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Entanglements of Firm Size and Country of Origin with Mining Company Reputational Risk in Guatemala

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In this paper I develop two interrelated arguments around the idea of reputational risk within the mining sector as a valuable way of approaching mining conflicts. First, I argue that smaller mining companies (juniors) are more risk-tolerant than large firms (seniors) and thus thrive under conditions of institutional weakness and violence. I support this assertion by looking at mining activity in Guatemala from 1999 to the present. In so doing I observe two distinct historical periods. The first period, from 1999-2008, was characterised by the consolidation of larger and larger mining companies over the control of Guatemala's mineral stocks. The second period, as mining grew riskier in Guatemala—both in investment terms and personal security terms—from 2008 to the present, has been characterised by the divestment of senior companies and turning the mineral landscape of Guatemala back over to risk-tolerant junior companies. The second argument I advance herein is that the national origins of the company are tangled up in firm behaviour. The integrity and productiveness with which companies engage with host communities and police their environmental impacts maps onto the geographies of origin of these firms, in the Guatemalan case.

Key words: Mining industry, Guatemala, corruption, junior companies, reputational risk

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Introduction

This paper focuses on the firm. Much of the literature around mining conflicts in Latin America takes the host community as the locus of attention and frames these conflicts around themes of resistance (Gustafson and Guzman 2016). But resistance to what? Such a focus leads to a tendency to overlook and under-theorise company behaviour (Ballard and Banks 2003, Franks et al. 2014). Further, much of the scant literature that does focus on the firm does so at the level of the industry or the value chain rather than within these landscapes of conflict around mine sites (e.g., Bridge 2008, Humphreys 2015).

This paper interrogates key aspects of mining company bad behaviour on the ground in host communities. Much of my work has been an effort to bring firm size, as an analytic lens, into the literature on mining conflicts—as both a theoretical and empirical project. I elaborate this conceptual framework in a 2013 article in *Competition & Change* (Dougherty 2013). I have since sought to demonstrate the utility of this framework in a variety of applications such as analysing corruption in the mining industry (Dougherty 2015), the role of Canadian companies and the Canadian state (Dougherty 2016) and companies' use of international investment dispute arbitration against host states (Anderson, Perez-Rocha and Dougherty 2016). This paper, as a continuation of these efforts, aims to deepen this project by looking at the entwinement of reputational risk, corruption, company nationality and firm size.

The next section, by way of providing some background, briefly traces the origins and character of the mining boom in Latin America of the past two decades. The third section traces the recent history of mergers and splintering of mining companies operating in Guatemala. The fourth section highlights the connections between national origins, corporate culture and company behaviour in Guatemala. The final section briefly summarises and weaves together the central themes of the paper with a view to implications and next steps.

This paper is based on 23 interviews conducted between 2009 and 2014 with representatives of the mining industry, including mining company managers and geological/environmental consulting firms that contract with mining companies as well as with representatives of state ministries that oversee mining—the Ministry of Energy and Mines and the Ministry of Environment and Natural Resources.

The New Extraction in Latin America and Guatemala

Since the 1990s, increased demand for natural resources, along with technological innovation in production, and the liberalisation of FDI regimes, has led to substantial increases in mineral development across the global south. No region has experienced this phenomenon more acutely than Latin America. Latin America's share of global mining investment increased from 10% to 25% between 2003 and 2012, rendering the region the chief mining exploration investment target in the world (Jamasmie 2012). Mineral rents across the region increased from around half of one percent of GDP in 2001 to nearly three percent by 2011, an increase of over 400% (World Bank 2016). Ore and metal exports in Latin America doubled from 5% of all merchandise exports in 2001 to 10.2% in 2011 (World Bank 2016). While the increase in mineral activity has led to a corresponding increase in mining conflicts between companies and host communities across the developing world, such conflicts are particularly intense and numerous in Latin America (Viscidi and Fargo 2015). By one count there have been 212 mining conflicts in Latin America since the 1980s, 73% of which began after 2000 (Observatorio de Conflictos Mineros de América Latina 2015). Gold producers are particularly apt to spark conflict. A Price Waterhouse Coopers (2012) report, for example, states that labour strikes are most common at gold sites.

An assemblage of factors has contributed to these shifts in the geography and methodology of production and the resultant conflicts. Most traditional, large-scale mineral deposits passed peak production over the past few decades. In the late 1990s metals prices were near all-time lows (e.g., copper, gold, and bauxite) at the same time as governance environments in the global north were tightening, representing added costs for mining firms[1]. These forces pushed mining companies to seek lower cost, non-traditional investment targets, finding these in the newly liberalised states of Latin America, among other regions.

As the first wave of the boom in mining investment was coming under production, around 2004, commodity prices were recovering and gaining considerable momentum. This was partly due to intensified industrialisation in the BRICS countries (Brazil, Russia, India, China and South Africa) and partly from increased demand for precious metals as a store of wealth in the run up to the great recession. These supply and demand side induced scarcities drove innovation in mining and milling techniques that allowed for less concentrated and lower grade mineralisation to be commercially mined and gave rise to a "new great game" for geostrategic control of resource streams (Humphreys 2015, Donelly and Ford 2008, Dougherty 2016). Further, the financialisation of mining firms and shareholder capture by institutional investors over the past decade has catalysed a turn toward maximising shareholder value in the upper tiers of the gold mining industry. This led to expansion during the bull years (2004-2011) and cost cutting around mine sites and repatriation of profits for shareholder returns rather than reinvesting these in host territory as the price of gold fell. These factors have intensified competition leading to cost cutting measures in the "secondary" areas of environmental and social management, or what some industry experts have euphemistically called “slimmed down control environments” (Ernst and Young 2010:2).

