environmental protection and population health that have been advanced since the creation of OSINERMIN (2007)?

Q.24: In the specific case of La Oroya, could you explain how the performance of the Smelter operator, DOE RUN has been?

Q.25: What were/are this company's arguments for delaying the implementation of the "environmental management and mitigation plan for La Oroya" (a.k.a. "PAMA" in Spanish)? How much of this plan was implemented and what is still required?

Q.26: If the negative environmental consequences derived from the delay in implementing the "PAMA" were widely known, why did the Peruvian Government concede to several deadline extensions to DOE RUN?

Q.27: What is the current legal situation for DOE RUN?

Q.28: Is there anything else that you would like to tell me in relation to the case of La Oroya?

B) Sample Questions to the Director of the "Peruvian Program for Medical Treatment to People affected by Metal Contamination and other Chemical Substances"

Q.21: What motivated the creation of this program in 2008?

Q.22: What is/ has been the selection criterion used to place settings and/or populations at risk?

Q.23: Could you explain what type of activities and actions are being implemented to help prevent and control the metal contamination problems in Peru? What has been done for individuals who have been affected by metal contamination?

Q.24: In the specific case of the community of La Oroya, what actions have been taken to treat people suffering from lead poisoning? Cadmium? Arsenic?

Q.25: Can you describe the group of individuals that these actions are meant to benefit? What are the criteria being used to select and/or prioritize treatment for the population in La Oroya?

Q.26: There is important scientific evidence regarding the strong correlation between cadmium and arsenic in the blood with the occurrence of cancer in human beings. What type of actions has the government taken so far to timely diagnose and treat potential cases of cancer in La Oroya?

Q.27: To what extent does this program coordinate efforts with other governmental organizations for better public service in the prevention of environmental and health risks? What is the process of coordination/articulation of these actions?

Q.28: In your opinion, what are the lessons the government has learned from the case of La Oroya?

Q.29: Is there anything else that you would like to tell me in relation to the case of La Oroya?

C) Sample Questions to the Peruvian Ministry of Labor

Q.21: What are the actions that the Peruvian Government is taking to reduce the social impact of closing the Smelter in La Oroya?

Q.22: Could you please explain in what the program of “labor reconversion” to reinsert mining workers into new job opportunities consists of? When is it planned to start?

Q.23: Does the Ministry of labor have a formal process of consultation that ensures the inclusion of union representatives, community groups and regional/municipal government in the decision making process with regard to the “labor reconversion” in La Oroya?

Q.24: If not, to what extent have the concerns and needs of the affected mining workers in La Oroya been taken into consideration in the design of this plan? Which actors were consulted informally?

Q.25: How many mining workers are being reported to benefit from the implementation of the plan?




Q.26: There is a latent possibility that the “labor reconversion” plan will lead to the displacement of some individuals from La Oroya. If this is the case, to what extent have the psychological and socio-economic consequences of this situation been taken into consideration? What is the plan to deal with such consequences?

Q.27: How will the success of this plan be monitored and evaluated?

Q.28: Is there anything else would you like to tell me in relation to this plan?

Appendix 3

Informe 045-2010-DGSP-ESNAPACMPOSQ/MINSA




 DECENTIO DE LAS PERSONAS CON DISCAPACIDAD EN EL PERU
 "Año de la Consolidación Económica y Social del Perú"

INFORME N° 045 - 2010-DGSP-ESNAPACMPOSQ/MINSA

A : Dr. CARLOS ACOSTA SAAL
 Director General
 Dirección General de Salud de las Personas.

ASUNTO : Solicitud de información por particular.

REFERENCIA : Expediente 10- 097489-001 10-097489-002

FECHA : Lima, **23 DIC 2010**

Por medio del presente, me dirijo a usted para saludarlo cordialmente y en relación al asunto de la referencia, expresar lo siguiente:

I. ANTECEDENTES:

Con Carta S/N de particular, Areli Valencia Vargas, solicita información a la ESN de Metales Pesados:

- Objetivos de vuestra oficina para atender y tratar a la población de la comunidad metalúrgica de La Oroya (Yauli-Junin).
- Metodología y procedimientos empleados para establecer diagnósticos de contaminación por metales pesados en el caso de la población en la Comunidad de La Oroya.
- El número de miembros de la Comunidad de La Oroya que vienen siendo atendidos.
- El número total de atenciones y el tipo de tratamiento brindado desde la creación de vuestra oficina a la fecha en el caso de la población de la Comunidad de La Oroya.
- El nombre y lugar de las instalaciones hospitalarias donde se llevan a cabo las atenciones de salud. De llevarse a cabo fuera de la Comunidad de La Oroya, incluir quién asume los gastos de traslado, alojamiento y alimentación.
- Si existe o se tiene proyectado la elaboración de estudios epidemiológicos en La Oroya que determinen la relación de causalidad entre plomo en sangre y la ocurrencia de diversas enfermedades.

