

Fujimori's Peru: A case study of state-corporate corruption and its  
implications for the good governance agenda

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Fujimori's Peru: A case study of state-corporate corruption and its implications for the good governance agenda

By: Stephanie Poirier

**Abstract**

During the 1990s, democracy became a central theme in the development discourse, dominating the good governance agenda. However, so many conditions have been named that the term good governance has become almost obsolete. If the practice is the opposite of bad governance, perhaps a better understanding of the conditions facilitating the latter will lead to prioritize the reforms to be encouraged. An example of bad governance is the regime of Peruvian President Alberto Fujimori (1990-2000), which despite its successes in fixing the economy, did so through authoritarian means and was combined with unprecedented levels of corruption. This thesis seeks to explore the structural conditions that facilitated this form of bad governance using the state crime model. It argues that these conditions consisted of the centralization of power and the absence of checks and balances, and served to create an opportunity structure for organizational deviance to occur.

December 22, 2010.

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In Fujimori's Peru, the most important decisions were always made out of public view and without regard for what Peruvians wanted. That Fujimori could not even face fellow Peruvians for a final farewell, a last hurrah, was equally telling (Conaghan, 2006, 2).

## CHAPTER ONE

### INTRODUCTION

The period from 1990 to 2000 represented a rather unique era for Peru. It was an era that was dominated by President Alberto Fujimori, a man who came out of nowhere and defied the usual party-based politics that, albeit weak, had dominated the country since its independence. The Fujimori era also consisted of a return to what was in effect authoritarian rule for the first time in over a decade. Surprisingly, this shift away from democracy actually had popular support from the majority of the citizenry, which had become disenchanted with the traditional political parties, the state of the economy, and the growing violence of the Shining Path insurgency. This is an important topic because of the fact that the Fujimori government was operating as a democracy in the eyes of the international community while committing murder and various other crimes at home. "Fujimori always liked to say that his government was unique while simultaneously insisting that it was a democracy" (Conaghan, 2005, 7). The President believed in an efficient type of democracy that would not be ruled by political parties, but rather by "selfless technocrats instead of self-serving politicians" (Ibid., 3). The nature of the regime is subject to some debate, although most scholars agree that it was authoritarian (see Calderón, 2001; Conaghan, 2005; Mauceri, 2006; Burt, 2007; and Quiroz, 2008).

The manifestation of this authoritarian shift was the *autogolpe*, or self-coup, of April 5, 1992. An *autogolpe* is defined by Cameron (1998) as "a temporary suspension of

the constitution and dissolution of congress by the executive, which rules by decree until new legislative elections and a referendum can be called to ratify a political system with broader executive powers” (1998, 220). He argues that a major factor in *autogolpes* is the perception of a threat and that the level of the latter will usually determine the amount of support for the coup, domestically and internationally. In the Peruvian case, the threat largely stemmed from the *Sendero Luminoso* [Shining Path] movement. In fact, a major reason for the coup was “the need to fight more effectively against the Shining Path” (Ibid., 227). The irony is that although the threat perception was increasing, *Sendero Luminoso* was struggling due to a loss in its rural support base. Consequently, they moved their operations to more urban areas, thus causing the increased threat perception (Ibid.).

Burt (2007) argues that the regime was authoritarian because it pursued its goals using undemocratic means. According to Carrión (2006), the Fujimori regime became one of “electoral authoritarianism” (2006, 4), in which the democratic process was manipulated in order to pursue its goals. Much of this manipulation was done through corruption, with bribes being paid to policymakers, legislators, members of the judiciary and the media (Conaghan, 2006). Perhaps Zakaria (1997) said it best when he ascribed the term “illiberal democracy”, referring to a situation where the government was elected but afterward, did not uphold the principles of “constitutional liberalism”. He states that the latter alludes to the “government’s goals” rather than the “procedure for selecting government.” “It refers to the tradition, deep in Western history, that seeks to protect an individual’s autonomy and dignity against coercion, whatever the source- state, church, or society” (1997, 25-6). This definition both acknowledges that the Fujimori government

was elected by the citizenry, complying with the most basic of democratic principles, while carrying out authoritarian goals and practices. What takes precedence then, is the form of governance of the regime, rather than the way in which it was put in place.

Governance is defined by the World Bank as the following:

[T]he manner in which power is exercised in the management of a country's economic and social resources. The World Bank has identified three aspects of governance: (i) the form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and (iii) the capacity of governments to design, formulate, and implement policies and discharge functions (World Bank, 1994, xiv).

Although the term governance has existed for some time, it became more significant in the 1980s when it became acceptable for international financial institutions (IFIs) to question a country's level or form of governance. Weiss (2000) identifies four reasons for this: the "glaring illegitimacy" of authoritarian regimes such as that of Amin and Pol Pot; the spread of democratization in the developing world; the increasing influence of non-state actors such as non-governmental organizations (NGOs) and transnational corporations; and the emerging notion of "sovereignty as responsibility" associated with the protection of human rights (2000, 800). Consequently, institutions such as the World Bank were free to interfere in the domestic affairs of their recipients by imposing conditionalities requiring reforms favorable to democratization and economic liberalization that would lead to 'good governance.' "Good governance has become a political and economic conditionality that is inseparable from debates about appropriate bilateral and multilateral financing for developing and formerly socialist bloc countries" (Ibid., 801).

According to Abrahamsen (2000), the emergence of the good governance agenda in development discourse is conventionally attributed to the "simple progression of

knowledge,” a mere evolution from models that were proven ineffective (2000, 25). She instead argues that two main factors brought on this change in the discourse: the end of the Cold War and the failure of structural adjustment programmes. During the Cold War, development aid was largely based on “strategic, geopolitical considerations” (Ibid., 32). This was evidently altered when the Cold War ended. Leftwich (1993) supports this by stating:

Thus the collapse of communist regimes and the consequential shift in the structure of world politics enabled Western governments to exercise not only economic conditionality, but also direct political leverage without fear of giving advantage to the Soviet Union and its allies (1993, 609-10).

Issues such as political participation and accountability seemed to take less precedence at a time where structural adjustment programmes were implemented in the developing world. In fact, they were considered to be “potentially harmful and detrimental to the overall aim of economic adjustment” (Abrahamsen, 2000, 30). Furthermore, a strong system of checks and balances was seen as a deterrent to economic development as it could stall reforms (Philip, 1999). Neo-liberal economists had lauded structural adjustment programmes as the solution to creating economic growth in developing countries. When these failed to produce the predicted economic growth, the World Bank, as well as others in the development field, resorted to blaming this failure on problems of governance (Abrahamsen, 2000). It was thus increasingly acknowledged that the right “political conditions” had to be in place for development to occur (Smith, 2007, 3). The advance this represented for the development discourse is that democracy was now seen as a “necessary prior or parallel condition of development, not an outcome of it” (Leftwich, 1993, 605). Good governance thus became desired for the simple fact that it

was seen as a pre-condition for economic development. Some scholars however, saw an agenda behind this. "Governance issues were grafted on to neo-liberal economic policies, giving them a more democratic and humanitarian façade and thereby constructing a new legitimacy for the severely criticised structural adjustment programmes" (Abrahamsen, 2000, 42).

The good governance agenda itself is thus not without its critics. It has been deplored for issues ranging from naivety to the imposition of Western values and traditions. It is particularly the imposition of good governance through conditionalities that has drawn criticism. Abrahamsen (2000), for example, asserts that the good governance agenda is underlined by the "belief in the superiority of Western values and political systems" and thus represents a return to "colonial discourses and practices" as well as past development discourse (Ibid., 36). Furthermore, she argues that this new development discourse is "intrinsically linked to larger discursive practices through which global power and domination are exercised" rather than a mere change in focus from the economic to the humanitarian (Ibid., 45). Philip (1999) argues that the World Bank should focus on fighting "obvious abuses" rather than spending time "telling the world how to govern itself" (1999, 242).

The good governance agenda has also been reproached because of its emphasis on economic rather than human development. While the United Nations (UN) emphasizes empowerment, freedom and democracy, the World Bank views these as secondary to economic development (Weiss, 2000). A kind of compromise between the two that has been advocated by Mahbub ul Haq is the notion of humane governance, which combines "good political governance" characterized by strong civic participation and accountability

with “good economic governance” consisting of an equitable and competitive economy (cited in Ibid., 805). The effect that good governance will have on development will largely depend on the definition of the latter, namely whether economic or human development is prioritized (Smith, 2007).

An additional problem with the good governance agenda is determining what conditions are required for good governance and how they are to be achieved. Part of the issue is that it is assumed that the “characteristics of good governance are coherent and capable of being universalized” (Philip, 1999, 226). Complicating this is the lack of a general consensus regarding which aspects of governance are to be valued over others as well as what constitutes the best political system (Ibid.). Grindle and Mason (2002) believe that the dilemma is that the reforms pushed by the World Bank are not prioritized and that the recipient countries forced to implement them are not given an idea of how long it will take to carry them out.

Unfortunately, the confluence of these sources often means that for any given country, a multitude of governance reforms are being undertaken at the same time, differentially supported by a plethora of donors, often with little thought to their sequencing, their interdependence, or their relative contributions to the overall goal of creating governments that are more efficient, effective, and responsive (2002, 12).

Yet another problem is the fact that some of these countries lack the resources to properly implement the reforms required for good governance. Grindle and Mason argue instead for ‘good enough governance,’ which consists of “a condition of minimally acceptable government performance and civil society engagement that does not significantly hinder economic and political development and that permits poverty reduction initiatives to go forward” (Ibid., 2).

Leftwich (1993) believes that the World Bank's analysis of the governance issue is "naïve" since "it entirely ignores that good governance is not simply available on order, but requires a particular kind of politics both to institute and to sustain it" (1993, 612). In fact, proponents of the agenda seem to be acting on the belief that no pre-conditions are required to create a democratic system except for the reforms they recommend (Ibid.). Philip (1999) supports this by stating that the Bank's idea of good governance is "too idealistic, insufficiently historically specific and over-confident in respect of what we do know and can know about the politics of development" (1999, 226). He makes an especially valid point concerning the lack of specificity of the reforms, which seem to be applied regardless of historical, cultural or political context. Philip also makes the argument that the Bank appears to be pushing for "perfect governance" rather than something that could be realistically attainable in a Latin American context (Ibid., 228).

There are indeed good theoretical reasons for considering democratic accountability to be very important, but a Latin Americanist might be forgiven for considering that the Bank's discussion of the issue does not do justice to real world dilemmas (Ibid., 236).

Themes associated with good governance reforms generally relate to political accountability, the rule of law, human rights, judicial independence as well as anti-corruption strategies. Corruption has become a very prominent issue in international development studies because of the detrimental consequences it has on economic and human development as well as the risks and additional costs it adds to business transactions. For this reason, anti-corruption reforms have been incorporated into the good governance agenda.

There are three different types of definitions of corruption. The first type consists

of definitions that are public-office-centered, which usually refers to the misuse of public office for personal gain, though not exclusively financial. Market-centered definitions refer to corrupt acts as a means through which to maximize income. The third type consists of public-interest-centered definitions and will be the type used for the purpose of this thesis. This type refers to acts in which someone in a position of power uses his or her position to undertake an action in exchange for monetary or other types of rewards. This action will then benefit whoever provided the reward and result in damage to the public interest (Heidenheimer & Johnston, 2002). Thus, the focus is on the consequences for the public good. For this reason, it is the best type of definition to use while emphasizing human development. Moreover, this type of definition provides a broader interpretation of corruption that is not limited to bribery and actions by individuals. True, corruption is conducted by individuals but it also forms part of a larger systemic trend.

### **Objectives**

Throughout the corruption literature, many authors have tried to explain the causes of the various types of corruption. These causes range from economic (low wages, etc.) to cultural factors. However, most have not emphasized the broader structural conditions that facilitate corruption. This is primarily the gap in the literature that my thesis seeks to fill. By structural conditions here I mean a focus on the conditions relating to the political and economic structure rather than the actions of individuals. Identifying these conditions will be the main objective of this thesis. I am setting out to find the conditions that facilitated corruption at a high level, with the assumption that it would have stronger consequences for development than would petty corruption. In order to achieve this main



objective, I chose to do a case study on the regime of President Alberto Fujimori, which ruled Peru from 1990 to 2000. This regime attained extreme levels of corruption all the while pretending to be a democracy and achieving a number of economic successes.

A major issue in international development is the role and consequences that industry, especially foreign corporations, can have on the economy, environment, politics and labor, among others, of developing countries. A second yet lesser goal would thus be to look at the relationship between the Peruvian government and the private sector and see how this can result in corruption and/or social harms. In order to better study this, I chose to concentrate on the mining sector, as it represents one of the most important industries in Peru and would thus hold significant clout. It should be noted however that studying the many consequences that mining can have on developing countries is beyond the scope of this thesis. I will therefore limit any discussion of consequences to those stemming from the relationship between mining companies and the Peruvian government rather than mining operations alone. Through the application of the so-called state crime model to two cases of corruption involving the Peruvian government and the mining sector during the Fujimori regime, I will be better able to analyze my case study. I will use Michalowski and Kramer's integrated theoretical framework as a guide to identify the conditions that facilitated corruption.

My third objective is to study all this in the context of the good governance agenda, through which certain policies and reforms are encouraged that may have an effect on the structural conditions I am seeking to identify. Furthermore, one of the main tenets of the good governance agenda is the fight against corruption. For this, the IFIs usually prescribe neo-liberal solutions. Another goal then, is to determine whether these

neo-liberal solutions actually had any effect in curbing corruption in Fujimori's Peru.

### **Research Question**

Although corruption has had a long history in Peru, dating back to colonial times, the emphasis on neo-liberal economics has given it a new form. A central theme has been the push for the privatization of important economic sectors, including the mining industry, in order to attract foreign investment. The IFIs have strongly encouraged the expansion of mining. The World Bank, for example, has supported the expansion of mining activities by promoting reforms in the legal framework that would lead to an increase in private investment in that sector. The Bank also co-financed large mining projects and actually purchased large amounts of shares in certain mines such as the Yanacocha mine in Cajamarca, in which it has a 5 percent share (Glennie, 2005). The IFIs hold power over the government of Peru because of its debt. Therefore, the government of Peru was encouraged to accept mining proposals in order to attract the investment that would hopefully help pay its debt (Glennie, 2005).

IFIs, notably the World Bank, often determine the conditions deemed to bring about good governance. Good governance is desired because it is seen as a requirement for economic growth. However, so many conditions have been named that the term good governance has become almost obsolete. If the practice is the opposite of bad governance, perhaps a better understanding of the conditions facilitating the latter will lead to prioritize the reforms to be encouraged. This thesis therefore attempts to answer the following research question: What structural conditions were in place and/or introduced to facilitate political corruption during the Fujimori era? A secondary focus

will be to determine whether any of the conditions were introduced as a result of the influence of IFIs.

### **Thesis Statement**

Fujimori's Peru is an example of bad governance that reached criminal levels while operating under the guise of an electoral democracy. This case study is significant because of the lessons it can bring to the good governance agenda. During the 1990s, democracy became a central theme in the development discourse, dominating the good governance agenda by highlighting the importance of a democratic system to achieve economic growth. Considering this, how could an authoritarian regime such as that of Fujimori carry out its corrupt and repressive policies while receiving funds from the IFIs? Abrahamsen (2000) provides an answer: "The important point to note is that in the context of structural adjustment programmes, democracy or good governance is not valued in its own right but is seen first and foremost as a means to an end of economic growth" (2000, 42). But if the end is the same, does the manner in which it is achieved matter? In other words, would the authoritarian nature of the Fujimori regime detract from the fact that it was able to fix the economy through austerity measures recommended by the proponents of the good governance agenda? The regime introduced vast changes, rewrote the constitution and reformed the political and economic system along neo-liberal lines. However, the reforms also served other purposes, such as the satisfaction of greed and the creation of an authoritarian regime (Conaghan, 2005). These reforms were implemented through authoritarian means.

It is my argument that political corruption in Fujimori's Peru was facilitated by a

set of structural conditions that provided an opportunity structure for organizational deviance to take place. Although my work mainly focuses on the conditions that allowed corruption to foster, I argue that the same conditions could facilitate a variety of state crimes. These conditions consist, among others, of the centralization of power in the Executive, and the absence of checks and balances. There were five factors that strengthened the concentration of power in the Executive: the use of Executive decrees; reforms under the 1993 Constitution that gave the President more control and created a Ministry of the Presidency; the establishment of a unicameral structure; the use of personalistic networks; as well as the already present tradition of strong presidencies in Peru. Three factors led to the absence of checks and balances in the Peruvian political system: reforms that served to undermine the judiciary; a pro-Fujimori majority that carried out the regime's wishes and failed to hold it accountable; and reduced institutional checks under the 1993 Constitution. What exacerbated this was the absence of social controls in the form of political pressure, media scrutiny, civil society participation and pressure from the international community.

Although the IFIs provided a source of motivation for political corruption to occur, they did not directly influence the implementation of the structural conditions that facilitated it. In fact, the good governance agenda advocates for political accountability and the respect for the rule of law, which was lacking during the Fujimori regime. That said, aside from protesting the self-coup of 1992, the World Bank did not seek to prevent or reduce the corruption or human rights abuses that followed. Moreover, the neo-liberal policies advocated through the good governance agenda did nothing to curb corruption and may have in fact contributed to it.