The intensification of mining activity in Latin America came incongruously bundled with the so-called left turn in Latin American politics (Petras and Veltmeyer 2009). This led to the singular paradox of the new Latin American left—how to harness the momentum in extractive investment without sacrificing progressive political goals. The “new extractivism” development model arose out of efforts to address this paradox (Burchardt and Dietz 2014, Gudynas 2009, Veltmeyer and Petras 2014). This model manifested itself in certain states’ blanket rejection of hardrock mining (e.g., Costa Rica and El Salvador) and other states’ rejection of certain projects that failed to meet environmental litmus tests (e.g., Bolivia). Successful efforts to raise taxes and royalty rates and even enter into public/private partnerships and cost-sharing agreements have also accompanied these efforts (Heidrich and Ortiz-Loaiza 2016). Burchardt and Dietz (2014) enumerate the attributes of this model including poverty reduction, increasing social participation, diversifying local economies and guaranteeing political stability. Related to this effort to harness mineral resources as an engine of socially inclusive, progressive development came a return to resource nationalism and an intensification of the association between resource patrimony and national identity (Haslam and Heidrich 2016, Himley 2014, Perreault 2013).

These shifts in the mining industry and its relation to states and civil societies—variously referred to as the “extractive industries super cycle” (Bebbington and Bury 2013, Humphreys 2015) the new extraction (Bebbington 2009, Deonandan and Dougherty 2016) or the new extractivism (Veltmeyer and Petras 2014)—have galvanised resistance to mineral development in new mining territories and brought about a surge in attention to the mining industry among researchers, policy makers, journalists and activists in recent years (Bebbington 2015). The scholarship of extractive industry is experiencing a windfall. For example, a search for the phrase “mining conflicts” in Google Scholar for articles published between 2000 and 2007 yields 714 results. The same search for articles published between 2008 and 2015 yields 1300 results.

Yet, there are signs that the mining boom in Latin America is beginning to taper off. Since 2011, mineral production has lost some momentum in the region. Metals prices recovered quickly in the aftermath of the great recession of the late 2000s but began to decline again in 2013. Ore and metal exports dropped from a high of 10.2% of merchandise exports in 2011, to 8.2% by 2014. This trend has continued, with metals prices in 2015 back to where they were in 2005. Fuel prices have experienced a more precipitous drop, beginning in 2014. As a result, mining economies in many parts of Latin America have lost dynamism. Mining in Latin America is no longer booming, but does seem to have plateaued without busting entirely.

Nowhere have these dynamics of the new extraction been more acute than in Guatemala. I turn below, therefore, to the specifics of the Guatemalan case. Guatemala is an extreme case of the new extraction. Ore and metal exports increased in Guatemala from 1% of total merchandise exports in 2001 to 9.6% in 2011. Whereas, across Latin America, this figure grew by 100% over the decade of the aughts, in Guatemala that same measure grew by nearly 1,000%.

As with the rest of the region, the surge of mineral investment and production in Guatemala has provoked conflict. Mining conflicts in Guatemala, in fact, have proven particularly protracted and violent, as one might expect given the extreme inequality, the pervasive impunity, the quotidian violence from gangs and narcotraffickers, and above all, the incapacitated state apparatus shot through with corruption and crime.

Mergers, Acquisitions, Spin-offs and Fire Sales: Firm size and Production Structure in Guatemala

Mergers, Accountability and Corruption Red Flags

Junior mining companies are small, little capitalised firms that focus on exploration rather than production, possess no or few production sites, and possess assets in the lower six figures. I have argued elsewhere that junior companies exhibit greater propensities toward corruption than larger firms and that the division of labour within the mineral production chain is set up to allow these flexible, fly-by-night companies to undertake the stages of production that lend themselves to corruption (Dougherty 2015). Here, I build on and seek to further substantiate these observations by analyzing the recent history of mergers, acquisitions, spin-offs and fire sales among multinational mining firms operating in Guatemala. This history shows that junior companies thrive under conditions of political institutional weakness.

The mining industry undertakes a variety of actions that work to obscure accountability. Parent companies often operate numerous subsidiaries in the countries in which they invest, and naming practices in the mining industry, where parent, subsidiary and mine project each have different names, also work to cloak responsibility. But perhaps mostly importantly, the mining industry is characterised by a large number of mergers and acquisitions. Smaller companies routinely merge with other smaller firms and/or are purchased by larger ones. An Ernst and Young report on corruption in the mining industry (2010: 10) notes that, "To date, more than half of the [United States Foreign Corrupt Practices Act] violations have arisen in the context of a merger or acquisition."

In examining the recent history of mergers and sell-offs in Guatemala, two salient patterns emerge, which can be understood as two separate historical periods. The first period, from 1999 to 2008 is a story of the consolidation of junior and mid-tier companies into senior firms. Such consolidation is characteristic of the mining industry. The second period, from 2008 to the present is a story of the dismantling of senior control of major mine sites in Guatemala in which intensifying controversy and state weakness drive seniors away and produce an enabling environment for small companies with little direct mining experience. These patterns support the observation that junior companies are better suited for weaker, more capricious institutional environments given to corruption and violence.