II. ANÁLISIS:

- a. La Estrategia Sanitaria Nacional de Atención a Personas Afectadas por Contaminación con Metales Pesados y Otras Sustancias Químicas cuenta con objetivos y líneas de acción, que se encuentran a plena disposición del público en general, a través de la página Web del Ministerio de Salud, en el siguiente enlace electrónico: http://www.minsa.gob.pe/portada/est_san/cmposq.htm. Siendo, el objetivo principal lograr acciones conjuntas y articuladas en forma intrasectorial e intersectorial en post de la prevención y control de actividades contaminantes con la finalidad de mitigar la mortalidad, morbilidad y discapacidad de las personas expuestas por la contaminación con metales pesados, metaloides y otras sustancias químicas.
- b. La metodología para la definición de los diagnósticos están consignadas en la Guía de Práctica Clínica de manejo de personas con intoxicación por plomo aprobada con RM N° 511-2007/MINSA, criterio del médico especialista. Vale precisar esta metodología no solo se aplica en la población de La Oroya si no en todo el País.
- c. La ciudad de La Oroya cuenta con un Centro de Salud Nivel IV y un Hospital de Categoría Nivel II, debidamente implementada, instituciones que garantizan la atención médica a la población en general.



DECENIO DE LAS PERSONAS CON DISCAPACIDAD EN EL PERU
"Año de la Consolidación Económica y Social del Perú"

- d. En el marco de la descentralización, el Ministerio de Salud tiene un rol normativo, de asistencia técnica y acompañamiento, mas no brindar atenciones médicas ni establecer tratamientos, quedando ello en potestad a los Gobiernos Regionales y locales bajo la normatividad vigente. Durante el 2008 y 2009, se realizaron 338 y 409 respectivamente haciendo un total de 747, de 21 especialidades a un grupo de 64 personas, sin evidenciar un daño de órgano blanco si no manifestaciones clínicas diversas.
- e. Las instituciones donde se realizan las evaluaciones médicas especializadas, en casos especiales o casos de intoxicación por metales pesados son el Instituto Nacional de Salud, Instituto Nacional de Salud del Niño, Hospital Nacional Arzobispo Loayza., todos ellos con un máximo nivel de resolución.
- f. Respecto a los proyectos de elaboración de estudios, manifestar que no es precisamente una función de esta oficina hacer estudios de investigación, para ello existe el Instituto Nacional de Salud y la Dirección General de Epidemiología; sin embargo como ente articulador se trabaja de modo coordinado y al momento no se ha definido hacer investigaciones de causalidad, ya que sus aplicación amerita años de estudio y observación implicando un alto costo que no se dispone al momento.
- g. La vigilancia epidemiológica en la Comunidad de La Oroya forma parte del reforzamiento de la vigilancia regular en 12 establecimientos de la Microrred La Oroya, en coordinación con la Oficina de Epidemiología de la red Jauja y la Dirección de Epidemiología de la Dirección Regional de Salud de Junín. Asimismo se ha capacitado al personal de salud de la Microrred – La Oroya en la vigilancia epidemiológica de determinantes de riesgo por exposición e intoxicación por metales pesados.

III. CONCLUSIONES

- El Ministerio de Salud como órgano rector, establece los lineamientos de atención en salud siendo las Direcciones Regionales de Salud las encargadas de implementar las Estrategias de atención.
- La definición del manejo de un paciente con intoxicación por plomo esta sujeta a criterios establecidos en la Guía de Práctica Clínica de manejo de personas con intoxicación por plomo aprobada con RM N° 511-2007/MINSA.
- Según lo coordinado con la Srta. Areli Valencia, se envía la información requerida vía correo electrónico y en medio fisico.