### **A Note on Methodology**

The analytical framework I will be using for this thesis is the state crime model developed by authors such as Ross (2003), Kauzlarich, Kramer, and Michalowski (2001), and Green and Ward (2004). This model emphasizes organizational modes of corruption rather than focus on the individual. State crime refers to “illegal, socially injurious, or unjust acts which are committed for the benefit of a state or its agencies,” rather than an individual within the organization (Kauzlarich et al, 2001, 175). Two types of state crime are applicable to my topic: political corruption and state-corporate crime. Rather than focus on one rather than the other, I will integrate them to better analyze my topic. Theories of political corruption alone would not explain the relationship between the Peruvian government and the mining sector or how their interaction could result in state crime. State-corporate crime theories on the other hand do not deal specifically with corruption though theorists may include them in their list of possible crimes.

My research will mainly consist of conducting a case study of corruption involving the Peruvian state and the mining industry. When engaged in such an exercise, one can choose to do a single or a multiple-case study. A single case study can be used in three different scenarios: if the case is considered critical, meaning it meets all the conditions to test a theory; if the case is considered unique or extreme; or if the case is considered revelatory, which refers to an opportunity for a researcher to study a phenomenon previously inaccessible to researchers (Yin, 1984). I am choosing to do a single case study because Fujimori’s Peru is considered to be one of the best and most extreme examples of corruption. Furthermore, it is an interesting case because of the fact that it was an authoritarian regime pretending to be a democracy. The advantage of doing

a case study is that it allows for a more holistic perspective. It can also allow me to explore the historical dimensions of my topic, such as the corruption and structural factors preceding Fujimori's ascent to power. However, there are also limitations. Given the focus on a specific time, region and issue, it is more difficult to make generalizations. The cases selected may affect the answers one receives (Geddes, 1990).

Within the case study, I will choose two examples of perceived or proven corruption. Perceived corruption would consist of scenarios where although not proven, no other logical explanations exist. In my case, the examples were selected using the integration of political corruption and state-corporate crime within the state crime model. One is an example of state-initiated crime while the other represents state-facilitated crime.

The research for this thesis will take a qualitative approach. This is relevant because a traditional positivist approach is near impossible given the concealed nature of corruption. The latter necessarily implies methodological difficulties for the study of corruption as causal relations can rarely be established and corruption cannot easily be measured (Green and Ward, 2004). There have certainly been many quantitative studies of corruption but a qualitative approach will be useful for answering my research question as I am trying to identify the conditions that facilitated the corruption rather than measure the correlation between them.

One methodological approach that will facilitate this study is Feyerabend's notion of methodological "anarchism" which holds the principle that when it comes to methodology, "anything goes" (1993, 18-9). He considers this to be "the only principle that does not inhibit progress" (Feyerabend, 1975, "Analytical table of contents").

Following his reasoning, any approach or combination thereof can be useful depending on one's research objectives. This understanding is of great utility for my purposes as I engage in a multidisciplinary approach combining International Development Studies, Political Science, Latin American Studies and Criminology. Furthermore, he does not discount any types of knowledge. Feyerabend's approach to methodology would thus allow for unorthodox methods such as the 'Duck Test': If it looks like a duck, walks like a duck and quacks like a duck, it most likely is a duck" (Schulte-Bockholt, 2010a, 2291)<sup>1</sup>. The Duck Test will be especially useful when dealing with examples of perceived corruption, wherein there is insufficient proof while all available evidence points to it. Feyerabend's approach also allows for the use of the state crime integrated theoretical model.

In addition, this thesis is mostly based on secondary sources. This material is important given the controversial nature of my topic, which prohibits me from collecting fresh data. I will mainly use academic studies, newspaper articles and government documents. It should be noted, however, that although the bulk of my research will use secondary sources, some data such as the Peruvian 1993 Constitution are considered primary.

I will use the integrated theoretical framework of state crime developed by Kramer and Michalowski (2006) to identify the conditions in the examples selected. The state crime model as well as the integrated theoretical framework will be discussed in chapter two. The integrated theoretical model combines three catalysts for action:

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<sup>1</sup> The phrase may have originated from American poet James Whitcomb Riley (1849-1916) but it was made popular by the US ambassador to Guatemala in 1950, Richard Cunningham Patterson Jr. He used the phrase to accuse the current government in Guatemala of being Communist ("Duck test", n.d.).

motivation, opportunity and control, with three different levels of analysis. These consist of the institutional environment, the organizational level, and finally the interactional level. This last one brings the analysis to the level of the individual. As I am seeking to identify the broader structural causes of corruption rather than all causes, I have chosen to limit my analysis to the higher level of the model as the other two would go beyond the scope of my research. I will analyze the case study using all three catalysts for action but will focus on the opportunity catalyst as it more accurately represents the type of conditions I seek to identify.



## **CHAPTER TWO**

### **ANALYTICAL FRAMEWORK**

#### **Introduction**

This chapter will serve to provide a theoretical understanding of the analytical framework used to analyze the case study as well as to situate it within corruption literature. The first section will discuss the various theories used to explain corruption. This will outline the variety of approaches to the topic while demonstrating the need for theories regarding the broader structural factors at play. The following section discusses two concepts that form the base of the state crime model to lead to a better understanding of the model in question. Next, I discuss the various perspectives on the theory of state crime including the convergence and divergence among theorists. It is important to acknowledge the diversity of opinion as to choose the one most appropriate for my purposes. As I am looking at state-corporate corruption within the context of the good governance agenda, the fourth section deals with the relation between state crime and good governance. This is meant to demonstrate that state crime can indeed be applied to the concept of good governance as it represents the opposite of the practice. The fifth section brings the theory closer to my case study, that of political corruption as state crime. This section discusses in which types of scenarios political corruption constitutes a form of state crime as well as the consequences it can have on development. The next section discusses another form of state crime relevant to my case study, that is state corporate crime as it represents the interaction of the public and private spheres resulting in crime and/or social harm. It also provides for the model I will be using as a guide for my analysis.

Finally, the concluding section of this chapter serves to summarize the usefulness and appropriateness of this model to my case study.

Although mining also has significant consequences for development, it is not the main purpose of this thesis to discuss them at length. It is the objective of my work to identify conditions that allow state-corporate corruption to take place, irrespective of the industry involved. Therefore, although I present some consequences of the collusion between the Peruvian government and the mining sector in chapter five, a discussion on the mining and development literature will not be included in this review as it is beyond the scope of this thesis.

### **Introduction to the corruption literature**

During recent decades, increasing attention has been paid to the problem of corruption in developing countries by academics as well as multilateral agencies and non-governmental organizations (NGOs). Corruption has emerged as a prominent theme in the development and foreign aid agendas due to the often-negative consequences it is now perceived to have on development. The World Bank, for example, has taken it upon itself to prescribe anti-corruption solutions mostly consisting of neo-liberal policies. The consequence of this has not resulted in fewer, but more opportunities for corruption (see Whitehead, 2002; Manzetti & Blake, 1996). “The irony of the donor reform programme is that in setting out to guarantee the conditions for capitalist accumulation and liberal democracy, it has produced increased pressures for corruption” (Szeftel, 2000, 303). Manzetti and Blake (1996) argue that while neo-liberal market reforms did not create corruption, they provided new opportunity structures for it to take place thereby altering its manifestation.

There are two reasons for this: first, market reforms tend to increase the discretionary power of bureaucrats through decentralization. Second, although corruption was often associated with state-run corporations, privatization provided a new outlet for rent-seeking activities. The link between privatization and corruption is discussed by Susan Rose-Ackerman (1999). She states that corruption can occur in the form of bribes when firms try to get in the bidding, to gain inside information on the bidding process, or to ensure that they receive the contract. Says Rose-Ackerman:

Privatization can reduce corruption by removing certain assets from state control and converting discretionary official actions into private, market-driven choices. However, the process of transferring assets to private ownership is fraught with corrupt opportunities (Ibid., 35).

It is noteworthy that privatization is often advocated as a solution to corruption by such institutions as the World Bank, while analysis of actual practice suggests that corruption often increases with privatization.

Another type of economic factor is natural resource abundance. According to Collier and Hoeffler (2005), “large natural resource rents indeed generate bad government – corrupt, detached governments concerned with looting for elites rather than providing public goods for ordinary people” (2005, 626). Corruption is most likely to occur in four particular circumstances: when public office is seen as a short-term position; when the group in charge is small; when the assets related to the natural resource are much more valuable than the average income; and where there is prevalence of patronage politics rather than democratic competition during elections (Ibid., 620). Tanzi (1998) supports the effect that natural resources can have on corruption by arguing that the funds acquired from their sale often lacks adequate control and transparency. Furthermore, he states that corruption is also related to the increase in regulations on

economic sectors that involve interaction with public offices.

Other causes are discussed in the corruption literature. One of these types consists of cultural factors. McMullan (1961) believes that certain customs and attitudes present in some cultures can lead to corrupt behavior once a new form of government is introduced, such as in former colonies. An example is the tradition of gift exchanges leading to bribery. Klitgaard (1988) claims likewise that certain values and moral systems in some cultures actually accept corruption, which leads to less punishment for corrupt individuals when they are caught. Moreover, he adds that it is the difference in such value systems as well as customs that result in the variety of forms and degrees of corruption found in any given country.

On the other side of the debate, Maingot (1994) warns against the inaccuracy of some cultural explanations of the prevalence of corruption. He argues that what can be problematic about cultural explanations is the tendency to generalize, which results in solutions that seek to rectify the situation through the imposition of their own moral values. That being said, he does not say that this caution should result in the hesitation to point out corruption in other cultures. Maingot himself presents two theories on the role of culture in corruption: cultural transmission and differential association. The first argues that a society's value system not only accepts corruption, but also encourages it. This will result in individuals undertaking what they see as acceptable behavior. The second theory claims that individuals are influenced by the corrupt actions of others within their peer group (Ibid.).

Another type of factor found in the corruption debates is institutional. According to Little (1992), in addition to problems related to discretion in the bureaucracy, the state

apparatuses of developing countries are lacking in morale and accountability, dominated by personal interests and characterized by low pay. All these factors are seen as promoting corruption. Theobald (1990) elaborates that the main problem is the insecurity and the instability of the bureaucracy in developing countries. Public servants are often neither paid well nor on a regular basis. They are required to put money toward their pension but feel fairly certain that they will never receive it. This leads to the following consequences: low morale, which in turn leads to poor work performance and inefficiency. Bribery thus becomes an incentive that is difficult to resist. This type of corruption also points to a distinction between need and greed. Corruption at the lower levels of bureaucracy is not usually done to satisfy greedy appetites for money but to supplement a low income. It is also important here to make the distinction between bureaucratic corruption, discussed above, and political corruption. Bureaucratic corruption has no political function; it merely serves as a way in which to increase income. Political corruption on the other hand is carried out by elected or appointed officials and “usually has the end of building party cadres and political machines which will, in turn, support ambitious politicians in their search for power” (Goodman, 1989, 655).

Cheema (2003) ties corruption to other branches of the government apparatus by arguing that a weakness in the legislature and a concentration of power in the Executive can lead to more corruption. Power of the latter often manifests itself through a lack of accountability and increased discretionary power. A weak parliament or congress often brings about an absence of checks and balances. An additional problem is corruption in the judiciary, which undermines its authority in the eyes of the public. Corruption in this

branch is often attributed to long hours and low pay. Gonzales Morales (2003) believes that politicians will often engage in corruption in situations where there is little constitutional order and an increased chance that their time in office will be short. Consequently, they are less concerned with maintaining a good reputation to get re-elected. In some countries, presidents are limited to only one term in office, which is also an incentive to seek personal profit while they are in power.

Another branch of the literature focuses on demonstrating what corruption can mean for different aspects of development. First, although some authors have argued that corruption can provide efficiency in the economy, there is a general consensus that the practice has a negative effect on economic growth (see Tanzi, 1998; OECD, 2000; Leite & Weidman, 1999; Quiroz, 2008). Second, many theorists argue that corruption undermines democracy by benefiting some groups over others (see Rose-Ackerman, 1999; Goetz & Jenkins, 2005; Green & Ward, 2004; Cheema, 2003). Third, the poor are considered to be disproportionately affected by corruption. They often cannot afford to pay bribes while social services are usually the first to be affected because of an illicit diversion of resources (see Goetz & Jenkins, 2005; Green & Ward, 2004). Fourth, the environment is often negatively impacted when corruption leads to a lack of regulation and enforcement, or because natural resources are not managed sustainably (see Pellegrini & Gerlagh, 2006; Robbins, 2000). However, few authors address the structural conditions that create an opportunity structure for corruption to emerge. It is primarily this gap in the literature that my work will seek to fill.

The next sections of the literature review will expand on the analytical framework that will allow me to do this. This thesis will use the model of state crime, which I will

rely on in my analysis. This model is of utility because it emphasizes organizational modes of corruption rather than focus on the individual. Furthermore, it is compatible with the public interest definition of corruption chosen for the purpose of this thesis.

### **Organizational Deviance and Political Crime as Concepts**

There are two main concepts that are crucial to the understanding of state crime: organizational deviance and political crime. This section will provide a brief discussion of each in order for the reader to understand the basis of state crime theory.

In the field of criminology in general, attention is given to actions undertaken by individuals against other individuals. These individuals may form part of a group but the latter is not what is emphasized. If it is, it usually falls under the heading of organized crime such as street gangs or Mafia. The idea of organizational deviance, whether by government or corporations, can therefore be an unusual concept since neither is capable of thought or action. Erman and Lundman (2002) provide three reasons to help us understand how organizations can be capable of deviant actions. First, an organization can be seen as a grouping of positions that form its “building blocks” (Ibid., 6). The emphasis is thus on the positions occupied by individuals rather than the individuals themselves. This leads to the second reason, which is that individuals in that organization are replaceable. There can be a turnover but new people are expected to fulfill the same functions and abide by the same norms, which lends continuity to the organization’s operations. Third, although organizations are not units able to have their own thoughts, they can influence those of the individuals within them. It is through the positions that individuals hold that their thoughts and actions are influenced, including the people at the

very top (Ibid.).

But how do organizations actually encourage deviant behavior? Deviance can be motivated in three ways: through “limited information and responsibility” an individual can carry out deviant actions without actually knowing or intending to (Ibid., 9). Since they are only responsible for duties that have been assigned to them, they may not be aware of the bigger picture and the consequences of their actions. Second, the decision-makers at the top of the organizational hierarchy institute “norms, rewards, and punishments that encourage deviance” (Ibid.). This is often done indirectly by deciding on the organizational goals and then assigning the responsibility of attaining them to the rest of the organization. The deviance that may result would therefore not initially have been intended. However, contrary to the previous statement, organizational elites can sometimes be directly responsible for creating the deviance. Third, by issuing commands to subordinates that would knowingly lead to deviant actions (Ibid.). Organizational deviance would then become institutionalized once “deviant solutions to organizational problems” become a part of the organization’s norms (Ibid., 24). As a result, deviant solutions would exist alongside with non-deviant ones.

The concept of political crime seeks to contest the often-limited definition of what constitutes a crime. Most would consider a crime to be an act that violates criminal law. This would exclude acts that could be considered criminal were it not for the simple fact that no law exists to prohibit it. What was advocated by many such as Sutherland, Bohm, Schwendinger and Schwendinger is a definition which uses a “social justice perspective” and places emphasis on whether or not the act can be seen as a “social harm, moral transgression, and/or civil or human rights violation” (Ross, 2003, 2).



A political crime can be committed against the state or by the state, whether in a domestic or international setting. Ross (2003) states that generally speaking an act will be a political crime if the person who commits it does so with “a political or ideological intention or motivation to cause harm” (Ibid., 4). State political crime on the other hand “consists of an action perpetrated by the government to illegally minimize or eliminate threats to its rule” (Ibid., 4). However, these definitions are further complicated by what actions are considered political and the contexts in which they are carried out. For example, a politician can be targeted for personal reasons such as infidelity in his marriage, which would make whatever crime committed against him or her in this context non-political. Context therefore becomes very important. A political crime can be identified according to several factors, which include: “existing laws, the individual’s (or group’s) motivations, the kind of victim/target attacked, the result, and the context of the action” (Ibid., 5). Three types of actors can carry out political crimes: individuals, individuals acting through their professional position, and organizations. The latter provides us with a way in which to tie political crime and organizational deviance together. Ross argues that political crimes are organizational if they are carried out on “behalf of, or for, a collection of people who are part of a particular organizational unit” (Ibid., 9).

Therefore, organizational deviance helps explain how organizations can undertake deviant actions for their own purposes. It also accounts for individuals’ roles in the latter. Political crime consists of a new way to view crime under which state crimes becomes a sub-type. Both concepts are relevant to my study of the conditions facilitating political corruption because the latter can be understood as first, a form of political crime.

Moreover, it should also be noted that the different conceptualization of crime, i.e. not requiring a violation of criminal law, is compatible with the public-interest-centered definition of corruption. Second, the type of political corruption being studied in this thesis is of an organizational nature as it consists of a mechanism used to achieve organizational goals. Therefore, the concept of organizational deviance is important.

### **State crime as an Analytical Model**

The study of state crime began in the late 1980s, though radical criminologists defined the idea of state crime in the early 1970s. Ross (2003) explains this delay by stating that it was the controversy surrounding most crimes committed by states that made academics hesitate to study it. In 1988, Chambliss called for a study of “state-organized crime” in his Presidential Address to the American Society of Criminology (Chambliss, 1989; Matthews & Kauzlarich, 2007). This development in the field arose from the perceived need to study the crimes of the powerful to which little attention had been paid. However, it was in the early 1990s that the study of state crime in North America really took off. This was largely attributed by the anthology edited by Gregg Barak, *Crimes by the Capitalist State*, which was considered to be the first of its kind (Kauzlarich et al, 2001; Ross, 2003).