Two well-documented "red flags" for a mining company's propensity for corruption include lack of transparency around ownership and little previous experience (CIPE 2014: 19). In what follows I demonstrate how mining firms operating in Guatemala exhibit both of these redflags.

Consolidation of Senior Control: Firm Size Patterns from 1999 to 2008

Guatemala is home to four producing gold/silver properties, one large, late-stage gold exploration project, Cerro Blanco, which is currently on hiatus, and two nickel active properties. Three of these properties, the Marlin Mine, the Cerro Blanco Mine and El Escobal, were developed under Glamis Gold and Goldcorp. Canadian junior companies discovered the sites that became the Marlin Mine and the Cerro Blanco mine in the late 1990s, on the heels of the 1997 Mining Law[2].

In 1997, in the run up to and aftermath of Guatemala's new mining law, a small, Canadian company, Mar-West, entered eastern Guatemala from Honduras and discovered the epithermal gold and silver deposit that became the Cerro Blanco mine in Asunción Mita, Jutiapa. Canadian mid-tier firm, Glamis Gold, purchased Mar-West in 1998. At the same time, on the other side of Guatemala, in the rugged highlands of the Department of San Marcos, Vancouver-based junior Francisco Gold was exploring what would become the Marlin Mine, the largest gold mine in Central America. Glamis Gold acquired Francisco Gold in 2002 consolidating control over Guatemala's two main gold properties. As Glamis was bringing Marlin up to full production in 2006, another Canadian firm, Goldcorp, acquired Glamis. This made Goldcorp one of the largest gold production companies in the world and the principal gold producer in Central America.

Goldcorp, just prior to merging with Glamis, had acquired other companies, and was in a moment of flux during its merger with Glamis. Goldcorp had acquired Wheaton River, for example, the year prior, inheriting their San Dimas mine in Mexico. Because Goldcorp was in a period of transition during its acquisition of Glamis, it kept Glamis' management structures largely in place. In the Central America region most of the management stayed the same, and throughout the company most Glamis executives became Goldcorp executives, including the CEO.

Importantly, Goldcorp executives with whom I have spoken claim to not have been interested in Glamis' Guatemalan properties. Ostensibly, the directors made the decision for Goldcorp and Glamis to merge predicated on perceived synergies between their respective Mexican properties. Glamis was developing the Peñasquito Mine and El Sauzal while Goldcorp was developing Los Filos and San Dimas. Goldcorp was interested in Glamis' Mexican properties, particularly Peñasquito, as a source of cash flow. The acquisition of Glamis' Guatemalan properties, the story goes, was of little consideration. However, the Marlin Mine quickly became Goldcorp's most cost-efficient mine, offsetting their more expensive Mexican properties and allowing them to employ the tagline, "the lowest cost gold producer in the world."

Junior companies come and go and few notice, and this is part of the point. A lack of transparency about ownership is a red flag for corrupt behaviour. Francisco Gold, Mar-West, Glamis Gold, and Wheaton River are just a few of the fly-by-night companies that factor into this recent history of metal mining in Guatemala. Mergers, name changes and nested subsidiaries are some of the key ways that the mining industry seeks to obscure the chain of responsibility for aggressive, duplicitous or corrupt behaviours and the controversies and conflicts that stem from these.

Dismantling Senior Control: Firm Size Patterns from 2008 to the Present

The heady feeding frenzy of the early 2000s gradually gave way to division, conflict and rancour as community organisations began to organise against mining projects in their territory and international solidarity networks became aligned with the anti-mining movement. The Catholic Church became vocally involved in opposing mining, and the Guatemalan media picked up on the issue. By 2008, the controversies around mining had become a centerpiece of public discourse across Guatemala. The senior companies that had begun to consolidate control just a few years prior, began to see the writing on the wall and seek exit strategies.

Also in 2008, Álvaro Colom succeeded Oscar Berger as President of Guatemala. The Colom administration was the first left-of-center executive administration in Guatemala in more than half a century, and one of the efforts made during this administration was to provide more technically proficient and robust environmental monitoring and enforcement. For example, under Colom, the Ministry of the Environment became involved in granting of exploration licenses, along with the Ministry of Energy and Mines, to whom this responsibility had traditionally fallen. The Colom administration was also particularly weak, largely because the entrenched, conservative oligarchy blocked its efforts. Both the weakness and the uncertainty around efforts to redouble the environmental regulatory apparatus, served to depress senior enthusiasm. The global financial crash of 2008 may have contributed to the diminished enthusiasm of nickel companies, but the price of gold achieved all-time highs during the early years of the recession. In this section I describe the recent histories of five mine projects in Guatemala that follow the pattern of being developed by small, exploratory juniors, acquired by larger companies—either seniors or mid-tier firms—and subsequently sold off to small companies with little to no direct mining experience. One of the red flags for mining companies at high risk of corruption is having "little relevant experience" (CIPE 2014:20). These junior companies currently operating in Guatemala all share this problematic attribute.