RECOMENDACIONES

- Se sugiere de considerarlo necesario solicitar información complementaria a la Dirección Regional de Salud de Junín.

Sin otro particular, es propicia la ocasión para renovar a usted los sentimientos de mi mayor consideración.

Atentamente,

Appendix 4

Interview Guide with Group A (Members of the Community of La Oroya)

“A Capability-Oriented Model of Human Rights: A Case Study of the Mining Community of La Oroya, Perú”

Respondent # (Anonymous code):**Gender:****Age:****Date:****Start:****End:****Personal Background:**

Q1: Were you born in La Oroya? If not, why did you migrate to La Oroya?

Q2: How long have you been living in La Oroya? Years _____

Q3: What is your marital status?

Q4: (If applicable) What does your partner do for employment?

Q5: Do you have children? How many? What age(s)?

Living Situation:

Q5: What is your current living situation?

- i. Rent a house or apartment
- j. Own a house or apartment
- k. Living in the house of family members
- l. Other, please specify

Q6: How many members of your family live with you?

Q7: How are household tasks distributed within your family? (cleaning, cooking, child care, other tasks)

Education and Training Background:

Q8: What was the highest grade of school that you completed?

Q9: Do you have any other education/training in addition to non post secondary schooling? If so, why did you choose this particular education and/or training?

Current Work Situation:

Q10: Are you currently employed? If so, is your current job related to your area of expertise?

Q11: How would you describe your level of satisfaction with your current job?

- m. Very satisfied
- n. Mostly satisfied
- o. Somewhat unsatisfied
- p. Mostly unsatisfied
- q. Very unsatisfied

If Unemployed:

Q12: How long have you been unemployed and what are the reasons that you lost your job?

Q13: What are you doing to support yourself and/or your family economically?

Q14: Could you please tell me what type of actions are you undertaking to return to the labor market?

Q15: What portion of your salary contributes (or contributed) to household expenses?

Q16: How many members of your family depend upon you economically? Why?

Q17: Could you tell me how being unemployed is affecting your life and the life of your family?

Your Health:

Q18: In the last 3 years, how would you rate your physical health?

- k. Excellent
- l. Very good
- m. Good
- n. Fair
- o. Poor

Q19: How often have you felt physically, mentally or emotionally unwell?

- i. Never
- j. Rarely Sometimes
- k. Often
- l. Always

Q20: If you ever feel physical pain, what type of pain is it?

Q.21: When you feel physical pain or suffer from emotional distress, what do you do to cope with it?

Q.22: When was the last time you used health care services? For what reason or reasons?

Q.23: When you use health care services, do doctors and/or nurses treat you with respect? If not, what actions have you taken to rectify this situation?

Q. 24: Have you been diagnosed with any type of illness and/or disease that requires ongoing medical treatment? If so, are you following the treatment and if not, could you explain why?

Q. 25: In your work history, have you ever suffered from a physical or psychological problem that was either related to your job tasks or happened while working? If so, what happened? Did you receive prompt medical attention? How did you cope with the situation?

Q. 26: Thinking about the amount of stress in your life during the last 3 years, would you say that most of the time you are:

- a. Not at all stressed
- b. Not very stressed
- c. Slightly stressed
- d. Quite stressed
- e. Extremely stressed

Q.27: What is your main concern and priority at this time?

Your children's health (if applicable):

Q.28: How would you rate the health of your children?

Child Age	Excellent	Very good	Good	Fair	Poor

Q.29: Looking back over the last 3 years, how often has/have your children felt unwell?

Child Age	Very Often	Often	Sometimes	Rarely	Never

Q.30: If he/she has experienced health problems now or in the past, what was the diagnosis? Did he/she receive medical treatment?

Q.31: How satisfied are you with the medical attention or treatment your children receive? Why?

Q.33: Please tell me about the things that made it difficult or discourage you from seeking medical treatment for you, your children or other members of your family.

Your Values:

Q.34: What are the things that you value the most and regard as necessary to achieve a good quality of life? Why?

Q.35: In a prioritized list, how would you rank the things that you value? Why?

Q.36: If you had to sacrifice some of these things in order to preserve others, what would you be willing to sacrifice? Why?

Your Needs:

Q.37: How satisfied are you with what you have achieved in your life so far?