Kauzlarich et al (2001) define state crime as acts that “are illegal, socially injurious, or unjust acts which are committed for the benefit of a state or its agencies,” rather than an individual within the organization (2001, 175). Emphasis in most definitions is placed on the fact that they are crimes of an organizational nature. In fact, one of the most important characteristics of state crime is that it has the support of the

organization responsible. The state is seen as an organization that is both capable of committing crime and regulating it (Ross, 2003). Barak (1991) makes the distinction between “proactive state criminality” and “crimes of omission” (1991, 6), which others have labeled as crimes of commission versus crimes of omission. The latter refers to inaction that can result in social harm. These harms, Ross (2003) argues, can be deliberately planned or completely unintended though they usually serve organizational goals.

State crimes are said to include “coverups, corruption, disinformation, unaccountability, and violations of domestic and/or international laws” (Ibid., 86). However, they can also include acts that are considered to be illegal or harmful even if they are not technically violating an official law. Other state crimes are considered occupational because it is the privileges and authorities which certain public posts offer that allow these acts to happen. These types of crimes involve “the misuse of legally vested authority and force, which includes such acts as corruption, bribe taking, police brutality, military crimes, and illegal domestic surveillance activities” (Ibid., 87).

Kauzlarich, Mullins and Matthews (2003) argue that a distinction ought to be made between crimes committed in the pursuit of state goals and those committed “in the interests of a ruling class” (2003, 243). Contrary to other authors, they make explicit issues of class and discuss the role of elites in state crime. They argue that class or rather socio-economic inequality can become a criminogenic, in other words crime- generating, force in society. While lower classes may resort to street crime in their isolation and lack of access to resources, the elite will develop criminal behavior based on their social position and its privileges. “Here, criminality will not spring from a lack of access to

social resources, but from having excessive control over social resources – specifically full access to and control of key social institutions” (Ibid., 242). This is not to say that crimes committed on behalf of elite interests or ideologies are not state crimes. The authors rather present it as an alternative explanation for the motivations behind state crime. Although Kauzlarich, Mullins and Matthews mostly discuss the role of the elite in terms of controlling the state and its agencies, they argue that it is not “useful” to view the state solely as being controlled by the elite because it must also respond to the interests of the general citizenry “in order to preserve larger state goals and to avoid undermining the state itself” (Ibid., 252). The problem with this is that it implies that all governments are accountable to their citizenry, which is clearly not the case in non-democratic states such as in Fujimori’s Peru. Furthermore, they are insinuating that the same actions would get the same citizenry response everywhere.

Green and Ward (2000) specify that state crimes are acts of “state organizational deviance” that violate human rights (2000, 110). They believe that including human rights as a “normative standard” in their definition is crucial because without it, state crime would be evaluated in a rather Machiavellian way – “one in which the various forms of political violence and deception were assessed purely in terms of their effectiveness” (Green & Ward, 2004, 7). What links deviance and human rights, in their view, is legitimacy because what legitimizes the state and its practices in the eyes of the citizenry is often its commitment to the protection of human rights. An act committed by the state would then be considered deviant if it is perceived as illegitimate or concealed for fear of being labeled as such by a social audience. “Deviance is not an inherent property of the act, but denotes a relationship between the act, the actor, and a particular

audience” (Green & Ward, 2000, 109). This ability of the social audience, in other words civil society, to label the state and its actions as illegitimate or deviant is important because it can serve as a method of social control (Green & Ward, 2004). This can easily be tied into issues of empowerment and civil society participation in development where the people are encouraged to engage in the political process and ascertain their rights. In fact, Green and Ward (2000) provide the definition that is most compatible with the study of development. They state:

When a human rights analysis is used within a framework of deviance and legitimacy and the audience for whom state norms are breached is extended beyond that of the powerful to those from “below”, then we have a conceptually coherent definition of state organized crime (2000, 111).

There are five different categories of state crime that are identified by Ross (2003): political corruption, illegal domestic surveillance, human rights violations, state violence and state-corporate crime. Two of these types are applicable to the political corruption involving the Peruvian government and mining sector: political corruption and state-corporate crime, which will be further discussed in the following sections.

Another concept, developed by Kauzlarich Matthews, and Mullins (2003), is the complicity continuum of state crime. At one extreme of the spectrum are crimes of commission while at the other are crimes of omission. The authors explain: “one end of the continuum highlights active decision-making and conscious, purposeful behavior, while the other acknowledges that failure to act, or failure to act properly, so-called nonfeasance, is also part of the phenomenon of state crime” (2003, 246). There are four main points on the continuum. First, Explicit Acts of Commission (CE) refer to overt acts that are based on achieving the goals of the state. They are usually the most extreme

types of crime and more noticeable, such as genocide (Ibid., 248). Next down the continuum is Implicit Acts of Commission (CI), which occurs “when states or state agencies tacitly support actions which result in social injury but their connection is more distal than proximal.” Therefore what separates this type of crime from the previous one is that the state is not actively participating (Ibid.). The third are Explicit Acts of Omission (OE), which happens “when the state disregards unsafe and dangerous conditions, when it has a clear mandate and responsibility to make a situation or context safe” (Ibid., 249). Finally, the last point on the continuum and the most controversial is Implicit Acts of Omission (OI). The contention is due to the fact that it involves the failure of governments in addressing “social problems such as racial, income, and gender inequality” (Ibid., 250). The above is linked to the discussion of what constitutes state crime, which is discussed below.

The concept of state crime has caused some debate regarding what actually constitutes a crime. This brings on the broader debate regarding *mala in se* crimes, those that are inherently harmful, as opposed to *mala prohibita* crimes, which are those that are harmful specifically because they are prohibited by an official law (Ross, 2000a; Barak, 1991). This debate is discussed by Matthews and Kauzlarich (2007) and is seen as comprising those who abide by a legalistic view of state crime on one side and those who come from a harm-based perspective on the other. “The question of state crime, for criminologists working within a legalistic framework, is not whether it is a real phenomenon, but rather which legal definition(s) to use” (2007, 47). There is also contention surrounding the use of definitions of crime that the state itself controls. What is therefore argued by authors such as Kauzlarich and Kramer is the use of definitions of

crime according to international law, which could be employed in order to determine whether a state's actions constitutes a crime. Some, such as Ross, have simply expanded their definition to include "elements of legal criteria" as well as acts which would be considered "illegal or socially injurious" by society (Ibid., 46).

The other side of the debate advocates "the study of harm producing behaviors" rather than the use of legal definitions of crime (Ibid., 48). An example of a social harm that extends the boundaries of the legalistic approach is the high levels of poverty that are either perpetuated by the failure of governments to address it or created by state policies that favor certain groups (Ibid., 49).

Some scholars such as Sharkansky (2000) have pointed out that the term crime may be inappropriate as the state is the one that controls the definition of what constitutes crime and the punishment it implies. This could be seen in the Peruvian case where the Fujimori regime created its own rules through executive decrees and the implementation of a new constitution. What the study of state crime recognizes is that most "legal systems are slow to enact legislation; are highly normative; and often reflect elite, class, and nonpluralistic interests" (Ross, 2003, 87). However, one does not have to be limited to definitions put out by the state, for states are not the final judges of what is right and wrong, if we take the example of the International Criminal Court. As demonstrated, some scholars of state crime have used international law and human rights law as a basis. For example, the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power could be especially useful. It states the following:

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally

recognized norms relating to human rights (United Nations, 1985a, B.18).

Therefore, victims of abuse of power are not only protected by national laws, but also by international norms. In addition, the Declaration encourages states to incorporate these norms into their legal system as to better protect their citizens.

I would argue that the best perspective would be one based mostly on international and human rights law while integrating acts that would be perceived as illegal or socially harmful by society. This would avoid relying on definitions of the state and would also not be limited to violations of law. Following this line of reasoning, the best definition to use would be that of Green and Ward outlined above.

Despite its increasing relevance in the field of criminology, many academics have complained of a lack of theory on state crime (Ross, 2000a; Barak, 1991; Kauzlarich et al, 2001). In fact, in most of the literature one comes across calls for more studies on state crime<sup>2</sup>. Barriers to this are the complexity of state crime, its hidden nature and the lack of funding for research (Michalowski & Kramer, 2006). An obvious complication to the study of state crime is its covert nature which means that most of the deviance is concealed from the public. In order to study it, “relevant actors and processes and specific relationships must be identified and a time period must be specified” using both quantitative and qualitative methodologies (Ross, 2000a, 13).

Ross (2000a) also makes a call for more country specific research in order to provide more contexts and to make the study of state crime more comprehensive. However, Ross himself almost exclusively focuses on state crimes in advanced

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<sup>2</sup> The study of state crime is not limited to the field of criminology, though the terms differ from one field to another. Political science, for example, studies state terrorism, which is comparable to state crime albeit with a slightly more specific focus.



industrialized countries, which limits his arguments and their applicability. He defends his choice by stating that the study of state crime is easier when comparing similar political systems, that data from the less developed countries are harder to collect and that there is too much variety in terms of state agencies and their mandates in the developing world. Though this is a fair statement, he refers to less developed countries as “communist, authoritarian, [and] totalitarian” (Ross, 2000b, 3) which is not only inaccurate but also comes off as patronizing. I would argue that the field would be enriched further by more studies of state crime committed in the developing world, which represents the vast majority of states and of the global population.

Green and Ward have demonstrated that this is possible by using case studies set in Nigeria, Honduras, Ecuador and other countries in the developing world. Furthermore, the integrated theoretical framework, detailed in the section on state-corporate crime, is not specified to any particular political system, which means it can be applied to a variety of contexts. Despite the fact that the state crime model has largely been used in studying the developed world, one can find many implications for the study of development. The most obvious of these concerns debates regarding the role of the state vis-à-vis its citizens and development. The debate regarding the role of the state in development and how this role is performed is often tied to the issue of good governance, discussed in the next section.

Therefore, the state crime concept as based on the works of Green and Ward, Ross and Kauzlarich et al becomes the most appropriate model to use for the purpose of this thesis. This is especially true because of its approach to organizational deviance committed by governments as well as its approach to crime. As I will show in another

section, the state crime model is also useful for explaining political corruption of an organizational nature, which is required for the Peruvian case study.

### **State Crime and Good Governance**

Bad governance is characterized by the “personalization of power, lack of human rights, endemic corruption and un-elected and unaccountable governments” (Weiss, 2000, 801).

It would therefore not be unreasonable to make the observation that state crime goes hand in hand with bad governance. State crime usually defies the respect for the rule of law advocated by good governance. It often undermines efforts to fight against corruption, which became a prominent concern in the governance agenda in the 1990s. The World Bank considers corruption to be detrimental to economic growth, the poor and public services while the UN considers it to be harmful to all forms of development: economic, social and political (Ibid.). As previously mentioned, the World Bank tends to prescribe neo-liberal policies in order to combat corruption with the idea that there will be a reduction in the level of corruption if they “demand changes in public policy which reduce state intervention and bureaucratic regulation, leaving the distribution of resources in the economy to market forces” (Smith, 2007, 193).

Furthermore, by Green and Ward’s definition state crime implies the violation of human rights. Therefore, a state agency’s action that does not cause harm or directly or indirectly violate the human rights of one or more of its citizens would not constitute state crime. Although Ross (2003) specifies human rights violation as a specific type of state crime, the others he mentions in his typology: political corruption, illegal domestic surveillance, state violence and state-corporate crime, also involve the violation of human

rights. The impact of political corruption on human rights is discussed in the next section. Illegal domestic surveillance, for example, goes against article 12 of the Universal Declaration of Human Rights, which states: “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation” (United Nations, 1985b). State violence includes torture, deaths in custody, genocide and police brutality. It thus implies that protection from threats to the right of life and from torture and “cruel, inhuman or degrading treatment or punishment” ensured in the same declaration (Ibid.). What then, would be included in Ross’ human rights violations as a type of state crime? He states: “Regardless of the degree of violence in connection with these actions, human rights violations are usually carried out by or have the involvement of a variety of state criminogenic agencies” (Ross, 2003, 122). While he does not discuss the relation of this type of state crime in relation to the others, one can assume that the main difference is that some types, such as illegal surveillance represent lesser violations. Where the line becomes blurred is with state violence, where human rights are violated in a direct and obvious manner.

This ties into the principle of good governance agenda because the protection of human rights is central to it and deemed fundamental to both human and economic development. Three different opinions exist on this in the development literature, namely “that development, and especially human development includes the enjoyment of one’s human rights; that development will enable human rights to be enjoyed; and that recognition of rights is a means of bringing about development” (Smith, 2007, 47). Human rights are defined by Smith (2007) as:

[C]laims to entitlements that are held to be morally defensible regardless of the law in any particular sovereign state. [...] Rights are claims for action or inaction

against institutions capable of meeting such claims. They are extensively claims against the state which has the power to prevent violations of human rights by its own agencies or other powerful social and economic institutions, such as organized religion or industrial corporations (Ibid., 45).

According to Schulte-Bockholt (2010), Fujimori's Peru was not only an example of bad governance but criminal governance. "Governance [...] is not merely bad but criminal because the lack of accountability, transparency, or rule of law produces results such as corruption, human rights abuses, or environmental contamination" (2010a, 2296). This case study therefore consists of an example of state crime going against the principles of good governance.

### **Political corruption as a state crime**

As mentioned above, political corruption is a type of state crime. Corruption becomes a political crime insofar as it violates the public trust. In most definitions of corruption, corrupt acts are those of individuals seeking to gain personally, either financially or otherwise. The distinction made with political corruption is that it involves benefits that are partisan rather than strictly monetary. However, political corruption is not only personal. In the event that the individual's goals and those of its organization are being met, political corruption can benefit both. It would not necessarily be carried out through a policy but may become part of the organizational culture, which ties it in with the concept of organizational deviance (Ross, 2003).

Political corruption, according to Ross (2003), is divided into three main types according to its perpetrators: corruption by lawmakers, corruption by law enforcement officers, and corruption by regulatory inspectors. Corruption by lawmakers usually involves taking bribes in exchange for influence in the legislative process. Corruption by

law enforcement officers is generally for the officer's personal gain and achieved through his or her authority as a member of the police force. Finally, corruption by regulatory inspectors stems from opportunities created by the decision making power regarding the violation of regulations. Inspectors would take bribes to look the other way on such violations (Ibid.). Although this typology provided by Ross is interesting, it mostly makes reference to bribe taking which is a limited way of viewing corruption and does not seem to fall in line with the broad view of crime found in the study of state crime. Furthermore, it seems to place emphasis on the individuals rather than on organizational goals. In fact, apart from the perpetrators being state officials, I fail to see why these types of corruption would be considered to be state crime since these officials would mainly be seeking personal gain rather than accomplishing organizational goals. The last two would rather fall under bureaucratic than political corruption. Moreover, it is specifically not useful for my topic since I am looking at grand corruption rather than petty corruption involving police officers and low-level bureaucrats.

Green and Ward's view of corruption as state crime is more useful for the purposes of this thesis. They offer a different interpretation as to what constitutes corruption. An act, in their view, is not corrupt because it is labeled that way but because it is concealed for the purpose of keeping it from people who may call the act corrupt. They argue that corruption becomes state crime when corrupt actions "are either committed in pursuit of the organizational goals of state agencies, or are tolerated for organizational reasons" (2004, 11). Green and Ward argue that corruption becomes a form of organizational deviance in three different scenarios.

The first is when corruption becomes a means through which to achieve

organizational goals. This would include using corruption to raise money for other purposes, such as fulfilling specific organizational goals or for gaining electoral advantage.

Second, when corruption is allowed or encouraged because it achieves organizational goals. A common example of this is when poorly paid public officials use bribes to supplement their income. The state generally tolerates such behavior because it cannot afford to pay them more. Higher- ranking officials may also personally benefit by taking a percentage of the bribes.

The final scenario is when the gain of profit achieved through corrupt activities becomes itself an organizational goal and affects the organization's decisions (Ibid.). This is common in regimes known as kleptocracies where the state is used to maximize profit for a group of specific individuals.

State-capture is another result of this type of corruption where "rather than purchasing discretionary administrative decisions such as the award of a particular contract, induces legislators or judges to alter the legal 'rules of the game'" (Ibid., 16).

Green and Ward's take on corruption is also more compatible with their definition of state crime because of the way in which they link the issue to human rights. They argue that corruption can lead to direct as well as indirect violations of human rights. The former occurs since "political corruption directly violates the right to political participation" because it "undermines the conditions for any effective political agency" (Ibid., 18). Smith (2007) would agree with their view, as he believes that corruption can directly undermine human rights when the people responsible for violating them can avoid punishment by paying bribes. Indirect violations on the other hand occur as a result

of the diversion of resources from services that would provide the poor with basic necessities such as clean water and health care (Green & Ward, 2004). This has especially significant consequences for development since the poor are disproportionately affected by corruption, which serves to increase socio-economic inequalities as well as affect their ability to satisfy their basic needs. This emphasis on the social harm created by corruption is also compatible with the public-interest-centered definition employed. Green and Ward make another contribution to the literature by not limiting their focus to the developed world and providing many useful examples from less developed countries, two of which will be discussed in the next section.

Therefore, the view of corruption as state crime advocated by Green and Ward is more appropriate for this thesis. It falls more closely in line with the model of state crime, which will be used to analyze the topic. Another important concept for my analysis is state-corporate crime, which will be discussed below.

### **State-corporate Crime as a State Crime**

State-corporate crime is defined as “actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of goals of one or more institutions of political government and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution” that are characterized as either criminal or harmful (Green & Ward, 2004, 28).