The silver and gold property, El Escobal, in the municipality of San Rafael las Flores, Santa Rosa, is an emblematic case of the pattern of returning properties to junior companies following management by seniors. El Escobal was initially developed by Mar-West and then by Glamis and subsequently Goldcorp. In November of 2009, former Glamis and Goldcorp CEO Kevin McArthur formed Tahoe Resources, a tiny company headquartered in Vancouver for whom El Escobal was, at the time, its only asset. Borrowing heavily from Goldcorp Guatemala staff, Tahoe took over the operation of El Escobal from Goldcorp. Since Tahoe has begun production, El Escobal has been mired in violence and controversy. But during

Goldcorp's management tenure it was not. Viewing the conflict around Escobal through the lens of firm size gives rise to the question of whether this project would have been so contentious had Goldcorp brought it online. Another version of that question might ask whether Goldcorp cleaved off its Escobal project into a separate company because it anticipated controversy? This contrast provides an opportunity to see the differences between how a junior and a senior firm manage the same project, with the caveat that Goldcorp managed Escobal as an early-stage exploration project, whereas Tahoe took it into production.

El Escobal is in the largely mestizo eastern lowlands of Guatemala. This region is culturally and geographically distant from the indigenous Western Highlands where the Marlin Mine is located. Despite being largely mestizo, there is a small but significant population of Xinca people, a non-Mayan indigenous group unique to Guatemala, which predates the Mayan presence in the region. Since 2012, tensions have been high in San Rafael as the Escobal project has begun ramping up production. In March 2013 these tensions allegedly led to the kidnapping of four and the murder of one anti-mining activist. A month later, in April of 2013, company security engaged in a standoff with protestors and fired into the crowd, seriously injuring seven protestors. The head of security, Alberto Rotondo, was caught on tape instructing his employees to shoot protestors and subsequently was caught and imprisoned while attempting to flee the country. Victims of the shooting later became plaintiffs in a lawsuit against Tahoe Resources. Just a month after the shootings, the President of Guatemala, Otto Pérez Molina, declared martial law in the area and deployed riot police to the scene of the ongoing protests. A year later, in April of 2014, further violence led to the death of a protestor. It has been reported that Tahoe Resources has sought to hide these controversies from its shareholders (Lakhani 2014).

When I interviewed Goldcorp Directors and Executives in 2009, just months prior to selling off Escobal, they described it as a "successful" project. By the spring of 2009, Goldcorp had two exploration concessions around the Escobal site and had applied for three more. The tenor of the discourse inside Goldcorp at the time was one of cautious optimism. The cautiousness came from the fact that the Escobal project represented the first time that Goldcorp had solicited exploration licenses from the Colom administration. In the words of one Goldcorp Director:

> Escobal, we are still exploring it actively. We still have hopes, and if we really do find interesting stuff there we will try to permit it. We will prepare an environmental impact study and submit it and we will see what happens. If we cannot get Escobal permitted, then we just won't try anymore. So we are going to have to see. But we will try to permit Escobal. If it turns out to have good results, we will give it a shot.

Despite this rhetoric, barely six months after this conversation, Goldcorp had spun off Tahoe Resources and transferred ownership of El Escobal.

Two hundred miles north and east of El Escobal, in the Caribbean-influenced Department of Izabal, lies the Fénix nickel mine. The history of this mine demonstrates a pattern similar to that of El Escobal. This project was first developed by the International Nickel Company (INCO) in the late 1970s. INCO was the world's largest Nickel producer for most of the Twentieth Century. By the early 1980s, a combination of low metals prices and fallout from the Guatemalan civil war caused the mine to be shuttered. With the mining boom of the early 2000s, however, interest in the project was renewed. First, in 2004, Skye Resources, a Canadian Junior, for whom Fénix was its principal asset, sought to develop the project through their subsidiary, Compania Guatemalteca de Niquel (CGN). They quickly discovered that in the two decades since INCO's departure, the lands had become occupied. Skye Resources' efforts to reopen the mine led to well-documented, violent evictions of peasant squatters, which set the tone for a tense and brief Skye Resources experience in Guatemala. In June of 2008, Canadian mid-tier Hudbay Minerals announced that it had absorbed Skye and touted the great potential of the Fénix project as a "world class project that is capable of near term production, has a 30 year mine life and contains significant opportunity for expansion" (Hudbay 2008). At the time of the acquisition, Hudbay effused in its press release about this opportunity to acquire a nickel project and diversify its portfolio. Three separate law suits were brought against Hudbay in Canadian courts, beginning in 2011, alleging violence against community members perpetrated by representatives of Hudbay. Partly as a result of these suits, three years after Hudbay effused about its new Guatemalan acquisition, it announced the sale of Fénix to the Cypress-based and Russian-financed Solway Group. By way of explanation, Hudbay stated that, "the project does not fit our strategy of focusing on VMS and porphyry deposits" (Hudbay 2011). Solway is not a mining company *per se*, but an investment management conglomerate with various overlapping interests. It has investments in a few mining operations scattered across the globe in other notoriously risky political environments such as Laos and the Democratic Republic of Congo.

BHP Billiton, the largest mining company in the world, acquired Australian junior Jaguar Nickel in 2006. Jaguar Nickel, through its Guatemalan subsidiary, Mayaniquel, had been exploring for nickel in the Department of Izabal since 1998 and was developing the Sechol Mine to be its flagship property. BHP Billiton's acquisition of Jaguar Nickel was an exemplar of these processes in which, in the words of one Guatemalan Ministry of Energy and Mines functionary, "the seniors are behind the juniors waiting." Yet, just three years later, in 2009, BHP Billiton sold Mayaniquel to Anfield Nickel Corp, a diminutive junior firm for whom the Sechol project was its only asset. Presumably, part of BHP Billiton's motivation to divest was watching the travails down the road at Skye's and then Hudbay's incarnations of the Fénix project. Anfield acquired the production license for Sechol in 2013 but sold Mayaniquel to Cunico Resources in June of 2014. Cunico is a small company that runs nickel processing plants in Macedonia and Kosovo and has recently acquired exploration licenses in Guatemala covering an extensive amount of territory. Cunico is not, as of yet, a mining company in the sense of having successfully permitted and brought a deposit into production.