- a. Very satisfied
- b. Modestly satisfied
- c. Not satisfied at all

Q.38: What else would you need to have or to do in order to be more satisfied with your life? Why?

Q.39: How satisfied do you think other members of your family/community are with their lives? Why?

Q.40: What do you think they need to have or do in order to be more satisfied with their lives or to improve their quality of life?

Your Expectations:

Q.50: What is the future you envision for your family?

Q.51: What is the future you envision for your community?

Q.52: How do you think other members of your community would envision a future for you and your family?

Community Identity:

Q.53: In your opinion, what criteria identify people from La Oroya?

Q.54: What are the things that you like and value the most about living in La Oroya?

Q.55: What things do you believe other members from La Oroya value the most about living in La Oroya?

Q.56: What are the things that you dislike about living in La Oroya? What would you do to change them?

Q.57: If you had the chance to move from La Oroya, would you do it? Why?

Community Social Struggles:

Several national and international studies in the last few years have reported high levels of environmental contamination in La Oroya produced by the mining activity:

Q.58: When was the first time that you heard about environmental pollution in La Oroya? How did you feel about this news at that time?

Q.59: How has this situation affected your life?

Q.60: How do you think that this situation has affected the lives of other people in La Oroya?

Q.61: Who do you think is most affected by this contamination? Why?

Q.62: Could you please describe your experiences in La Oroya when the contamination reached its highest levels? What did you do to change this situation?

Q.63: Has this contamination affected you or other members of your family physically? How?

Q.64: Are you aware or have you received information about the potential health hazards of lead poisoning, cadmium and arsenic in human blood?

a. If yes, could you please share the source of the information you received?

b. If not, who do you feel should provide you with such information?

Closure of the Smelter

It has been widely reported by the media that the systematic delaying of the current operator DOE RUN to implement the “Environmental Management and Mitigation Plan for La Oroya” lead to the governmental decision to close the smelter:

Q.65: Did you know or were you informed about the reasons why DOE RUN delayed the implementation of that Plan?

Q.66: What is your opinion about the performance of the DOE RUN company in terms of social responsibility within your community?

Q.67: What do you think about the government decision to close the Smelter?

Q.68: Are you aware of the content of the governmental plan to relocate mining workers from La Oroya to other mines?

Q.69: Has the closure of the Smelter affected your life? If not, do you think it will affect your life in the future?

Q.70: How do you think the closure of the Smelter has/will affect other people living in La Oroya?

Q.71: What other economic activities would people have access to in La Oroya to support themselves?

Q.72: if you do not think this decision meets the needs or expectations for people in La Oroya, what do you think should have been done instead?

Q.73: How do you imagine La Oroya in 5 years?

Q.74: How would you like La Oroya to be in 5 years?

Q.75: Is there any other concerns, feeling or comment that would you like to add to this interview?

Appendix 5

Consent Form Model (Group A: Members of the Community of La Oroya)

“A Capability-Oriented Model of Human Rights: A Case Study of the Mining Community of La Oroya-Peru”

You are invited to participate in a study entitled, “A Capability-Oriented View of Human Rights: A Case Study of the Mining Community of La Oroya, Peru” that is being conducted by Areli Valencia.

I am a graduate student in the Faculty of Law at the University of Victoria (UVIC) and you may contact me if you have further questions by e-mail at areliv@uvic.ca.

As a graduate student, I am required to conduct research as part of the requirements for a degree of Doctor of Laws (PhD). It is being conducted under the supervision of Professor Hester Lessard (Faculty of Law- UVIC), and Professors Cecilia Benoit (Department of Sociology-UVIC) and Laura Parisi (Department of Women’s Studies-UVIC). You may contact my main supervisor, Hester Lessard, at (1)(250) 721-8164, or by email at hlessard@uvic.ca.

I hold a Canadian Graduate Scholarship sponsored by the Social Science and Humanities Research Council of Canada (SSHRC). This research is also being funded by the University of Victoria - Graduate Studies.