There are two types of state-corporate crime. The first is state-initiated corporate crime, which consists of corporate deviance that is either approved or commanded by the state. The second type is state-facilitated corporate crime, which refers to cases where

“government regulatory institutions fail to restrain deviant business activities, because of direct collusion between business and government, or because they adhere to shared goals whose attainment would be hampered by aggressive regulation” (Ross, 2003, 150). Parenti argues that the close relationship between the two stems from the fact that the government usually sees a healthy economy as necessary for a healthy state. Since the economy is often controlled by large business interests, a close bond is formed and goals become shared as both begin to work to ensure the maximization of profits and the stability of the market (cited in Ibid., 153). The problem that can result from this relationship is that when crimes come to light, the state usually retains its role as “investigator of the crime, prosecutor, and fact-finder/adjudicator (judge)” despite its own involvement in the crime in question (Ibid.).

The study of state-corporate crime contests the previous separation between political and economic crime, and combines them. Furthermore, scholars of state-corporate crime consider the violations of regulatory law as crimes as opposed to merely considering them violations of criminal law. Michalowski and Kramer (2006) add that some actions will not violate criminal or regulatory laws but will go against international and human rights laws and should therefore still be considered as crimes. Case studies have mainly focused on industrialized countries. One example is of a fire at a poultry processing plant in 1991 that took place in North Carolina, which resulted in the death of twenty-five people. It was attributed to the failure of government to enforce safety regulations. “Regulatory inspectors (i.e., state agents) knew that Imperial kept fire exit doors locked to prevent workers from stealing chicken parts. Because the doors were locked, 25 workers died in the fire” (Ross, 2003, 151). The incident is attributed to the



fact that government allowed the company, Imperial Chicken, to engage in illegal actions and failed to protect the safety of its workers.

Two case studies, covered by Green and Ward (2004), are worth mentioning because they deal with developing countries and were conducted “in order to explore the theoretical and empirical parameters of state-corporate crime” (2004, 30). The first study concerns the shrimp aquaculture industry in Ecuador, Honduras, Guatemala and Mexico. Since the early 1980s, this industry has grown significantly. Aquaculture corporations have developed large-scale shrimp farms in coastal and mangrove areas of these countries with severely negative consequences for the environment and local populations. Green and Ward argue for a case of state-facilitated crime. This was done through the “virtually free land concessions to shrimp farm operators”, the failure to enforce environmental regulations meant to protect mangroves, and the repression used to instill fear in the locals. Indeed, private security forces working for the shrimp corporations committed most of the use of force, albeit with immunity from government sanctions (Ibid.). The second case study deals with the Nigerian oil industry, where large corporations have exploited petroleum reserves to the detriment of the local environment and inhabitants. In both cases the consequences were displaced communities, environmental degradation as well as repression and violence at the hands of private security forces (Ibid.). However, in the Nigerian case the state was found to have played a larger role in “violently repressing local dissent” to protect the oil industry’s interests (Ibid., 34).

Arguably the most important contribution made to the study of state-corporate crime was the construction of an integrated theoretical model by Michalowski and Kramer (2006). This model combined three theoretical approaches: differential

association theory, organizational theory, and political economy in order to explain the phenomenon of state-corporate crime at different levels. A Marxist political economy analysis was used to explain how the political and economic structures in any society will “shape the goals and means of both economic and political institutions, as well as the constraints they face.” Organizational theory explains how internal structures within organizations, whether political or economic are linked with the broader political economic structures on the one hand and the actions and thoughts of individuals that form the organization on the other. Particular emphasis is placed on how the thoughts and actions are shaped by the position that the individual holds in that organization as well as the organizational norms. Finally, differential association theory brings the analysis to the level of the individual “by focusing on the social relations that give meaning to individual experience, [and] directs us to examine the symbolic reality derived from social interaction within bounded organizational niches” (Michalowski & Kramer, 2006, 24).

These three levels of analysis are then combined with three catalysts for action in order to form the integrated model found in the table below. The three catalysts are: motivation, opportunity, and control. The argument at the base of the model is that “criminal or deviant behavior at the organizational level results from a coincidence of pressure for goal attainment, availability and perceived attractiveness of illegitimate means and an absence of effective social control” (Ibid., 24)<sup>3</sup>. At the base of the motivation catalyst is the pressure for “goal attainment” (Kramer, Michalowski and Kauzlarich, 2002, 273). Kramer, Michalowski and Kauzlarich (2002) explain the

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<sup>3</sup> It should be noted that while the integrated theoretical framework has mostly been applied to cases of state-corporate crime, it can also be applied to different types of state crime (Green & Ward, 2004).

rationale behind this:

Thus, a highly goal-oriented individual, working in an organization that evaluates performance strictly on goal attainment by its workers in a society whose cultural and institutional framework emphasizes goal attainment above all else, will be more susceptible to pursuing deviant organizational strategies than if one or more of these conditions is absent (Ibid.).

The opportunity catalyst puts forward the idea that when “legitimate means are scarce relative to goals”, there is a higher chance of organizational deviance taking place (Ibid.).

The authors explain:

The likelihood of deviance increases for those organizations or organizational subunits where the allocation of means by the internal structure is inadequate relative to the organization’s goals, increasing the likelihood that individuals will perceive themselves to be blocked from access to legitimate means and will subsequently seek deviant alternative routes (Ibid., 273, 275).

The final catalyst for action, social control, provides a deterrent to deviant behavior at all three levels. Kramer, Michalowski, and Kramer argue:

Thus, societies with high operationality of social control are more likely to produce organizations with strong corporate cultures favoring compliance with laws and regulations. Individuals who function in these organizations in such a society will be more likely to develop forms of personal morality that would mitigate against engaging in organizational deviance (Ibid., 275).

**Table 1.1 An Integrated Theoretical Model of State-Corporate Crime**

Levels of Analysis	Catalysts for action		
	Motivation	Opportunity	Control
<b>Institutional environment</b>	<ul style="list-style-type: none"> <li>- Culture of competition</li> <li>- Economic pressure</li> <li>- Organizational goals</li> <li>- Performance emphasis</li> </ul>	<ul style="list-style-type: none"> <li>- Availability of legal means</li> <li>- Obstacles and constraints</li> <li>- Blocked goals/strain</li> <li>- Availability of illegal means</li> <li>- Access to resources</li> </ul>	<ul style="list-style-type: none"> <li>- International reactions</li> <li>- Political pressure</li> <li>- Legal sanctions</li> <li>- Media scrutiny</li> <li>- Public opinion</li> <li>- Social Movements</li> </ul>
<b>Organizational</b>	<ul style="list-style-type: none"> <li>- Corporate culture</li> <li>- Operative goals</li> <li>- Subunit goals</li> <li>- Managerial pressure</li> </ul>	<ul style="list-style-type: none"> <li>- Instrumental rationality</li> <li>- Internal constraints</li> <li>- Defective SOPs</li> <li>- Creation of illegal means</li> <li>- Role specialization</li> <li>- Task segregation</li> <li>- Computer, telecommunication, and networking technologies</li> <li>- Normalization of deviance</li> </ul>	<ul style="list-style-type: none"> <li>- Culture of compliance</li> <li>- Subcultures of resistance</li> <li>- Codes of conduct</li> <li>- Reward structure</li> <li>- Safety and quality control</li> <li>- Communication processes</li> </ul>
<b>Interactional</b>	<ul style="list-style-type: none"> <li>- Socialization</li> <li>- Social meaning</li> <li>- Individual goals</li> <li>- Competitive individualism</li> <li>- Material success emphasis</li> </ul>	<ul style="list-style-type: none"> <li>- Definitions of situations</li> <li>- Perceptions of availability and attractiveness of illegal means</li> </ul>	<ul style="list-style-type: none"> <li>- Personal morality</li> <li>- Rationalization and techniques of neutralization</li> <li>- Diffusion of responsibility</li> <li>- Separation from consequences</li> <li>- Obedience to authority</li> <li>- Groupthink</li> </ul>

(Michalowski & Kramer, 2006, 25)

Social control here forms an important part of the framework as it can provide a deterrent to state crime. As shown in the table above, it can come in the form of civil society or international pressure. This becomes an important point for development as efforts to empower civil society could be used to suppress state crime. Regarding international pressure, it raises the question of whether the good governance agenda of the IFIs can

affect the likelihood of state crime through conditionalities and whether this would represent a method of social control.

Relating to the issue of IFIs is the argument that debt is usually a major factor behind state-corporate crime. Development agencies and IFIs will often promote certain industries, such as shrimp aquaculture, as a way to foster economic growth and export earnings (Green & Ward, 2004). In their efforts to attract and secure investment from foreign corporations and industry, governments will facilitate certain acts harmful to their people and/or the environment. Says David Barnhizer: “the debt service obligation almost compels governments to look the other way when foreign and domestic investors offer some hope of increasing economic development and hard currency earnings from foreign trade” (cited in *Ibid.*, 45). Furthermore, it is also argued that these types of industries create a concentration of wealth in their host country “to the detriment of the poor” (*Ibid.*, 46). All this of course begs the question, economic growth at what cost? On a broader level, state-corporate crime also raises some important issues regarding the influence of large industries in developing countries, not only for the potential harm caused but also for the way in which governments sometimes give predominance to their interests rather than those of their citizens.

The state-corporate crime type is useful because it helps to explain the relationship between the Peruvian government and the mining sector in my case study. Furthermore, it provides a framework to analyze the potential for state crime. Specifically, and most importantly, this framework furnishes the means with which to identify the conditions that facilitated political corruption during the Fujimori regime.

As demonstrated previously, both state-corporate crime and political corruption as

types of state crime are important concepts for my thesis. However, instead of focusing on one rather than the other, it is more effective to integrate them. Theories of political corruption alone would not explain the relationship between the Peruvian government and the mining sector or how their interaction could result in crime. State-corporate crime theories on the other hand do not deal specifically with corruption though theorists may include them in their list of possible crimes.

This integration is both necessary and plausible as neither of the definitions mutually exclude each other. The best way to integrate them is to view corruption as a type of state-corporate crime. Thus, the relationship between the Peruvian government and the mining sector would be emphasized and one result of this interaction would be corruption. I will use this integration in order to select the examples of corruption that will form my case study. Examples will need to fit the definition of political corruption as state crime proposed by Green and Ward as well as fit the criteria of state-corporate crime, i.e. the intersection of the public and private spheres that results in crime or social harm.

### **Conclusion**

The state crime model is the most useful tool to use for my topic for the following reasons: it offers a broader interpretation of the concept of crime, which is compatible with the public-interest-centered definition of corruption chosen for this thesis. The model also mainly deals with crimes of an organizational nature, meaning acts that are committed by individuals for the purpose of achieving organizational goals. In addition, the state crime model provides a way in which to view political corruption, as it

represents a subcategory of the former. Finally, another of its categories, state-corporate crime, provides us with an integrated framework that can be useful for the analysis of corruption in the Peruvian mining sector.

Although a model of criminology, state crime can be linked to development issues in several ways. First, the emphasis on human rights invokes the call of many development theorists for the importance of meeting basic needs and a broader focus on human development rather than having strictly economic goals. Second, the role of the state as a perpetrator of crime fits in with debates on good governance. Third, the importance of social control, exercised by civil society, which serves as a deterrent to state crime, has significance for development efforts to empower the poor and engage them in the political process. It brings a new justification for the emphasis on participation. Fourth, it has been argued that a factor in state-corporate crime in developing countries is the massive amount of debt incurred. This is clearly an important issue for many developing societies as it questions the role of IFIs in state-corporate crime through the promotion of economic growth as well as the true costs of a country's ability to develop economically despite its debt. Moreover, it raises the question of how much influence the promoted industries have on their host country's government, and what the latter will do to protect its interests.

This choice of analytical framework clearly has implications for my methodology. If I am applying the state crime model to my thesis, I will need to find examples of corruption during the Fujimori era that match the same criteria. More than that, I will need to match them to the criteria set specifically by the integration of state-corporate crime and political corruption typologies. Once the best examples have been chosen, I

will analyze them in order to identify the systemic conditions that facilitated them using the integrated theoretical framework and determine whether these conditions were influenced by the IFIs or if they correspond to the good governance doctrine.



Corruption, spreading like burning lava throughout the corners of our immense territory, has wounded the Republic in everything it held as great, noble, and generous: its morals, religion, and laws. – Domingo Elias (cited in Quiroz, 2008, 130).

### **CHAPTER THREE**

#### **TRADITIONS OF CORRUPTION IN PERU**

##### **Introduction**

The overall purpose of this chapter is to provide contextual background to the case study as well as to present the two examples of corruption that will be used for analysis. The first section will present a brief overview of corruption trends that have occurred in Peru throughout the ages. Next, an account of the rise of Fujimori and the authoritarian turn it took will be outlined in order to provide context. The following two sections will also provide background: one will discuss the levels corruption reached under Fujimori while the other briefly explains the mining expansion that took place while the regime was in power. The fifth section consists of descriptions of the two examples of corruption, involving the mining sector and the Peruvian government, used in the analysis of this case study. Finally, the chapter concludes with a discussion of the consequences the collusion between the government and the mining sector can have for development. This serves to show that although the examples chosen may not be extreme in their consequences, that complicity between these two parties can be detrimental to the citizens as well as the environment.

##### **Historical Corruption in Peru**

Though the Fujimori regime undoubtedly represented a unique era for Peru due to its

unprecedented level of corruption, the presence of the latter dates back to colonial times. In fact, bribery and patronage was then used as a way to ensure stability in the viceroyalty, which was attracting newcomers while having to satisfy the ambitions of the conquistadors. "Rebellion and discontent among former conquistadors and encomenderos dispossessed of indigenous labor grants, and respective clients, were common, particularly in strategic mining centers" (Quiroz, 2008, 59). Patronage was therefore established in order to satisfy their interests. This was complimented by corruption, which provided extra benefits. Patronage was also used in order to solidify the viceroy's executive power, appointing people close to them to ensure loyalty. According to Quiroz (2008), the principal types of corruption during the colonial era were the sale of public offices, corruption revolving around contraband and corruption relating to the "interested delay in the collection of debts and neglect in mining supervision and maintenance" (Ibid., 80). There was also significant corruption in the administration of the mines through the exploitation of the indigenous population and greed from the production of mercury. Although the colony operated under a different political and administrative system, the corruption and patronage networks established during the colonial era set the tone for the next centuries. Quiroz argues that "corruption was central to the colonial system and the basis for future systemic corruption" (Ibid., 83).

After independence, corruption remained but manifested itself in different ways. Military caudillo patronage replaced the former viceregal practices and was used for the same reasons. Corruption stemming from contraband was still present but declined in importance as time went on. Bribery in obtaining public work and guano contracts became prevalent, facilitated and supported by a network of industry lobbyists,

bureaucrats and legislators<sup>4</sup>. The same types of actors were also involved in corruption in the management of public credit, including the domestic debt (Ibid.).

In the period following the Pacific War (1879-1883), corruption benefiting the military elite was prevalent though briefly overshadowed by “bribery for the approval of the strategic financial settlement with foreign creditors” (Ibid., 244). Patronage persisted at a time when political parties were weak and corruption was encouraged. “With limited fiscal resources and low civil service salaries, politicians allowed and even encouraged corruption at high and low administrative levels to complement political rewards and favors” (Ibid., 245). The regime with the highest level of corruption during this era of modernization was undoubtedly that of Augusto Leguía, spanning from 1919 to 1930, where the practice reached “all key institutions and the media” (Ibid.). In the period thereafter, corruption from the acquisition of weapons increased, especially during the military regimes of Colonel Sánchez Cerro, General Benavides, and General Odría (1930-1939). Corruption in public works and services was still prevalent while the mismanagement of public debt went from a “focus on foreign debt to domestic loans” (Ibid.). There was also an increase in “favoritism, graft, and abuse” due to the protectionist policies of import substitution industrialization (Ibid.).

The latter part of the twentieth century, preceding the Fujimori era, is characterized by “assaults on democracy” (Quiroz, 2008, 305). The military regimes ruling between 1968 and 1980 were especially guilty of this. During this time the military exerted control over political institutions, the economy, the media and the Constitution

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<sup>4</sup> Guano refers to “the excrement (feces and urine) of sea birds, bats and seals”. Due to its high levels of phosphorus and nitrogen, it has been used as fertilizer and in the making of gunpowder. Guano has been mined along the coast of Peru since the Incan empire (“Guano”, n.d.).

and mainly ruled by executive decree (Ibid.)<sup>5</sup>. In a tendency that would later be repeated by the Fujimori regime, the military administration implemented a series of decree-laws that centralized power in the Executive and undermined that of the judiciary. The latter was achieved by replacing honest judges with mediocre ones through appointments by the Executive. This new political order served to encourage rather than keep corruption in check. “The new rules and practices introduced by the military between 1968 and 1979, together with new state enterprises, ministries, and organizations, bred all inefficiency and abuse that hid or protected corruption” (Ibid., 327-328). Another parallel that can be drawn between the Fujimori regime and the earlier government one was the control of the media held by both. The main difference was that Fujimori was able to control a privately owned media through bribery while the military regime controlled them by expropriating “all means of mass communication in 1974” (Ibid., 330). Consequently, journalists were more willing to do the government’s bidding, as they were dependent on it for their income. This of course meant that corruption scandals were mainly left uncovered and the media ceased to act as a check on government. The main forms of corruption during this time were “the abuse of export subsidies, exchange controls, and preferential dollar rates” (Ibid., 354). However, these practices did not end with the return to civilian rule in 1980 but rather continued throughout that decade. Other types of corruption, already present in former times, continued. These included the mismanagement of the public debt and foreign aid as well as corruption relating to public work contracts (Ibid.).

During the transition back to civilian government, a constituent assembly was

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<sup>5</sup> Although it is important to note that the military regime ruling from 1968 to 1974 was leftist and the military regime that succeeded it was right wing, they were both guilty of this (Quiroz, 2008).

created with the objective of designing a new constitution. “In an attempt to solve impasses between the executive and legislative branches made obvious in past democratic regimes, the 1979 charter strengthened the executive branch and weakened the legislature” (Ibid., 333). It also gave the president more powers such as the appointment of Supreme and Superior Court judges and the ability to suspend constitutional rights in times of emergency. Quiroz argues that it was these flaws embedded in the Constitution that helped undermine “crucial checks to corruption” in the years to come (Ibid., 333)<sup>6</sup>.