The El Sastre mine tells a similar story of repeated takeovers, mergers and name changes. Aurogin Resources permitted a small gold operation, near Guatemala City, in the Department of El Progreso, in 2006. The following year they merged with Castle Gold, a Canadian junior producer. In early 2010, Argonaut Gold, another Canadian junior acquired Castle Gold. In late 2010 Argonaut sold El Sastre to local investors. As companies have merged and names have changed with El Sastre even more rapidly than in other cases, the Guatemalan subsidiary, Rocas El Tambor, has been constant. In interviews, industry insiders suggest that, with respect to El Sastre, the parent companies have served as absentee financiers rather than managers on any level.

The El Tambor mine is located just miles from the El Sastre project in the municipality of San José del Golfo in the Department of Guatemala. Vancouver-based junior exploration firm Radius Gold acquired an exploration license for El Tambor in 2003 through its Guatemalan partner company Exploraciones Mineras de Guatemala. Radius sold the El Tambor permits to Kappes, Cassiday and Associates (KCA), an American company, in 2008. KCA is generally a mineral engineering firm, rather than a gold production company. Since 2011 this mine was the site of a peaceful local resistance, known as La Puya, that blocked vehicular access to the mine site. In 2014, during a state of siege, the protestors were forcibly removed. There are likely some undiscovered connections between the El Sastre project and the El Tambor project. For one, the local company that operates El Sastre is called, Rocas El Tambor. Secondly, KCA has done extensive consulting work for Argonaut Gold over the years, including on their Mexico project, El Castillo, inherited from their takeover of Castle Gold.

In sum, the period from approximately 2008 to the present in Guatemala has been characterised by the breakdown of the conventional industry model whereby junior companies explore and license mineralisation while senior companies bring the deposits into production and operate them through closure. Recent years have seen senior companies like

Goldcorp and BHP Billiton that labored to consolidate control of mineral resources in Guatemala turn away from Guatemala and sell off promising properties to diminutive companies with little experience bringing a mine into production. Goldcorp's decision to shutter Cerro Blanco and turn Escobal over to Tahoe exemplifies this trend as does BHP Billiton's divestment from Sechol and the rapid turnover of the Fénix project from Skye to Hudbay to Solway. In some instances, these decisions were responses to existing conflicts. In others, they were responses to the weak state and anticipation of conflict. In all of these cases, the frequency of mergers and acquisitions in the mining industry, along with confusion around names, where a company, its subsidiary and its project all have different titles, are deliberate efforts to obscure traceability and responsibility in an industry inclined toward corruption operating in a political environment characterised by dishonesty and impunity.

Further, most of these small companies that took over from larger firms in the post-2008 period were companies with little relevant experience, a red flag for corruption risk. Tahoe had just formed and Escobal was its only asset. Solway Group was an investment management company rather than a proper mineral production company, and they had no experience in Latin America prior to acquiring Fénix. KCA had mostly operated as an engineering consulting company prior to its recent diversification into direct mineral production. Cunico Resources had operated as a metal processor but not producer and also had no experience in Latin America until acquiring Sechol.

The companies that came to dominate the Guatemalan mining sector have little relevant regional expertise and little relevant technical capacity. Yet, these firms were willing to take on high-risk investments that came bundled with powerful community opposition and state bureaucracies characterised by capriciousness, venality and uncertainty. These companies are risk-tolerant, in part, because their small size bequeaths an invisibility premium, the inverse of the reputational risk that drives larger multinationals' adherence to higher standards. Their low reputational risk allows them to rent-seek in creative ways that are most effective in weak institutional environments. Reputational risk as a key variable maps onto firm size as well as firm nationality, the focus of the next section.

National Origin and Corporate Culture

Previous research has argued for relationships between a company's nationality, corporate culture and local stakeholder engagement (Haslam and Tanimoune 2016, Maignon and Ferrell 2000). This section reinforces this set of observations arguing for two types of distinctions with respect to nationality. First, domestic firms and multinational firms have different structural incentives for corporate behaviour and stakeholder engagement. Second, among multinational firms the country of origin matters for ethical corporate behaviour. Finally, these differences possess interaction effects with firm size as well.

The national origins of finance capital and company management bring to bear on the level of corruption mining firms exercise in Guatemala. Within the Guatemalan mining industry and its affiliates there is consensus around the notion of a hierarchy among countries of origin for mining firms operating in Guatemala in terms of their bad behaviour. Mining industry representatives see Canadian companies as the least corrupt and as possessing the most serious commitment to sound environmental management. The industry sees US-based companies as performing less well than their Canadian counterparts on these criteria. Russian companies are thought to fall significantly shorter than Canadian and US firms in ethical and managerial behaviour. Domestic firms are viewed as the worst of the lot. Each of these countries have particular industry cultures and historical experiences, which shape company culture and influence how companies engage with host states and communities.