Purpose and Objective

The purpose of this research project is to collect lived experiences and insights from community members of La Oroya regarding their needs, social struggles, values, expectations and obstacles impeding the improvement of the quality of their lives. The reason for collecting this data is to inform my research on the extent to which human rights violations in this community reflect the decrease in the range of opportunities for community members to make life decisions at the individual and collective level. More specifically, this data will provide valuable information to enable a better understanding of the extent to which the history of a long-standing mining tradition has transformed people’s lives and social relationships in this community. Dependency on mining activity has exacerbated the susceptibility to domination by political and economic powers, which has resulted in social conflicts and impediments to the realization of essential human rights for this community –i.e. the right to health, environment and the right to enjoy of job opportunities-.

Importance of this Research

Understanding human rights violations in terms of their impact on the well-being of people from La Oroya is crucial to critically evaluate how responsive and/or connected, if at all, the Peruvian social, economic and environmental policies and laws are to the expectations and the needs of people from La Oroya. Whereas important studies have focused mainly on denouncing *consequences* of human rights violations in this community, my study seeks to contribute to these studies and the literature on human rights in general, by advancing a complementary framework to evaluate human rights violations that focus on the extent to which such human rights violations are historically, socio-economically and institutionally determined.

Participants Selection

You are being asked to participate in this study because, as a resident of the community of La Oroya, your insights and lived experiences are valuable and play a central role in this project.

What is involved?

If you agree to voluntarily participate in this research, your participation will include meeting with me for an interview lasting approximately 1-1.5 hours, during which I will ask you questions about your values, goals, needs, struggles faced by your community, and your expectations for the future in La Oroya. The interview will be scheduled at a time and place that is convenient for you. Prior to starting the interview, I will ask your permission to digitally record your responses. During the interview I will also take hand-written notes. If necessary, I might contact you again for a follow up interview.

Voluntary Participation

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will not be used or will be used only if permission is given by you.

Anonymity

If you agree to participate, your identity will be protected. For this purpose, rather than using your name I will employ numeric and anonymous codes.

Confidentiality

In order to preserve your anonymity, privacy and the confidentiality of your responses, I will store the digitally recorded interviews, transcripts and interview notes in a secure location such as locked cabinet and/or password protected electronic files on my personal computer. No one other than me will have access to this information.

Risks

As a researcher, I am aware of the struggles community members from La Oroya face in order to protect their health and environment vs. the defense of employment opportunities, which are directly and indirectly related to mining activity. I am also aware of the social tension and lack of trust this situation has created among community

members who actively defend one of these positions. If you are afraid that your participation may cause you emotional stress or discomfort, you should be aware that this is an independent academic study that seeks to capture and understand a diverse range of perspectives in this community. Thus, it will provide space for both major concerns of this community –health and work- to be heard. In addition, your participation and confidentiality of responses will be protected in order to avoid or minimize any potential risk.

Benefits

The potential benefits of your participation in this research include the opportunity to voice your values, needs and expectation for improving your quality of life both as an individual and as part of the community of La Oroya. In doing so, this study will promote individual and community values and expectations for a life of well-being and the goal is to influence the thoughts that these are important considerations when designing and implementing social and economic policies in Peru. Moreover, this study will create increased awareness about how the historical, socio-economic and institutional factors create the space and function as the root causes for human rights violations in La Oroya, and the extent to which these factors place significant barriers for you and your community to improve their quality of life.

On-going Consent

To make sure that you continue to consent to participate in this research, I will ask you to sign the consent form each time I meet you.

Dissemination of Results

It is anticipated that the results of this study will be shared with others in the following ways: dissertation and/or published articles or a monogram and/or presentations at scholarly meetings. Upon your request, you can also have access to a summary of my research results once the analysis of the data collected is complete. In order to ensure accountability to your community, my ultimate goal is to publically present the conclusion and recommendations made in my dissertation in La Oroya immediately after my oral examination in Canada.

Disposal of Data

Data from this study such as digital-recorded interviews and interviews notes will be destroyed upon the completion of the PhD dissertation, publishing of the book monogram based on the PhD project in question or after publication of subsequent academic papers.

Contacts

Individuals that may be contacted regarding this study include Ms. Areli Valencia, the principal investigator, and the project supervisor, Prof. Hester Lessard. Contact information for both has been provided on page one of this consent form. In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria at (250) 472-4545 or ethics@uvic.ca.

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researchers.

Name of Participant

Signature

Date

A copy of this consent will be left with you, and a copy will be taken by the researcher.

Appendix 6

Map on the Recruitment Process in La Oroya