According to Durand (2005), there are a few factors that lead to corruption during the Garcia regime, which immediately preceded the Fujimori one. These included Garcia’s personality and political ambition, the concentration of power in the Executive, and the increased intervention of the state in the economy. This reduced the likelihood of corruption being detected, investigated as well as punished. Garcia also had control of the Congress due to the majority held by his party, *Alianza Popular Revolucionaria Americana* (APRA). Corruption was able to spread under these conditions, eventually reaching all levels of society and government (Ibid.). Corruption was also found at the very highest level of government, evidenced by the personal enrichment of Garcia and some other high officials during his time in office (Ibid.). Peru therefore has a long history of corruption preceding the Fujimori regime, which created the environment for the unprecedented levels of corruption that was to follow.

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<sup>6</sup> Although this is true, the 1979 Constitution was also quite progressive in its protection of social rights and the decentralization of the power structure to include regional governments. This process of decentralization was later reversed by the Fujimori regime.

### **The Rise of Fujimori**

Fujimori arrived on the political scene out of nowhere. An agricultural engineer and professor, his only political experience was limited to academia, where he rose to rector of La Molina Agrarian University and President of the National Assembly of Rectors. The son of Japanese immigrants, Alberto Fujimori was a complete outsider when it came to the political process. For one, he was different than the light-skinned elite that usually ran for office. This, coupled with his accent and the fact that he came from humble beginnings, formed the basis of his appeal for a large part of the population, particularly the indigenous. He also constantly criticized the traditional political parties and characterized himself as being anti-politics, which appealed to the largely disenchanted citizenry. In 1990 he ran for both the Senate and the presidency under the banner of a movement cum party named Cambio 90 [Change 90], which used the slogan “honesty, technology, and hard work” (Calderón, 2001, 47). His main opponent was Mario Vargas Llosa, a Peruvian novelist and public intellectual, who was running a campaign based on neo-liberal principles and opposition to the outgoing President, Alan Garcia. It was because of the latter that Garcia decided to endorse Fujimori, considered the underdog in the election. “As a result of Garcia’s support, Fujimori managed to finish second in the first round of the 1990 presidential election and then to defeat Vargas Llosa in a runoff” (Ibid.).

It was during the 1990 election that Fujimori met Vladimiro Montesinos, who would come to play an important role in this tale of political manipulation and human rights violations. Amid claims that he had sold some assets to finance his campaign, an investigation was conducted into Fujimori’s financial affairs and concluded with

allegations of tax evasion. He was introduced to Montesinos, a lawyer who had been kicked out of the military for selling secrets to the CIA and was known for defending drug traffickers. "Montesinos was not the sort of lawyer who won cases by arguing the merits; he was the kind who would walk out of a judge's office leaving behind a briefcase of cash" (Cameron, 2006, 273). The case was won but that was not the end of Montesinos. He won over the President-elect by showing him secret military plans of a coup and analyses of the fight against terrorism. Anxious about the prospect of a military coup against him, Fujimori began to depend on Montesinos for advice on how to control the armed forces (Ibid.). Thereafter, as of the inauguration, Montesinos became the informal head of the national intelligence service, the *Servicio de Inteligencia Nacional* (SIN) and Fujimori's closest advisor. He is also considered to be the master puppeteer who controlled the corrupt networks.

Fujimori came into power at a time when Peru was in very dire straits. Hyperinflation at the end of Garcia's reign had reached an all-time high of 7,650 percent, which was significantly affecting the purchasing power of the population (Calderón, 2001). Meanwhile, the country was overtaken by fear and anxiety due to the advances of the brutal *Sendero Luminoso*, or Shining Path, movement. This Marxist insurgency began in the 1980s as a response to the poverty experienced by peasants (Ibid.). The violence caused by the Shining Path acted as a deterrent to foreign investment in Peru, which characterized it as a high-risk location. In order to address these issues, Fujimori responded with a more authoritarian approach than what he had campaigned on. "Fujimori adroitly grasped the fact that Peruvians, especially in times of crisis, actually welcome the *mano dura*, or iron fist" (Robinson, 1997/8, 59).

On April 5, 1992, Fujimori, with the support of the armed forces, staged his self-coup. He suspended the Constitution and closed down Congress. Top officials of the latter were put under house arrest and members of APRA, the traditional party that had been headed by former President Alan Garcia, were arrested. Garcia escaped arrest by making his way to the Colombian embassy and fleeing to Paris. The military secured the APRA headquarters as well as other government buildings. Many judges were fired, which resulted in the closure of the Supreme Court and the tribunal responsible for constitutional guarantees. The *autogolpe* had strong popular support. “Apoyo, Datum, and CPI reported approval ratings for the closure of congress at 71 percent, 84 percent, and 87 percent, respectively” (Conaghan, 2005, 33). This was due to the fact that Fujimori justified the coup as a way in which to better fight the Shining Path and to fix the struggling economy. This resonated with widespread public perception of the ineffectiveness of the partisan political system in confronting these problems.

The opposition and international community, however, did not share this view. The US government and Organization of American States (OAS) both voiced their opposition and threatened to cut foreign aid and impose economic sanctions, respectively, if “representative democracy was not restored” (Ibid., 3). Fujimori had no choice but to concede. He agreed to have elections for a provisional congress, a combination of the “legislature and constituent assembly [named] the *Congreso Constituyente Democrático* (CCD),” that would be in charge of writing a new constitution (Ibid., 41). The problem however, was that the OAS did not specify how these elections were to take place, only that they would observe the elections to ensure fairness. They also did not establish any rules for the dialogue that would take place between the government and the opposition



(Ibid.). This provided Fujimori with the flexibility he needed in order to control the political process. What contributed to this was the fact that the more established opposition parties, such as *Acción Popular* (AP) and APRA, boycotted the elections. The parties did not wish their participation to “be interpreted as legitimating the coup” (Ibid., 50).

Due to the outcry of the international community, Fujimori was forced to reinstate democracy, albeit one he would control. This was evident in the way in which the Executive largely influenced the creation of the new constitution. This Constitution, implemented in 1993, was characterized by a neo-liberal focus and a mandate for stronger presidential powers in a newly unicameral political structure.

### **Corruption During the Fujimori Regime**

Scholars such as Durand (2005), Conaghan (2006), and Ugarteche (2005) have argued that the corruption process really began after the *autogolpe*. The main reason for this is that by undermining the ability of oversight of both the Congress and the judiciary, the Executive could act with impunity. This allowed corruption to flourish. “Corruption became both a means and an end – a way to retain power and the reason to stay in power” (Conaghan, 2006, 103). According to Durand (2005), there was a slight delay in the increase of corruption due to the moral reaction to the excesses of the previous government. This was combined with the fact that at the start of the Fujimori administration, there was a balance of power in the sense that his party did not yet control Congress as it would later. Furthermore, the regime had not yet co-opted the media. Nevertheless, corruption grew over time and eventually reached unprecedented levels.

“In the case of the Fujimori administration, corruption spread out across different arenas, involved different rings of participants, and served a variety of personal and political purposes” (Conaghan, 2006, 105).

There are two main views on the corruption networks operating in Fujimori's Peru. One sees Montesinos as the helm of a corrupt force taking over all institutions. As unofficial head of the intelligence agency, he used his powers to co-opt key officials in the various branches of government and the bureaucracy to do his bidding (Conaghan, 2005). The other view considers three different ‘mafias’, each controlled by a different leader (Durand, 2005). Fujimori controlled what was referred to in Peru with clear racist undertones as the “yellow mafia”, as it was comprised of descendants of Chinese and Japanese immigrants close to him. This mafia was mainly concentrated in the Ministry of the President as well as the NGOs Aken and Apenkai and the insurance company Popular y Porvenir. These last three institutions were later involved in a scandal of misappropriation of funds. “The Fujimoris’ NGOs served to funnel an estimated \$100 million worth of donations coming from Japan and local illegal sources into the family’s coffers” (Quiroz, 2008, 378).

Jorge J. Camet who was the minister of economy and finance led the second group, the so-called white mafia. This group was involved in the co-optation of economic institutions such as the tax and customs authorities, privatization committees as well as negotiations with big business. The private sector had an interest in supporting a regime that promised to privatize the economy and clamp down on organized labor, and thus actively participated in its corrupt networks (Quiroz, 2008). There was corruption involved in the privatization process, which is evident from the fact that of the \$1 billion

made from privatization, only \$250 million was left ten years later (Durand, 2005). What is also interesting to note is that while the Garcia regime mainly benefited from expanding the role of government and interfering in the economy, the Fujimori benefited from doing the opposite (Ibid.).

The last mafia was the one controlled by Montesinos. This group operated principally from the intelligence agency (SIN)'s headquarters. They controlled large finances such as the SIN's special operations fund and the military pension fund. The Waisman Commission, formed after the fall of the regime, found that about \$300 million was taken from the pension fund through the creation of fake companies used to siphon money from the pension fund (Quiroz, 2008). Another source of money was the cocaine trade because traffickers paid the military for protection, and contraband (Durand, 2005). A further source of income was the bribes received from the arms deals brokered by Montesinos and his cronies (Quiroz, 2008).

As mentioned above, Montesinos' indiscretions were more pervasive than the other two as he bribed his way to controlling the majority of institutions. In fact, the latter consists of one aspect that separates the Fujimori regime from others. In most cases, an outside agent would bribe a government official in exchange for a service while in the Fujimori case there was also many instances of a state agent bribing a private one to benefit the President and the rest of the mafia (Ugarteche, 2005). An example of this is the co-optation of the media by Montesinos. Bribes were paid to an outside party in order to control the image of the government. The regime would use their corrupt resources to in turn bribe others in order to maintain the regime (Durand, 2005). In this sense, it could be seen as a type of investment, though bribes were also used for personal enrichment. It

should be noted that officials were not always bribed with money but were sometimes promised good jobs in exchange for services rendered (Ibid.).

The ultimate goal was thus maintaining power and perpetuating the regime through reelection (Conaghan, 2005). “Beyond personal greed, the main motivation for this disproportionate graft was to retain power with enough funds to bribe and run fraudulent electoral and media campaigns” (Quiroz, 2008, 381). Corruption then became generalized and systemic, a way of accessing funds and a form of survival (Ugarteche, 2005). This was certainly not without cost to the Peruvian coffers. “Aided by his inner circle of family and friends, Fujimori drained the Peruvian government’s treasury of approximately \$400 million through the illegal abuse of power during his administrations” (Quiroz, 2008, 381).

Corruption under Fujimori became both a means and an end in itself, but it also brought on the fall of the regime. While Fujimori had promised to fight corruption from the beginning, and kept an anti-corruption discourse throughout his stay in power, the regime became one of the most corrupt in the country’s history. Montesinos had the habit of recording his secret meetings, either with audio or videotapes as a way of holding something over his counterparts. Shortly after the 2000 reelection, one of these tapes became public and created a scandal of epic proportions. The tape, allegedly leaked to the media by Montesinos’ personal secretary, showed him bribing congressman Alberto Kouri to cross over to the governing party. This revelation made impossible the relationship between Fujimori and Montesinos and ultimately led to the resignation of the former. After the fall of the regime, more tapes were found and released. These recordings created widespread panic amongst those who had taken bribes from the

sPYmaster, for most were unaware whether or not they had been taped, or if they would eventually be exposed (Cameron, 2006).

### **The Mining Expansion under Fujimori**

Mining has been one of Peru's most important economic activities since before colonization (De Eiden, 2006). However, before Fujimori's rise to power the mining sector had been experiencing some difficulties. As mentioned above, the Shining Path insurgency proved to be an obstacle to foreign investment in Peru, especially in the mining sector. Mining operations were often the targets of rebel violence, their compounds attacked and explosives stolen. Convoys bringing in mining materials were often intercepted, their cargoes either stolen or destroyed in order to disrupt mining operations (Ibid.). Stabilizing this situation was therefore a priority for the Fujimori regime, something it eventually achieved.

A number of measures were introduced in order to develop the mining sector, which had been nationalized under military rule (1968-1980). First, most of the nationalized mining companies were privatized. In fact, it "was established that the State participation in mining activities should not be higher than 2 percent" (De Eiden, 2006, 113). This was based on the government's privatization strategy, which was market-oriented in nature and based on the premise of limited "state participation" as well as the "promotion of private investment" (Ibid.). The privatization process was carried out without the involvement of national capital, the nationalized companies being sold exclusively to foreign companies (Ibid.). Although this was mostly due to the fact that Peruvian corporations were not large enough to bid, it was also facilitated by the 1991

Regimen of Legal Stability for Foreign Investment. This regimen served to forbid “discrimination against foreign investors” and allowed the latter to own property in Peru with few restrictions (Glennie, 2005, 5). The Peruvian government sold the most important state owned mining companies: CENTROMIN, Cerro Verde, Hierro Peru, Tintaya, as well as a couple refineries. These sold for a total of US\$ 856 million plus US\$ 95 million in foreign debt bonds and US\$ 1.133 billion in promised investment (Campodonico, 1999).

Second, foreign buyers also benefited from such laws as the 1991 Law to Promote Investment in the Mineral Sector. The benefits, largely implemented to attract foreign investment in the mining sector, included “transparent administrative regimes; beneficial tax and currency-exchange regimes; the freedom to repatriate earnings; and unhindered access to foreign currency” (De Eiden, 2006, 5). Third, the mining sector was to be less encumbered by regulations controlling its activities. Says De Eiden (2006): “The approach most favoured was to have as few regulations as possible and to encourage self-control” (Ibid., 7)

The IFIs were very supportive of this mining expansion. The World Bank for example actively encouraged it by advocating for legal reforms that would “facilitate mining investment” (Glennie, 2005, 5). The Bank directly financed several mining projects in Latin America and buying 5 percent of shares in the Yanacocha gold mine, located in Cajamarca and operated by the US-based company Newmont and its Peruvian partner Buenaventura (Ibid.). The mining expansion was thus part of the vision held for economic development, one that would be combined with good governance. Whether the two ended up being mutually exclusive remains to be seen.

### **Examples of corruption in the Peruvian mining sector**

As discussed above, corruption under Fujimori spread like a virus to reach many sectors of the public and private spheres. The mining sector, characterized by high rents and foreign investment was also affected. This thesis will focus on two examples of corruption in the Peruvian mining sector. The first consists of state-initiated crime, a case where Newmont, operating partner of Yanacocha gold mine, allegedly bribed Montesinos to intervene in a Supreme Court decision. The second consists of an example of state-facilitated crime and involves a case of tax evasion by the Canadian company Barrick Gold. Both will in turn be examined below.

#### ***Newmont: An Example of State-initiated Crime***

In what would later prove to be a contentious partnership, the Yanacocha gold mine in Cajamarca was owned by a Peruvian company, Condesa which owned 32.3 percent, an American company, Newmont which owned 38 percent, and a French company, *Bureau de Recherches Géologiques et Minières* (BRGM) which owned 24.7 percent. The International Financial Corporation (IFC), part of the World Bank, owned the remaining 5 percent (Felices Curtis, 1998). The dispute began in 1994, when BRGM decided to sell its shares in Yanacocha to Normandy, an Australian mining company. Newmont and its Peruvian partner filed a suit in Peru on the basis that they had pre-emptive rights to the shares as stated in the terms of their partnership. On September 21, 1996 the judge ruled in favor of Newmont. The decision was challenged in the Court of Appeals but the latter upheld the decision on February 14, 1997. It was then that BRGM and Normandy

decided to take the fight to the Civil Chamber of the Supreme Court. The latter decided to hear the case and on January 5, 1998 the judges announced a 3-2 decision in favor of BRGM. The matter did not end here as Peruvian law states that four votes are needed to win. A sixth judge was to be appointed and if the four votes were not achieved, a seventh judge would join the panel.

Worried about a potential defeat, Newmont decided to take matters into their own hands. Newmont and Buenaventura, its Peruvian partner, appealed to Fujimori for help and shortly after received word that the man to see was Montesinos (Perlez and Bergman, 2005). The US government already had a relationship with Montesinos, who was receiving US\$1 million a year from the CIA. The United States' relationship with him was a complicated one, as he was valued as an ally for his power in Peru while at the same time deplored for his actions as the Americans became increasingly aware of the human rights violations occurring under his watch as well as his involvement in the drug trade (McMillan and Zoido, 2004).

Lawrence Kurlander, then vice president of Newmont, met with Montesinos on February 26, 1998. Also present were an unidentified Peruvian man, thought to be associated with the judiciary and Grace Riggs Brousseau, Montesinos' former lover who was acting as translator. Unbeknownst to Kurlander, this meeting was being taped, as Montesinos had the custom of doing. Kurlander had come to see Montesinos for help with the BRGM case. In the tape, he is heard offering his help to Montesinos in return, saying that he has connections to powerful people in the US government and in the Jewish community (Ibid.). Peru had earlier deported an Israeli businessman, Baruch Ichver Bronstein, for the anti government stance of his television station. The latter had



then fled to the United States and was appealing to Washington for assistance in the matter. In exchange, Kurlander expected help in the Supreme Court case. This much is evident from the following conversation that was recorded on the tape:

Kurlander: It's very good! I want a friend for life!

Montesinos: That's right. I really appreciate everything you have told me and, well, you already have a friend now.

Kurlander: If you help me and you are useful I will try to be useful to you as well. I will be back.

Montesinos: How long are you going to be here?

Kurlander: How long do you think it will take until they have a verdict?