Domestic Firms: The Invisibility Premium, Insider Knowledge and Bad Behaviour

I was standing in the parking lot of the Los Cebollines restaurant on Calle Montufar in Guatemala City talking to Roberto, a mining industry insider who worked for decades for various multinational mining companies in Guatemala and beyond. As we stood there talking, Roberto extended his arm toward me, his hand in a fist, knuckles facing up, pantomiming holding a gun against my stomach. "They do this," he said. "And they'll say, 'You're going to approve my project. I know you'll find it good.' Or they'll say, 'Private school is expensive. I can help with that.' That's how they do it…by the gun or by the bribe." Roberto was describing a hypothetical interaction between a mining manager and a state functionary charged with approving production licenses. This illuminating comment, which demonstrates just how pervasive and tied to violence bribery is, emerged during a conversation about the difference between foreign and national mining firms in regards to their relationships with the state.

Roberto was suggesting that national companies disregard the "rules of the game," and use corruption and violence as facilitating instruments to a greater extent than foreign firms. This is the case, Roberto went on to argue, because firms headed by Guatemalan nationals understand the culture of violence and impunity that characterises Guatemala. Other industry insiders further exemplified this theme. A high-ranking functionary at the Ministry of Environment and Natural Resources stated that, "national companies are run by well-known people. They have contacts. So they have a great deal of ease in getting their projects through." An environmental consultant in private practice commented,

> If Johnny Gringo goes to the *Ministerio* with a project, they're going to really go over it closely because they know it will attract attention. But if I do it, it goes right through because I know how the system works. I know who to bribe. I know how to handle community members [i.e., protestors]. I tell them to go to hell [*los mando a la mierda*]. This works because I don't care, because nobody's watching.

A former manager of a multinational mining company and current private consultant for the Guatemalan mining industry, shared the story of the owner/manager of a small mining operation.

> This guy was a friend. We went to high school together, and we worked together for the same [foreign] company, but at different times. He was exploring for this company, and he found some promising results from some core samples. But rather than tell the company, he hid the results from the company. When that firm left the country, he found a foreign business partner. His EIA was basically a joke. He didn't care at all. When neighbors came from downstream to complain about the sediment, he threatened them and ran them off. Years later, I ran into him at a conference in Puerto Rico. He was there with three congressmen! He paid their way. They were on the Energy and Mines Committee.

This informant went on to articulate, what he referred to as "the irony" that while foreign companies are better behaved than local firms, they receive much more criticism and oversight than local firms because of their greater visibility. National companies, he suggested, are less concerned with environmental and social issues even as all of the protest and media coverage is directed at foreign companies. This holds true, he argued, even for small foreign companies. Haslam and Tanimoune (2016) refer to a "liability of foreignness" for multinational mining companies in terms of the attention they attract from transnational social movements. The flipside of this observation, apparent in this discussion, is the "invisibility premium" that domestic firms enjoy.

A high-level functionary at the Ministry of Energy and Mines told stories that echo the above narratives and further underscore the claim that local companies, which are generally smaller than most of the multinational juniors, exhibit higher levels of corruption and violence. This informant told the story of the two most "difficult [*conflictivo*]" companies he had worked with, both of which are local metal producers. In one case, a delegation from the Ministry of Energy and Mines traveled to a remotely-located mine site to conduct an inspection, and they "were turned away at the door." They were told, "You can come in and supervise us, but I am not responsible for what the locals may do to you." The implied threat was that the mining company controlled the local communities, which depended on the mine for their livelihoods and any effort on the part of the Ministry which could be perceived as having a negative impact on the mine would be met with violence.

This same individual told a similar story about another locally-owned metal mine. In this case, as in the previous case, representatives of the Ministry of

Energy and Mines sought entry into the mine site to conduct routine inspections and were denied access. This was frustrating for the Ministry, but it lacked the capacity to force the company to submit to inspections. They responded by cancelling the company's production license for "compliance failure", which dissolves the mine's legal standing. The mine, however, continued to operate illegally, and the Ministry has been unable to enforce the mine's closure. When locals complained about silt downstream, they too were threatened with violence from mine owners. This company, the informant explained, despite its flagrant failures to comply with the state, has not been the object of protest or resistance because it is "small and hidden" and "not lucrative enough to be interesting."

In this set of statements from various interviewees, domestically owned and managed companies tend toward worse ethical behaviour than multinational firms. This is so for two chief reasons. First, small local companies have little reputational risk to protect. They benefit from an invisibility premium. This then fails to disincentivise the use of corruption and violence to facilitate production and profit. Second, these companies possess unique insider knowledge of the machinations of the weak and corrupt Guatemalan state.

Multinational Firms and Cultures of Compliance

In contrast to the above stories of national companies, the Guatemalan mining industry and its affiliates tend to talk about Canadian companies operating in Guatemala as accountable to higher ethical standards than domestic firms and multinational firms from other countries. This argument stands in curious and stark contrast to the considerable scholarly literature that argues that Canadian mining companies behave particularly badly in Latin America (e.g., Denault and Sacher 2012, Dougherty 2016, Gordon 2010, Imai, Gardner and Weinberger 2016). Speakers commonly referred to various aspects of the source country history and culture as salient in explaining this phenomenon. The country's history of mining and global visibility as a "mining country" condition their companies' behaviour. Further the rigour of the source country's domestic regulatory framework and the strength of domestic civil society make a difference for how these companies behave abroad. This set of ideas is distinct from but reminiscent of the notion of the California effect, the idea that one country's environmental standards can raise the standards of its trading partners (Vogel 1997).