Riggs: Until the final vote.

Montesinos: I am going to help you with the votes.

Kurlander: That is what I hope. You know that trip.

Montesinos: They have been three and three and Elcira Vásquez [one of the Supreme Court judges] voted but they are still waiting. I can do a thing or two to put some pressure on them. I would like to know about the bad tactics of the French.

Kurlander: Oh!

Montesinos: The French connection!

Kurlander: The French connection, that's it! [laughter] (Ibid., 3).

Peter Romero, the US Assistant Secretary of State for Latin America, also approached Montesinos, asking him to intervene on behalf of Newmont and stressing that the case was important to the US government (Ibid.). As it turns out, Newmont was a major contributor to the Clinton administration (Riley, 2004). Interviewed later, Romero states that he intervened because he heard that the French government was involved and potentially influencing the case (Perlez and Bergman, 2005). The French had indeed become involved. The French President, Jacques Chirac, had contacted Fujimori requesting a Supreme Court review and "his personal intervention" (Ibid.). This is not surprising, considering that BRGM was a state-owned company. It is noteworthy that Peter Romero later found employment with Newmont as a consultant (McMillan and Zoido, 2004).

However, the story does not end here. After his meeting with the Americans, Montesinos met with Jaime Beltran Quiroga, the seventh judge appointed to the Supreme Court panel, on May 19, 1998 (Ortega, 1998; McMillan and Zoido, 2004). Once again, Montesinos taped the meeting. In the tape, he asked Beltran to vote in favor of Newmont emphasizing that it was a matter of national interest. It would garner US support for the deal to be brokered to end the border conflict with Ecuador (McMillan and Zoido, 2004). When asked by Beltran why the United States government was interested in the outcome, Montesinos explained that Newmont was a company that had influence and had the ability to pressure the government. Beltran then asked if the American ambassador had intervened to which Montesinos replied that the matter had reached a higher level. He told Beltran that it had become “a matter of state” as the undersecretary for Latin America, referring to Peter Romero, had spoken “directly to the President by order of the Secretary of State” (Ibid., 4). Montesinos then asked Beltran about his ambitions and promised to move him to the constitutional court in a matter of weeks (Perlez and Bergman, 2005)<sup>7</sup>. Two weeks later, Beltran voted in favor of Newmont.

What was not captured on tape was whether any bribes were given in order to facilitate the intervention. Kurlander promised a favor in return for a favor but no money was discussed. Montesinos then intervened on Newmont’s behalf by promising a promotion to a judge if he ruled in favor of the American company. That said, Rafael Merino Bartet, the second highest SIN analyst, later testified in front of the Townsend Commission that Montesinos received US\$4 million from Newmont for intervening on

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<sup>7</sup> According to his personal website, Beltran does not appear to have been transferred to the Constitutional Tribunal. He states that from 1996 to 2001 he served as a member of the Supreme Court in both the civil and constitutional chambers ([http://www.bysabogados.com/staff\\_jaime.htm](http://www.bysabogados.com/staff_jaime.htm)).

the company's behalf (McMillan and Zoido, 2004; Palacios, 2001). The same amount was mentioned by Patrick Maugein, a French businessman contracted by the French government for assistance in the case, in a suit filed in 2002 in the US against Newmont (McMillan and Zoido, 2004). Of this amount, Grace Riggs Brousseau allegedly received US\$600,000 for her role as translator and a magistrate named Lorenzi US\$100,000 for services unknown (Palacios, 2001).

To this day, Newmont denies taking part in any bribery. The company also denies asking Kurlander to meet with Montesinos but the former disagrees. According to Kurlander, not only did his superiors know that he was meeting with Montesinos, it was the US government which had recommended doing so (Perlez and Bergman, 2005). Kurlander maintained that he had been informed upon arriving in Peru that the French were engaged in bribery to influence the case. "Today Mr. Kurlander says that whatever his reservations at the time about Mr. Montesinos, he went ahead because nearly everyone told him, 'if the French were to be stopped, he was the only one in Peru who would dare to do it'" (Ibid.). Kurlander maintains that no one asked Montesinos to intervene in the case (Ibid.). This last statement is somewhat skewed as there is no other reasonable explanation for Kurlander seeking a meeting with Montesinos and informing him of what he could do for him. It is worth noting that although the case was investigated by a Peruvian commission and later by the US government, no charges were ever laid against Newmont. As per the Supreme Court decision, they settled with BRGM and Normandy and later took over the Australian company (Riley, 2004).

This example was selected because it constitutes state-corporate corruption. State-corporate crime is defined as "actions that result from a mutually reinforcing interaction

between (1) policies and/or practices in pursuit of goals of one or more institutions of political government and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution” that are characterized as either criminal or harmful (Green and Ward, 2004, 28). Political corruption here is defined as an act that is concealed for the purpose of keeping it from the public who may label the act as corrupt. It becomes state crime when the act is “committed in pursuit of the organizational goals of state agencies, or are tolerated for organizational reasons” (Ibid., 11). One of the situations in which corruption becomes a form of organizational deviance is when it is used to raise money for other purposes, such as fulfilling specific organizational goals or for gaining electoral advantage (Ibid.). This scenario is the most compatible with the Newmont case for the Fujimori regime did use bribes to maintain the regime and seek reelection.

The Newmont case involved both the State, specifically the informal chief of the intelligence service as well as a Supreme Court judge, and Newmont, a foreign mining corporation, satisfying one of the selection criteria. The interactions were conducted in secret for fear of being labeled illegitimate. They involved the exchange of favors and allegedly bribes. The interaction of the public and private spheres resulted in the violation of the rule of law, which in this case is above all the separation of powers. Furthermore, if there were indeed a bribe paid to Montesinos by Kurlander, it would violate the US Foreign Practices Act. Despite the fact that Montesinos was approached by Newmont rather than the other way around, this case constitutes an example of state-initiated crime because of the degree of involvement of the government.

### ***Barrick Gold: An Example of State-facilitated Crime***

Arequipa Resources, through its Peruvian subsidiary Acuarios Minera y Exploradoras SA, discovered the Pierina gold mine in 1995 and subsequently invested US\$35 million (Químper Herrera, 2003). In 1996, the Canadian company Barrick Gold acquired Arequipa Resources through the Canadian stock exchange for US\$790 million while accounting for the revaluation of the initial investment (Herrera Becerra et al, 2003). By way of this purchase, Barrick also acquired its subsidiary, Acuarios Minera y Exploradora, which held the title for the Pierina mining concession.

In 1996, Barrick, already owner of Arequipa Resources, merged with its Peruvian subsidiary Barrick Misquichilca thanks to Supreme Decree 120-94-EF (Químper Herrera, 2003). This Supreme Decree and associated law number 26283 allowed the following:

- 1) To exempt from income tax the goods transferred following a merger or division of companies, with respect to the highest attributed value to said goods, in relation with its computable costs (always and when said gain is capitalized); 2) to exempt from sales tax, in this case, the transfer of property; and 3) to exempt from payment of registration fees in the public registry [author's translation] (Herrera Becerra et al, 2003, 2).

It “also allowed the company which was merging to revalue its assets prior to the merger and later to transfer these to the company that was taking it over at the highest value, benefiting the latter with a superior depreciation” [author's translation] (Químper Herrera, 2003). Subsequent laws were then implemented to keep extending past the original deadline of December 31, 1994 (Herrera Becerra et al, 2003).

Despite the fact that it was the government that implemented law number 26283 and its associated Supreme Decree 120-94-EF, it was later declared unconstitutional. In fact, it violated several Peruvian laws. First, article 75 of the General Law of Mining

prohibits revaluing mining concessions (Químper Herrera, 2003). Revaluing also goes against article 44 of Legislative Decree number 774, which prohibits “the deduction of intangible assets” [author’s translation] (Herrera Becerra et al, 2003, 15). Second, the Supreme Decree gave extra benefits to corporations, which went against the “*principio de reserva de ley en material tributaria*” [principle of material subject to tax law] stated in article 74 of the Peruvian Constitution (Ibid., 3). Third, the law goes against Norm IV of the tax code which states that only a law or legislative decree “can create, modify or eliminate taxes; mark the event for the tax liability; the basis for calculating the rate; the creditor; the debtor; and tax withholding or collection agent, subject to the provisions of Article 10” [author’s translation] (Ibid., 4). Fourth, 120-94-EF goes against Norm 16 of Accounting [*Contabilidad*], which stipulates that: “the depreciation method used should reflect the pattern in which the asset’s economic benefits are consumed by the enterprise” [author’s translation] (Ibid.). The commission investigating the merger reported that: “under this standard, a voluntary revaluation of assets with tax implications is unjustified” [author’s translation] (Ibid.).

The consequence of this law was that corporations could take advantage of it to avoid paying taxes (Ibid.). In fact, the *Superintendencia Nacional de Administración Tributaria* (Sunat) [National Superintendency of Tax Administration], the Peruvian tax authority, opposed the Barrick merger based on the fact that its goal was to avoid paying taxes and that it went against international norms that prohibit revaluing intangible assets (Químper Herrera, 2003; Herrera Becerra et al, 2003). What is interesting to note is that Barrick did not attempt to hide this fact as they stated in their merger agreement that they were taking advantage of the law for its tax benefits and gave no other indication that

they were merging for other reasons. The merger was meant to recover the costs of acquiring Arequipa Resources (Herrera Becerra et al, 2003).

Sunat later verified that Barrick Misquichilca only existed on paper. It was determined that the company had no employees before the merger and that there was no evidence of it even having a payroll. Furthermore, Barrick Misquichilca had not performed any economic activity prior to the merger. It was thus concluded that the merger was not implemented to accomplish any type of improvement or to increase efficiency but solely to get a tax break (Ibid.). The other infraction Sunat cited Barrick for was the fact that they revalued the subsidiary about to be absorbed to over US\$ 468 million, increasing its value by 188 times. The reason for this revaluation was that Supreme Decree 120-94-EF “permitted merging corporations to deduct from their income tax parts of the costs which were caused by the absorption of the other business enterprise” (Schulte-Bockholt, 2010b, 25). In this case, the two companies in the merger were owned by Barrick, therefore it was the sole beneficiary of the tax break. “In other words, not only did Barrick merge with itself but it subsequently inflated the value of the company which it had allegedly incorporated and deducted the arbitrarily enlarged amount from the income tax” (Ibid., 25). It was thus determined that through the tax evasion, Barrick was able to avoid paying US\$141 million (Químper Herrera, 2003).

It should be noted that Barrick was but one of many to take advantage of this law and that Supreme Decree 120-94-EF was eventually partially eliminated by the government in December 1998. It was then declared illegal by Congress on October 7, 2002 with 61 Congressmen for, two against and five abstaining. In May of 2003, Congress banned from public service Jorge Camet, the minister of Economy and Finance

responsible for enacting Supreme Decree 120-94-EF for his role (Campodónico, 2006).

Tax evasion is described as:

Unlawful attempt to minimize tax liability through fraudulent techniques to circumvent or frustrate tax laws, such as deliberate under-statement of taxable income or willful non-payment of due taxes. Whereas tax evasion is an offense (punishable by both civil and criminal penalties), tax avoidance is not ("Tax evasion", n.d.).

Although Barrick was indeed complying with a law enacted by the Peruvian government, the company did so knowing that it violated international norms. A clear demonstration of this was the testimony of Donald Payne, Barrick Misquichilca's financial manager, before the investigative commission. He told the panel that when he talked to his boss in Toronto, the latter called him crazy for even suggesting the possibility of such a law (Herrera Becerra et al, 2003). Furthermore, the fictitious merger of its subsidiaries, one of which only existing on paper, has been considered fraudulent (Ibid.). Since it was the merger that made Barrick qualify for a tax break, it seems to correspond with the above-mentioned definition.

It should also be acknowledged that while there is disagreement on whether the Barrick case constitutes tax evasion, a number of scholars (see Quiroz, 2008; Schulte-Bockholt, 2010b) as well as Sunat, the Peruvian tax authority, and the investigative commission led by Ernesto Herrera Becerra describe it as such. As my analysis is based on these sources, I have also used the term tax evasion when discussing this case.

The Barrick case constitutes state-corporate corruption because it involved both the private and public spheres and resulted in the violation of the Peruvian Constitution as well as an indirect violation of human rights. It could arguably be seen as a case of state capture where "rather than purchasing discretionary administrative decisions such as the



award of a particular contract, induces legislators or judges to alter the legal ‘rules of the game’” (Green and Ward, 2004, 16). The Executive led by Fujimori did indeed alter the rules of the game, by enacting a law and a Supreme Decree that would only serve the interests of the private sector. In most cases of state-facilitated crime, the government fails to restrain the private sector through regulations, which results in a violation of the law, or human rights, or caused social harm. What is noteworthy about this case is the fact that the government actively created the regulation that allowed the crime to take place. Barrick did not have to bribe the financial authorities to make this happen.

“Nevertheless, Barrick’s tax issue was part of the larger issue of corrupt economic policy management, including crooked privatization and banking rescue schemes executed by key finance ministers linked to private and foreign interests” (Quiroz, 2008, 397).

Therefore, Barrick was able to benefit from corruption that was already taking place, which facilitated its tax evasion. While it would be difficult to establish a direct causal link between the corrupt behavior of the Fujimori regime and the unconstitutional law that allowed Barrick Gold to avoid paying taxes, one can safely determine that it was a major factor. Assuming that they received something in return from Barrick or one or more of the many companies that took advantage of the decree is not unreasonable in this case. Moreover, as opposed to the Newmont case, one can clearly see the consequences because Barrick avoided paying US\$141 million that could have been used for economic development or the provision of social services. Green and Ward would see this as an indirect violation of human rights, thereby implying state crime. This is due to the fact that tax law in Peru stipulates that 50 percent of this amount would have been allocated to local development (Barranté et al, 2005). The state crime also lies in the fact that multiple

international and domestic laws were violated, despite the fact that the tax evasion was carried out in accordance with an existing law.

### **Consequences for development**

Although the two examples chosen may not be extreme in their consequences for development, they were selected because of how they fit the criteria for the integration of state-corporate crime and political corruption. They also represent both types of state-corporate crime: state-initiated and state-facilitated. It is important to note, however, some of the consequences of the corrupt relationship mining companies had with the Fujimori government as well as broader consequences of the collusion of the Peruvian government and the mining sector.

The environment, for one, has greatly suffered at the hands of the mining sector as a result of relaxed regulations and the lack of enforcement of the latter. The way in which the environmental institutional framework was set up in the 1993 Constitution was done in order to attract foreign investment (Ibid.; Barretto et al, 2008). By this, I am referring to the dispersion of environmental responsibilities instead of the concentration in one central environmental body. Each ministry had its own environmental unit responsible for the environmental regulations and policies pertaining to its sector. There are several issues with this. The environmental unit only had limited power relating to policymaking but did not hold the power to enforce. Therefore, although it was technically in charge of all environmental issues in its sector, enforcement powers were given to another unit, which had the ability to sanction or administer fines. In the case of the Ministry of Energy and Mines, the environmental unit, the *Dirección General de Asuntos*

*Ambientales Energia* (DGAA) or General Direction for Environmental Affairs, had almost no decision making power as its role was mainly an advisory one.

The lack of a central environment authority also meant that the interests of some sectors could dominate others where environmental issues were concerned. In the case of Peru, this implied a clear bias toward mining interests could play out because of its economic importance for the country. Furthermore, it meant a lack of coherence in the country's environmental framework resulting in "the overlapping of resources and efforts" on the parts of the various sectors and the Consejo Nacional del Ambiente (CONAM) [National Environmental Council] (De Eiden, 2006, 175). Yet another issue was that there was no government body responsible for monitoring the environmental actions of the mining sector. In fact, monitoring was done by third parties who were actually hired by the mining companies (Ibid.).

Due to the segmentation of powers relating to the environment, in the event of a conflict among the Ministry of Energy and Mines and different ministries over public environmental resources that have been compromised, they had to be analyzed and decided on based on the standards and views of the mining sector. Therefore, one could have encountered a situation where the definition of damage held by another concerned ministry was not shared by the Ministry of Energy and Mines and the latter's view would often prevailed (Ibid.). For example, a common conflict with the Ministry of Health was over the permissible limits of pollution. The mining sector only took into account pollution at the source of emission whereas the health sector agencies also considered the pollution in the receiving bodies. The main issue here was the lack of a unified mandatory pollution standard that would have applied to all sectors and would eliminate

such conflicts as well as reduce environmental degradation. As it stood, the mining sector was not accountable for the pollution found in the receiving bodies because under its environmental regulations, only pollution at the source of emission was considered. Consequently, they were not held accountable for all the environmental degradation caused downstream.

The Ministry of Energy and Mines held power over the other ministries because of the priority to protect the mining industry, not the citizens of Peru. Its purpose was also to improve the macroeconomic performance of the country through production and income from mining.<sup>8</sup>

In Fujimori's Peru, there existed an unequal power evident in the priorities of the government, illustrated by the implicit policies that undermined the explicit environmental regulations for the mining sector. Explicit environmental policies are defined as measures that aim to influence the behavior of the actors involved in the economic activity targeted. Conversely, implicit policies are defined as policies that are not environmental in nature but that seek to influence the behavior of specific actors and that can result in indirect implications on environmental policies (Ibid.). These can stem from general or sector specific macroeconomic policies or policies that were agreed to in an international convention. Therefore, even though there are environmental regulations for the mining sector, they can be undermined by certain economic policies or legislation.

The 1991 Law for Private Investment was the most important as it eliminated many environmental obstacles that could affect the competitiveness of mining operations,

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<sup>8</sup> The problems caused by the absence of a central authority were solved by the creation of the Ministry of the Environment by the government of Alan Garcia in 2008. Although this is certainly a step in the right direction, proper care should be employed to ensure that mining interests do not take precedence over those of others.

notably the large scale ones. The law created ideal conditions for private investment, such as so-called stability contracts between the Peruvian government and foreign mining companies. In these deals the former agreed not to change the rules or obligations during a period of ten years. Although such rules and obligations mainly related to taxation and exchange rates, it also concerned the environment because the government was hesitant to impose additional obligations in the form of environmental policies in fear that it would drive away investors (Ibid.).

Therefore, environmental regulations had been included in the 1993 Constitution but were constantly undermined by implicit policies and the protection of mining interests. While it would be difficult to prove, one can nevertheless assume that corruption played an important part when deciding whether regulations were or not enforced. There have been several consequences of this for the environment.

A study of Peru identified sixteen critical environmental zones (CEZs). Out of these, mining was found to be the main factor of environmental degradation in eight and as the only determining factor in two. In the former, the main problem identified was the contamination of water by flotation tailings and mine waters (Nuñez-Barriga, 2009). Tailings were defined in a *Christian Aid* report as “the rock wastes left behind following ore extraction. They often contain heavy, acid-forming minerals and residue from toxic chemicals used in the extraction process, including cyanide and sulphuric acid” (Glennie, 2005, 14). Tailings are also known to pollute the air and soil if not well contained, which is a constant problem for mining operators. The contamination of soil by tailings has been known to affect pastureland and plant life, and the communities’ ability to provide grazing land to their livestock.

In addition to soil and water, air quality is also negatively affected. For example, one of the most serious toxic gases resulting from the process of removing sulfur from minerals is sulphuric oxide (Nunez-Barriga, 2009). Cyanide is another bi-product of mining activities that can contaminate the surrounding the environment. “Yanacocha claims that no cyanide escapes from the mine, however, anti-mining activists claim that some 25 percent of the cyanide used evaporates during the extraction process which is subsequently spread by wind and rain” (Schulte-Bockholt, 2010b, 19).

Mining can also affect the environment in ways that do not involve contamination. By constructing open pit mines, mining companies permanently alter the landscape and can cause deforestation. Furthermore, it requires large amounts of water, which can result in drying up of rivers, consequently affecting the local population and their livelihoods (Glennie, 2005). In fact, the Yanacocha mine uses 18 million cubic meters every year, free of charge (Schulte-Bockholt, 2010b).

According to the definition of state crime, social harms can be committed against society or the environment. Therefore, the collusion of the State and the mining companies resulting in serious environmental damage could be considered as state-corporate crime.

There have also been severe negative impacts on the local populations living by mines. First, environmental degradation, discussed above, commonly leads to loss of agricultural livelihoods in the case of water and soil contamination. Short-term employment may be available for some at the mine, but environmental damage and the subsequent impact on livelihoods can be permanent and has wider reaching consequences (Glennie, 2005). Second, the arrival of mining in a community generally results in a loss

of land for many of its inhabitants. All large scale mines in Peru use open-pit mines, which require a large track of land. In fact, the Yanacocha gold mine, owned by Newmont, is so large that it can be seen from outer space (Bebbington et al, 2008). The loss of land took place in forced sale, seizure, sales which were below market value, or in cases where the environment became so polluted that the families choose to leave (Glennie, 2005). Conversely, for those wishing to purchase land, the increased price caused by mining claims became an obstacle. This often led to migration (Barretto et al, 2008). Third, arguably the most important consequence on the local population has been the negative impact on their health caused by contaminants such as sulfuric oxide, mercury, lead, arsenic and cyanide, all of which are used for, or are a result of mining operations (Glennie, 2005; Barretto et al., 2008). This affects their quality of life and their ability to work. Fourth, mining generally signifies the arrival of outsiders. This can cause a significant disruption of community life. In many cases this has led to increased violence and prostitution in mining communities (Keenan, Echave & Traynor, 2007; Glennie, 2005).

In fact, the activities of mining companies have often been met by social protests in the surrounding areas. A negative consequence of this has been the repression and use of force used by private security companies employed by mining corporations. The expansion of private security companies is seen as a “consequence of the neo-liberal restructuring of economic and social policies” (Kamphuis, 2010, 20). This observation can be made in the case of Peru, where a significant expansion of the private security sector occurred after the neo-liberal shift of the 1990s (Ibid.).

Nowhere is the collusion between government and the mining companies and its consequences more evident than in the use of private security forces. To begin with, many of the security companies are owned and/or operated by former members of the armed forces or police force. Furthermore, “off-duty police officers are permitted to work for private security companies while using State property such as weapons, uniforms and ammunition” (Ibid., 20). Given that numerous security firms are contracted by multinationals, the off-duty officers inevitably end up working to protect private interests, especially in situations of social protest (Ibid.). What complicates matters further is that the duties of these security companies have expanded, meaning they no longer simply provide security at mining facilities. They “have become implicated in the coercion, harassment and intimidation of human rights organizations working to defend the economic, social and environmental rights of mining-affected communities” (Ibid., 21). The Peruvian government has supported this shift from defensive to offensive tactics by joining private companies in employing an “anti-activist, anti-environmentalist discourse” in order to undermine those opposing mining activity by depicting them as “violent, leftwing” and “anti-development” (Ibid.). Furthermore, the Peruvian government has taken steps to criminalize public protests by modifying the Criminal Code to include punishment for protest-related activities (Ibid.).

The Yanacocha mine has been the scene for many protests over the years. The causes behind these have ranged from the low prices paid for land, problems with irrigation channels, as well as environmental contamination (Romero, 2006a). In order to protect its facilities, Yanacocha contracted a private security firm named *Forza*. This firm was founded and operated by “retired personnel from the Armed Forces who specialized



in subversion and espionage work for the Fujimori government” (Kamphuis, 2010). Since the firm is legally able to hire off-duty officers, a virtual partnership has been established between the Newmont-owned Yanacocha mine and the local police force. The police is used to “protect its property, members, and the homes of its top executives as well as to escort its vehicles” in exchange for financial compensation to individual officers and a larger “contribution to the police force” (Ibid., 28). Given that the police officers are technically working for both public and private, the situation becomes ambiguous.

Since the cooperation agreement is not public, the extent of Yanacocha’s economic support for the police force is unknown. Further, it is unclear which institution, Yanacocha or the chief of police, gives the Yanacocha-paid police officers orders and is legally responsible for their actions (Ibid., 28).

One example of a social conflict involving the Yanacocha mine was the “violent clash” that took place in the community of Combayo in 2006. The protests revolved around issues of environmental contamination that went unaddressed by the mining companies. In addition to peaceful protests, a group of around a hundred campesinos set up a highway blockade, which instigated a violent response from the Yanacocha security forces (Ibid., 22). During the confrontation, the hired guards killed one of the campesinos, a man named Isidro Llanos. Following this, the protests intensified, forcing the mining company to stop its operations for a few days due to the blockade. The *Grupo de Formación e Intervención para el Desarrollo Sostenible* (Grufides), a local NGO that offered support to communities affected by Yanacocha’s mining activities, was asked by the government to come in and act as mediator to resolve the dispute (Ibid.).

Although three police officers, Luis Leiva Vigo, Manuel Vásquez Cervera, and Jorge Moisés Atalaya Contreras (Romero, 2006b), were investigated for the shooting of

Isidro Llanos, no one was ever prosecuted (Kamphuis, 2010).<sup>9</sup> It is noteworthy here to point to Legislative Decree No. 982 implemented on July 22, 2007. The measure modifies article 20, clause 11 of the Peruvian Criminal Code, “police officers and military personnel who murder citizens while carrying out their duties, such as controlling public protest, have guaranteed immunity from prosecution” (Ibid., 21).

Following the events, Yanacocha accused Grufides, the officially mediating NGO in the conflict, of “manipulating campesino communities and exacerbating the Combayo conflict” (Ibid., 22). Newmont organized anti-Grufides marches, mainly involving their own employees. “The marchers primarily remained stationed in front of the Grufides office, harassing, intimidating, threatening and insulting Grufides personnel. Alarming, in the face of these acts, the public force failed to intervene and provide Grufides personnel with protection” (Ibid., 22). These marches eventually escalated into “Operación Diablo”, a “systematic program of intimidation, death threats and defamation” aimed at Grufides (Ibid., 22-23). It was later discovered that the manager of operations at *Forza* was responsible orchestrating the operation, which employed intelligence firms, such as C & G, to do surveillance of Grufides employees.

The problem was not limited to the one organization however. Documents were later found that outlined threats to mining activities by identifying the groups and individuals that opposed Yanacocha with photos and descriptions of each. One of these

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<sup>9</sup> However, there were many difficulties in conducting the investigation. Due to lack of confidence in the local authorities, the other campesinos did not allow the immediate examination of the body or the preservation of the crime scene. Furthermore, the mining officials at Yanacocha, their private security firm, *Forza*, and the police were not collaborating in the investigation. “In addition, the initial findings and the search for evidence where the death of Isidro Llanos occurred were practically performed by the same police officers involved in his assassination” [author’s translation] (Romero, 2006b).

was entitled “Existing Threats to Yanacocha 2006” and the other was titled “Principal Leaders in Cajamarca that Oppose Yanacocha’s Mining Activity” (Ibid., 23).

Coincidentally, one of the men identified as a threat in the document was later assassinated by a group of hit men (Ibid.; Romero, 2006a). Edmundo Becerra Cotrina had been opposed to projects “El Solitario” and “La Valentina” that Yanacocha was planning, though no one could ascertain if Yanacocha or its security company were responsible (Ibid., 6). “In spite of overwhelming evidence linking C & G, Forza, and Yanacocha to Operation the Devil, the Peruvian justice system has consistently refused to properly investigate and criminally prosecute those responsible” (Kamphuis, 2010, 24).

An even more damning example of state-corporate collusion surfaced when in January of 2009 photos were released of members of Forza and local police engaging in the torture of at least twenty-nine campesinos protesting the Majaz mine, associated with Yanacocha, in July and August of 2005 (Ibid.).

As these examples demonstrate, the collusion of government and the operating partners of Yanacocha have resulted in serious human rights abuses including illegal surveillance, harassment, torture and death. The government not only subsequently failed to properly investigate the incidents but has even created the proper legal framework for assuring that those responsible go unpunished. Furthermore, by legally allowing these private security companies to employ off-duty officers, the State has relinquished its position as the sole authority capable of wielding the use of force. An important example of this was the Grufides case. Says Kamphuis (2010):

To the extent that Grufides was successful in supporting Campesino communities, and to the extent that Campesino communities intensified their demands, both were met with organized repression on the part of Yanacocha’s private security

companies. In other words, as the State retreated, private power expanded to repress the rise in civil society organizing (Ibid., 28).

## **CHAPTER FOUR**

### **ANALYSIS**

#### **Introduction**

The overall purpose of this chapter is to analyze the two examples of corruption chosen by applying the integrated theoretical framework and to then explore the conditions identified. Specific attention will be given to the different factors bringing about the conditions which provided an opportunity structure for corruption to occur. The first section will thus be the application of the framework and the identification of conditions. The next section examines each condition identified and the measures or circumstances that formed them. The third section then examines the role of the IFIs and the good governance agenda in the examples of corruption. Their role is explained using the same theoretical model for analysis.

#### **Application of the integrated theoretical framework**

Michalowski and Kramer's integrated theoretical framework combines three different levels of interaction with three catalysts for action: motivation, opportunity and control. State crime could occur if the organization or individual is goal driven, has the opportunity through illegitimate means, and is not deterred by social control. In the two examples provided, this theory can easily be applied. As this thesis only deals with the interactions of the government and private sector, only the institutional level will be considered.

For both the Newmont and Barrick examples, one can see the motivation behind the actions. Fujimori came to power at a time of crisis and measures had to be taken in order

to restore the economy. In addition, the government was also under pressure to improve Peru's economic performance to repay its debts. According to Green and Ward (2004), this is often a motivation for state-corporate crime. "State institutions are strongly motivated to increase exports in order to obtain foreign exchange to finance debt" (2004, 47). Consequently, there was pressure to attract and maintain a certain level of foreign investment. This was in part accomplished through the intense privatization process that took place in various economic sectors, including the mining sector where most of the major players were foreign corporations. Considering the economic importance which the sector held for Peru, there was undoubtedly motivation to keep the foreign interests happy. On the other side of things, Peru's mineral deposits were a source of great wealth for these companies. "Gold was Peru's largest export item, accounting for 16 percent of the country's overseas earnings in 1998. Thus Newmont was vital to Peru and, reciprocally, Peru was vital to Newmont" (McMillan and Zoido, 2004, 2). Therefore, wanting to cater to business interests as a way to ensure economic development could be seen as the motivations to intervene on behalf of Newmont in the Supreme Court decision and also for creating a law that would purely benefit the private sector despite the fact that it clearly violated the Constitution.

Within the opportunity catalyst, there are five factors identified: "availability of legal means, obstacles and constraints, blocked goals/strain, availability of illegal means, and access to resources" (Michalowski and Kramer, 2006, 25). The latter two are the most applicable. Both examples were in fact facilitated by the same structural conditions that created an opportunity structure. The two most important are the centralization of power in the Executive and the absence of checks and balances. The consequence of this

is that the Executive could act with complete impunity through the availability of illegal means and access to resources. The impact on the two cases is obvious. For the Newmont case, Montesinos was able to manipulate the system and blatantly interfere in the judiciary by being able to promise Beltran a promotion. Despite the fact that most of this transpired in secret, little chance existed that the case would have been investigated because the Congress and the judiciary suppressed most inquiries into allegations of corruption. In the Barrick case, the absence of checks and balances is more obvious. The mere fact that the Executive could get away with a law that was unconstitutional in nature demonstrates that no one was able to hold the regime in check which meant it could do as it pleased. What's worse, the company that committed the infraction got away with it as well. This opportunity structure differs from the theory in one important aspect. In the explanation provided by Kramer, Michalowski and Kauzlarich (2002), the authors argue that deviance will occur when individuals cannot access legitimate means and thus have to seek alternatives. In the Newmont case, what was asked of Montesinos was illegitimate in and of itself. Therefore it is the availability of resources and illegitimate means that was important as legitimate means may not have been sufficient to affect the Supreme Court decision. The Barrick case is similar in the sense that the government seems to have chosen the illegitimate means over the legitimate ones. What remains unclear is why. One can only assume that the main reason is because they could.

There are of course sources of control other than the branches of government supposed to hold the latter in check. These include the international community, civil society, and the media, to name a few. During the Fujimori regime, however, these did not serve as effective agents of control. The international community may have reacted to

the self-coup and forced Fujimori to hold elections, but it later bought into the façade democracy created by the regime. Civil society had been practically dismantled under the Fujimori administration as dissent was rarely tolerated, a fact demonstrated by the assassinations and disappearances of those thought to be associated with the Shining Path or who opposed the regime. An example of the latter is the December 18, 1992 assassination of Pedro Huilca, a labor union leader who openly opposed the economic reforms Fujimori was implementing. In 2005 the Inter-American Human Rights Court determined that he had indeed been assassinated by the Fujimori administration (Centre for Justice and International Law, 2005). The media on the other hand, with few exceptions, was actually co-opted by the regime to portray a positive image of the government (Conaghan, 2005). Any deviation of that could be punished, as in the case of Baruch Ichver's deportation discussed previously.

Thus, in the Newmont case as in the Barrick one, motivation to engage in state corporate corruption was to maintain foreign investment by keeping the foreign corporations happy. For the first example, this was done by intervening on Newmont's behalf by way of a clear breach of the separation of powers and potential bribery. In the second example, a new law, later deemed unconstitutional by Congress, provided tax benefits to the private sector. Opportunity was made available by the centralization of power and the absence of checks and balances, which allowed those in power to act with impunity. This feeling of impunity was enhanced by the fact that the media, civil society and the international community did not act as proper agents of control on the government, or were unable to do so.



## **The Opportunity Structure**

### ***Concentration of power***

Before Fujimori became President, a culture of centralized power had already been in existence in Peru. According to Mauceri (2006), the “1979 constitution ushered in a period of growing presidential power and influence” (2006, 44). A strong executive, governing mainly by issuing legislative decrees, characterized both the Belaunde and Garcia regimes. This tendency was intensified first by the various executive decrees issued following the self-coup and then by the 1993 Constitution. During the period between the self-coup in April 1992 and the swearing in of the new constituent assembly nine months later, the Executive “issued hundreds of decrees recasting government institutions and their operating procedures” (Conaghan, 2005, 41). Almost all of these served to concentrate power in the Executive. Since the Congress was closed, no one was able to oppose these measures. What was discovered later was that many of these decrees were used to transfer money from the different ministries and put in “slush funds in the SIN” and thus kept secret (Ibid., 41). Decrees were also used to carry out mass firings in the bureaucracy and the judiciary. Another decree prohibited fired judicial officials from appealing their discharge. Following this, a process of re-hiring occurred in the judiciary where only selected people were given temporary employment, making them dependent on the Executive for keeping their jobs (Ibid.). After the international community had intervened and insisted on a return to democratic processes, the constituent assembly was elected. The problem was that Fujimori controlled this election process and guaranteed himself a majority. Outraged by how the National Dialogue prescribed by the Organization of American States was actually being carried out, some of the larger more

established political parties such as APRA and *Acción Popular* (AP) decided not to participate. The consequence of this was that they were then shut out of the process and of the constituent assembly. The smaller parties who had agreed to participate in the Dialogue were then able to enter an agreement with the government to form a five party Constituent Assembly. In a surprise move, the Fujimori government issued a decree that ruled that the Assembly would remain in power until the next elections, taking place in 1995 (Ibid.). One of its first actions was to legalize the decrees issued between the coup and the inauguration of the new Constituent Assembly as well as to ratify Fujimori as the President. In fact, while the Constituent Assembly reinstated the 1979 Constitution as they worked on a new one, the decree laws were deemed to take precedence over it (Ibid.).