A mine compliance monitor at the Ministry of Energy and Mines implicitly ranked the multinational companies by their compliance with standards of safety and environmental management, commenting, "Goldcorp takes good care of everything. They are very careful and well-managed. Tahoe does okay. I sometimes have to reprimand them [*jalarles las orejas*]. They do little things that aren't up to code like their trash or their hoses. El Tambor, however, is a total mess, the worst of the three." Another interviewee, a private sector consultant for mining companies made a similar assertion regarding her experiences consulting for each of these companies. She recollected that her experiences with Goldcorp had been more positive than her experiences with Tahoe and her experiences with Tahoe had been better than her experiences with KCA. Again, these statements reinforce the sense that smaller firms do generally less well than larger firms on a range of social and environmental criteria.

Among the multinational firms operating in Guatemala, industry insiders talk about Russian-operated company Solway as having the lowest standards of corporate ethics and citizenship. Many interviewees pointed to what they saw as stark contrasts between the ways that Hudbay [Canadian mid-tier] and Solway [Russian junior] managed the Fénix project. One interviewee, for example, said the following: "[Hudbay] invested whatever amount of money was necessary in environmental management. They always went above and beyond what the law required. But there's a huge difference between how they acted and now that it's owned by Solway." Another interviewee, a functionary at the Ministry of Energy and Mines, made a similar statement: "Compañía Guatemalteca de Níquel, when it belonged to Hudbay, had a great deal of social programming, but now with the Russians, I don't know how things are going. I don't think they have kept up." A third interviewee, a former Ministry functionary and current private consultant, corroborated the previous comment saying, "The Russians don't have much conviction regarding social programs. They provide some resources but probably not enough."

Representatives of the Guatemalan mining industry tend to conflate national culture with corporate culture. This sometimes works to advance sweeping and problematic generalisations about these various national cultures, but it also illuminates the ways that domestic elites make sense of foreign capital. For example, one industry insider made the following statement:

> When CGN was Skye Resources and then Hudbay, it was different. Canadians I mean they are…well, Russia does not have a big expertise in mining. But the Canadians have their own indigenous populations. They have also had to deal with local people, so they have a better understanding of these dynamics. With the Russians, you have to understand that these Russians come from the time when Russia was not Russia but the USSR…and the KGB…you have to imagine a James Bond movie. Imagine spies and stuff like that. They are kind of…they have kind of a military approach, a hardline approach. They don't have a soft heart to understand that the more you understand the people and work together, your bottom-line increases because you are also reducing risk.

Some interviewees linked national culture and the dominant values of civil society to corporate culture in the context of environmental management. One interviewee, for example, suggested that "some companies view the environmental impact assessments as just a bureaucratic hurdle, while others view it as something with inherent value." This individual went on to argue that Canadian companies are culturally inclined to care about the environmental impact assessment because they are accustomed to Canadian civil society, which demands high levels of compliance. She contrasted this with Russian civil society which, she argued, "has yet to teach its companies that these things matter." This, she went on to suggest, "makes the difference between a company that pays for a serious [environmental impact] study and one that does not."

In sum, company nationality and its overlaps with firm size are salient considerations for making sense of corporate bad behaviour in Guatemala. Domestic companies possess an "invisibility premium" with respect to transnational social movements, a function of both their diminutive size and domestic origins. This invisibility premium, together with insider knowledge of the machinations of state bureaucracy and corruption, encourage local firms to behave worse than multinational firms. With respect to multinational firms, entanglements of cultural and structural factors help explain these differences in outcomes by national origins. In each of these quotations and anecdotes related above, the interview participants pointed to cultures of compliance in source states, along with size differences, mining history, and the strength of civil society in the country of origin to explain these different outcomes by national origins. Within Guatemala, representatives of the mining industry and its regulatory apparatus consider Canadian firms to be the most robustly compliant with standards of good behaviour, followed by US companies and finally Russian firms. This observation is striking in light of the considerable evidence that Canadian companies behave badly across the region. A recent Justice and Corporate Accountability Project report, for example, found that over the past 15 years 28 Canadian mining companies, across 13 Latin American countries, have been associated with 44 deaths and 403 injuries (Imai, Gardner and Weinberger 2016).

Haslam and Tanimoune (2016) evaluate causality for a variety of commonly cited independent variables on mining conflict in Latin America. They find that Canadian firms perform better compared to other foreign firms. This finding corroborates the way that Guatemalan industry insiders describe Canadian companies. Haslam and Tanimoune further find that Canadian companies are more likely to be associated with conflict at mine sites than domestic firms. I argue here, that in the Guatemalan case, domestic firms are greater perpetrators of bad behaviour than foreign firms. Bad behaviour is not conflict *per se*. Additionally, the invisibility premium that accrues to domestic companies, along with their ability to navigate behind the scenes of state bureaucracy and their willingness to use violence to quash conflict suggest their bad behaviour may partly explain why these mines are less often sites of well-publicised conflict.

Concluding Remarks and Discussion

This paper has sought to contribute to our understanding of the ethical behaviour of mining companies in Guatemala by advancing a set of arguments that center on the entanglements of risk, corruption, firm nationality and firm size. The focus on the mining companies themselves and the ways that industry insiders understand mining conflicts is a necessary complement to the glut of literature that examines mining conflicts from the points of view of host communities and civil society. A central objective of my broader research agenda is to advance firm size as a key analytic frame for understanding the panorama of the stakeholder engagement in the mining industry. This paper keeps with this goal arguing essentially advancing two principal arguments.

First, I argue that smaller companies, particularly those with little experience, thrive in weak, capricious and venal political-institutional environments. I advance this argument by showing how mining companies in Guatemala over the past two decades have broken with the industry convention whereby smaller companies explore and develop projects and larger companies bring these projects to full production and through closure. In the case of Guatemala, this conventional process took place until approximately 2008 when the riskiness of the investment environment led to a series of spinoffs and fire sales and the transfer of control back to very small companies with little experience who were willing to shoulder such risk.

Second, I argue that company nationality influences stakeholder engagement in two principal ways. Domestic firms capitalise on an invisibility premium and on insider knowledge of the inner workings of the Guatemalan state bureaucracy to circumvent standards of corporate behaviour. Domestic firms in Guatemala routinely employ violence (or threats thereof) and bribery as tools for rent capture. Industry consensus in Guatemala suggests that multinational firms vary in their ethical behaviour. This is, in part, due to the ways that cultures of compliance (i.e., history of mining, strength of civil society, robustness of regulatory apparatus) in their countries of origin inform company culture.

All of this takes place in the context of the new extraction—the steep growth of mining activity in Latin America over the past decade and the concomitant growth of conflict and controversy. Guatemala is an extreme case of this set of phenomena experiencing ten times the growth in mining as the rest of the region over the first decade of the 2000s and weathering particularly bitter and violent conflicts as a result. Industry structure, particularly firm size, is an overlooked dimension of the new extraction, and exploring, as I do here, the ways that industry representatives themselves talk about these conflicts, extends our understanding and provides practical implications for addressing these issues.

Mining industry watchdogs, civil society groups and social movements should turn their attention to domestic companies and the smallest of the multinationals with the goal of making these companies more visible, thus reducing the invisibility premium. Often local companies are difficult to target because publically available information about ownership and management is scant. This is all the more reason to turn attention to investigating and policing these firms. Further, states must create the kinds of incentives that larger multinationals respond to without "reducing" community opposition through coercion. In other words, states must reduce risk for FDI in the mining sector by working towards consistency regarding bureaucratic procedures for mining companies and substantively engaging petitions from civil society. Finally, states must be aware that not all FDI is the same in the mining sector, and must court FDI from source countries with strong cultures of compliance. These observations serve as a point of departure on the long road towards reigning in mining company bad behaviour and transforming the sector into a genuine engine of development in Latin America.

Notes

[1] The US environmental regulatory climate during the Clinton administration was a major factor in driving gold producers south. The 1997 Millsite Opinion, issued by the Office of the Solicitor General (US Department of the Interior 1997), sought to enforce the mining law of 1872's limit of one five-acre millsite patent per mining claim, thus reducing the scope of what gold producers could mill. Additionally, the Bureau of Land Management's proposed changes to the Federal Surface Management Regulation in 1999 sought to, "require mining operators to meet certain outcome-based performance standards relating to all aspects of operations, including exploration, mining, processing, and reclamation and incorporate the BLM's existing cyanide leaching and acid mine drainage policies into its surface mining regulations" (Bureau of Land Management 1999). Industry analyst John Dobra (2002:3) called these two developments in the US regulatory the "changes…that most seriously threaten the [gold] industry's long-run stability in the US."

[2] The 1997 Ley de Minería (Mining Law) followed the signing of the Peace Accords and Guatemala's transition to civilian democracy. It was part of a larger package of neoliberal laws. The Mining Law served to streamline foreign direct investment in mining by reducing the bureaucratic steps for acquiring a license and reducing the royalty rate paid by mining companies to the state from six percent to one percent. This gave Guatemala among the lowest royalty rates in the world and opened the door to a massive influx of foreign direct investment in mining. The mining law was, in part, a product of a regional "race to the bottom" to capture mining investment in the wake of the dissolution of the multi-fiber arrangement. The legislative bodies of El Salvador, Honduras and Guatemala went back and forth adjusting royalty rates for mining companies, seeking to cultivate a more welcoming environment than the next country (Dougherty 2011).

In addition, according to a former director at the Ministry of Energy and Mines, the passage of the Mining Law was itself the product of some ethically questionable and obscurantist, if not explicitly corrupt, behaviour. The circumstances around the passage of the law served as a harbinger for the corruption and collusion that would characterize the industry in Guatemala in the following years. Following the passage of the Mining Law, there were initiatives to modify it in order to capture greater benefits to the state. The Miners, Quarriers and Processors Union (GREMICAP) lobbied hard to maintain the law as it was, including threats to shut down the sector if the Mining Law was modified. Additionally, the Mining Law was drafted in consultation with representatives of multinational mining companies to ensure that it served their interests. Beyond the law, the granting of mining production licenses, particularly for that of Marlin, were as done in such a way as to obscure the events from the public. One insider recalled to me in an interview, "Yeah, I even remember that [the Marlin permit] was ready in November 2003, and in 2004 a new government was coming in. So [the Ministry of Energy and Mines] kind of kicked it to the fence, and one day before he left office, the minister kind of made it public, you know? The next day he was out of office. Because they kind of could perceive that it might have some problems."

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