The 1993 Constitution was crucial to giving even more power to the Executive. One of the most important measures was the establishment of a unicameral system, where there would be a congress but no senate. According to Conaghan (2005):

The new constitution and the rules of procedure empowered the executive branch by making other institutions more pliable, more prone to manipulation by the executive. The text established a unicameral legislature, with rules of procedure designed to make it easier to limit debate and rapidly push through measures (Ibid., 58).

This differs from a presidential system such as Chile's, which has a bicameral system that works as part of a system of checks and balances. "Such systems are designed to allow for slow but incremental change, preventing policy instability as a result of changes in the balance of power" (Aninat et al, 2006, 22). A strong Executive also characterizes Chile's political system but other institutions counterbalance this power. For example, the Executive can set the agenda for policy and has veto power but other

institutions can “block executive policy initiatives.” “These include an independent judiciary, a Constitutional Tribunal, a Comptroller General and the “National Security Council” (COSENA) that gives the semi-autonomous Armed Forces a direct institutional role in the government” (Ibid., 27). Policy initiatives can also be blocked in the bicameral Congress (Ibid.)<sup>10</sup>.

Under the new Constitution, the Peruvian President was given many powers. In fact, article 110 of the latter states that the President is the “personification of the nation” (Cameron, 1998, 220). His or her powers include: initiating legislation, policymaking by way of decrees or administrative procedures, and making political appointments. The president plays an important role in policymaking, usually setting the policy priorities, which are then carried out and translated into policy by the office of the President or cabinet ministers. The President thus becomes “the focal point of policy formulation and political management” (De Eiden, 2006, 84). Moreover, the President controls much of the public spending, especially through the Ministry of the Presidency, which was created after the self-coup of 1992. By 1996, the amount of spending controlled by the Ministry had increased five-fold, reaching 22.6 percent of all government spending (Ibid., 83).

According to De Eiden (2006), the President can have even more power allocated to him than that provided for by the constitution. “The possibility to extend the President’s power by law only add to other means available as clienteles, nepotism, cronyism, patronage through party or movement structures, among others” (Ibid., 67). Furthermore, in practice the executive often plays a larger role in policymaking than the congress (Ibid.). This was certainly the case during the Fujimori administration, which

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<sup>10</sup> Noteworthy is the fact that Chile has the lowest level of corruption in Latin America (Aninat et al, 2006).

made heavy use of decrees. Another important power given to the President in the new constitution is the ability to dissolve congress after two cabinet censures as opposed to the three specified in the 1979 Constitution. “Ministers can be interrogated by Congress on policy and [...] cabinet censure is a prerogative of Congress” (Mauceri, 2006, 47). In the last constitution, the President would be limited to one dissolution per term but under the 1993 Constitution, he or she has the ability to dissolve congress an unlimited amount of times and can rule by decree until a new congress is elected (Ibid.).

In addition to the President, the rest of the executive is comprised of cabinet members, each heading a government department, led by a prime minister. What contributes to the centralization of power in Peru is the fact that the President appoints those close to him or her to form the Cabinet, which assures loyalty and obedience.

Appointments made further down the line follow the same logic.

High-level appointees would also trust their closest circle to fill the jobs in the bodies where they are to fulfill duties. Loyalty and the right recommendations and credentials play an important role in the process. This pattern goes down through the middle levels of the bureaucracy (De Eiden, 2006, 68).

Usually, personalistic networks would be formed according to party lines, recruiting mostly from the ranks of the governing party. Fujimori, however, did not have a strong party base. He therefore recruited people from various sectors to create his network of followers. The latter were not already part of an established institution, and “did not have an independent power base of their own and were thus unable to provide a check on presidential activities” (Mauceri, 2006, 53). Moreover, they were dependent on Fujimori for employment security, which was inevitably linked to their ability to cater to the President’s needs and interests (Ibid.).

Despite the fact that Peru already had established a tradition of strong presidential powers, the 1993 Constitution provided the President with more of the same. Although this alone could have resulted in more opportunities for corruption, it was exacerbated by the fact that the other branches of government were unable to keep the Executive in check.

### *Absence of Checks and Balances under Fujimori*

Most political structures operate under a system of checks and balances. The latter “has been established in the Constitution of 1993, so that each branch controls and is, at the same time, controlled by the others” (De Eiden, 2006, 67). Since the implementation of a unicameral legislature, in Peru there were three branches of government: the executive, the congress, and the judiciary. During the Fujimori administration however, this system of checks and balances existed on paper but was intentionally undermined in order to further empower the Executive branch. “Acting on instructions from Vladimiro Montesinos, the C90-NM legislators undertook a systematic assault on the entire system of checks and balances laid out in their own 1993 constitution” (Conaghan, 2005, 6-7). This was mainly done in order to limit the opposition’s power and limit their ability to question the government or investigate its actions (Ibid.).

The neutralization of the checks against the government was principally accomplished by restructuring the other branches of government and by co-opting the media and civil society leaders. The judiciary already had problems dealing with lack of autonomy due to “the interference of the Executive branch in the appointment of judges” (De Eiden, 2006, 75). This situation was of course exacerbated by the mass firings and

rehiring that took place after the self-coup. Said move allowed the government to better control the judicial apparatus by instating provisional positions. As a result judges in insecure positions were more likely to vote in accordance with the regime's wishes. Furthermore, "Montesinos put his cronies in posts in the judicial system to ensure that judicial sentences would always be pronounced in his-and Fujimori's – personal interest" (Calderón, 2001, 49). Judges who formed part of Montesinos' corrupt network also voted in favor of private interests protected by the spy chief (Quiroz, 2008), a fact exemplified by the Newmont case. The system that ensued was one where corrupt officials were rewarded and those that respected and abided by the law were punished (Ibid.; Calderón, 2001). The constitutional court, the highest in Peru, was also controlled by the Executive through the appointment of judges loyal to the government. The Executive was thus able to control the decisions on the constitutionality of certain issues brought to the court.

In addition, the judiciary was strongly affected by the 1993 Constitution. The pre-1993 judicial system was certainly notoriously corrupt and inefficient, which was largely due to poor working conditions and low wages (De Eiden, 2006). This was used as a justification for reforms undertaken to create a more efficient judiciary. Although the reforms did improve the efficiency of certain procedures, it neglected to address structural problems such as the lack of autonomy. At first view, the new Constitution appeared to address this issue with the creation of the so-called *Consejo Nacional de la Magistratura* [National Council of Magistrates], which would control the appointments of new judges. The establishment of an Ombudsman was seen as another measure that would protect the judiciary's autonomy. The Constitutional Tribunal was also given more powers than before (Ibid.).

These steps taken in the right direction were unfortunately not carried out in practice. Both the National Council of Magistrates and the Constitutional Tribunal were subject to control by the Executive branch, mainly through appointments. Appointments to the Constitutional Tribunal were done through the Congress, which could also remove judges from the Tribunal. An example of this was the removal of three judges from the Tribunal in 1997 for having voted against Fujimori's second re-election. The justification offered by Congress was that the panel had violated the Constitution by issuing a ruling against the re-election law enacted in 1996. Thereafter, the Constitutional Tribunal's president, Ricardo Nugent, resigned to protest the measure. "With opposition deputies who claimed that the dismissals reflected Fujimori's authoritarian-style of government, refusing to participate in the selection of replacements, the [tribunal] was left inquorate" (Keesings, 1997, 41632).

In November 1995, Fujimori created the *Comisión Ejecutiva del Poder Judicial* [Executive Commission of the Judiciary], "which had as objective to concentrate all administrative issues related to the management of the Judiciary that had been traditionally in the hands of the President of the Supreme Court" (De Eiden, 2006, 77). Then, in June 1996, a second body, named the *Consejo de Coordinación Judicial* [Council of Judicial Coordination], was created with the aim of reorganizing judicial administration (Ibid.). "[T]he main problem with the creation of all these bodies was that, although in theory the aim of reorganising the Judiciary was important, such commissions only took out power from those who were the ones called to initiate and implement the reform, the judges and justices" (Ibid.). The new Constitution also created new sets of laws under which the judiciary would have to operate, such as a new criminal

code, new procedural codes as well as a new General Law of the Judiciary (Ibid.).

When Fujimori first came to power, his political movement did not have a majority in Congress and thus had to compromise and form alliances with other parties in order to get initiatives passed (De Eiden, 2006). After the self-coup however, the new Constituent Assembly elected comprised 120 members, 71 of which were pro-Fujimori.

Consequently, they were able to write a constitution along the lines of what Fujimori wanted and follow his lead on legislation and policymaking thereafter (Robinson, 1997/1998).

According to De Eiden (2006), Congress members in Fujimori's camp were given beepers through which instructions on how to vote during sessions would be sent to them. The majority in Congress also served to prevent any investigations into corruption or human rights allegations that could have harmed the government or the interests it protected (Conaghan, 2006). More importantly, the fact that Fujimori controlled the legislature meant that he could act with impunity. Says Quiroz (2008):

The pro-Fujimori majority in Congress, especially during the legislature of 1995-2000, had systematically surrendered congressional and oversight rights. This allowed Fujimori and Montesinos to exert unchecked power over other key institutions, such as the judiciary and electoral tribunals, and remain unpunished for their crimes and transgressions [...] The degree of servile behavior observed among many members of Congress can only be explained by taking into account the massive distribution of bribe money in their midst (2008, 385).

Bribery would indeed come to play a role in the functioning of Congress as both Fujimori backers and members of the opposition would be rewarded for carrying out certain actions and doing Fujimori's bidding. The bribed members of the opposition were instrumental in voting according to Montesinos' wishes and providing the latter with confidential information on the inner workings of their parties (Ibid.).



In addition to control of the Congress through a majority, Fujimori was able to undermine congressional authority through changes made to certain procedures. As mentioned above, the new Constitution reduced the size of Congress, by transforming it into a unicameral structure, thereby reducing its “representativeness” (Mauceri, 2006, 46). Another consequence of this is that motions could be pushed through and made into law within twenty-four hours if need be, which severely limited debate and oversight (Cameron, 1998).

The 1993 Constitution also reduced the institutional checks on the President. One important example is that it eliminated the need for congressional approval on the creation and ratification of international treaties as well as high-level diplomatic and military appointments (Mauceri, 2006). Moreover, decrees no longer required congressional approval. Article 104 of the new Constitution stated that the President only needed to inform Congress about a new decree (Ibid.). This applies to the previously mentioned decree 120-94-EF, which led to Barrick’s tax evasion, still, with a majority in Congress the measure may have been implemented anyway.

The reduced ability of Congress to provide a check on presidential power proved to be detrimental for having a democratic process during Fujimori’s regime. Rather than hold the government accountable and to legislate, the Congress served “to provide disciplined support to the executive and enable the government to spend and rule in an autocratic and discretionary manner, often disregarding constitutional norms” (Cameron, 2006, 279).

In addition, the regime controlled the media. A free and independent media is important in any political system as it can act as a check on government by exposing its

actions and inactions and playing a significant role in the way in which the public will perceive its leaders. However, in Peru this has rarely been the case. “Throughout its long and complicated history, the Peruvian press had never functioned as a consistent and effective watchdog on government, despite the efforts of some scrappy reporters and hard-nosed editors to make it so” (Conaghan, 2005, 16). The problem was worsened in Fujimori’s Peru in that the media was co-opted through corruption in order to project the desired image of the government (Ugarteche, 2005).

While the regime intimidated many media organizations, it also used the *prensa chicha* or yellow press, a tabloid type of press, as a virtual medium for propaganda. One example of its use was during the 2000 election campaign where the *prensa chicha* was used to discredit opponents. During the first round of the electoral campaign, the Fujimori team attacked Luis Campa  eda by “raising legitimate doubts about [his] ability to govern and the qualities of his team” while using the *prensa chicha* to make “less savoury allegations of a personal nature” (Taylor, 2001, 6). In addition to scandalous rumors, the tabloids were also used to fuel fear of change in the citizenry. When up against Alejandro Toledo, the Fujimori side fed the *prensa chicha* with the message<sup>11</sup> that “Toledo was a puppet of Alan Garc  a and the ‘*partidocracia*’<sup>12</sup>, whose election would bring hyper-inflation, economic chaos and a resurgence of *Sendero Luminoso*” (Ibid., 17).

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<sup>11</sup> Former employees of the tabloid press later confirmed that they received direct instructions from SIN (Taylor, 2001, 6).

<sup>12</sup> Refers to a political system where, albeit democratic, is dominated by few political parties. This restricts “the possibilities for citizens to express their real desire beyond the existing parties” [author’s translation] (“Partidocracia”, n.d.). In English this would be referred to as *particracy*.

Another check on government usually comes from civil society. Peruvian civil society organizations had increased greatly during the 1970s and 1980s, both in numbers and political participation, but these were reduced, if not dismantled during the Fujimori years (Roberts, 1996; Mauceri, 2006). Civil society organizations usually exercise their check on government power through their ability to influence public opinion, whether through media or public demonstrations. During the Fujimori era however, civil society organizations were “either repressed or co-opted into new governmental agencies” (Ibid., 58). The regime worked to inhibit the resurgence of civil society through various measures “ranging from old-fashioned clientelism to more nefarious kinds of surveillance and intimidation of the opposition to outright repression” (Burt, 2007, 162). Burt (2007) argues that this was done strategically to stay in power “and undermined the possibilities for reconstructing democratic governance in Peru, as the key actors who would theoretically have an autonomous basis for action and could press for democratizing reforms remained debilitated and fragmented” (Ibid.)<sup>13</sup>. One example of repression was the way in which the Fujimori regime sought to undermine the labor movement. “Fujimori’s free market reforms eased dismissals, limited the right to strike, facilitated temporary contract labor, and encouraged competing unions in the same workplace” (Roberts, 1996, 81).

Thus, the increased centralization of power in the hands of the Executive as well as the elimination of most checks on that power created an opportunity structure where those at the top could carry out illegitimate actions without fear of being caught and/or punished. The centralization of power was exacerbated by measures included in the 1993

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<sup>13</sup> Two other factors in the fragmentation of civil society were the economic crisis and the political violence committed by the Shining Path (see Roberts, 1996).

Constitution, which added more powers to the President and created a Ministry of the Presidency. The 1993 Constitution also established a unicameral political structure, essentially eliminating a branch of government whose purpose was to hold the Executive and Congress in check.

### **International Financial Institutions and ‘Good Governance’**

According to Cheema (2003), “corruption is a problem of poor governance” (2003, 109). Governance is an issue to which IFIs such as the World Bank and the International Monetary Fund (IMF) have been paying increasing attention. The rationale is that a good level of governance will better facilitate economic development. In the Peruvian context, however, one has to question this assessment. Ugarteche (2005) maintains that Peru turned authoritarian to better implement the drastic economic reforms insisted upon by the World Bank. In fact, he claims that the purpose of the self-coup was to carry out economic reforms. Philip (1999) argues that the success of the economic reforms was in fact due to the fact that they were carried out without resistance, given the unaccountability of the regime.

Despite the fact that the good governance agenda emphasizes economic liberalization and democratization, the former clearly took precedence in Peru during the Fujimori years. This is demonstrated by the fact that the structural adjustment loans made to Peru included no conditionalities relating to the maintenance of a democratic process. Non-economic reforms dealt instead with the provision of social services and the social safety net (World Bank, 1995). In the Bank’s evaluation report, it is stated that the loan was a success and the Peruvian government did what it was asked to do. It is

acknowledged that “[m]aintaining democratic procedures, given the political turmoil of recent years, while providing continuity in economic policy is a large challenge” (Ibid., 22). However, the level of concern, despite the increase in human rights abuses and authoritarianism after the self-coup, must not have been high enough to merit intervention. The next loan to address Peru’s political shortcomings only came about in 2003 as a “Programmatic Decentralization and Competitiveness Structural Adjustment Loan” (World Bank, 2003). The IFIs did threaten to pull their funding after the self-coup but once “democracy” was restored by holding elections, the Fujimori regime was able to carry on as it pleased and was not threatened again, despite its increasingly authoritarian character.

The fight against corruption forms one of the main tenets of the good governance agenda. There are three broad directions one could take in the fight against corruption: working with civil society, changing economic policy, and working with institutions. As could be expected, the World Bank and IMF tend to support economic reforms.

The assumption here (and particularly within the World Bank and IMF) is that the more there is state management of the economy, the more opportunities there are for private interests to seek benefits in the form of permits and licenses from public officials. Deregulation, liberalization and privatization are thus leading instruments in the fight against corruption (Smith, 2007, 193).

As discussed in chapter two, neo-liberalism has not served to curb corruption but has often created more opportunities for it to take place (Manzetti and Blake, 1996). This was clearly the case in Peru. Fujimori implemented the toughest economic package ever introduced in Latin America, following the guidelines set by the World Bank and the IMF, but he also became the most corrupt leader in the history of Peru. In fact, so much corruption transpired during the privatization process, that an investigative commission

was created to address specifically those cases. The strong emphasis on neo-liberalism not only did not succeed in deterring corruption, but it incited the Peruvian government to cater above all to private interests in order to secure investment. This in turn led to the motivation behind both cases studied here. The fact that Peru possesses vast mineral wealth only exacerbated the problem.

According to authors such as Bebbington (2008), “the main negative relationship between good governance and mineral wealth relates to lack of transparency and corruption in the appropriation and use of state revenue” (2008, 892). A bias develops in favor of the mining corporations and the investment they represent rather than the citizens whose lives the structural adjustment programs were supposed to be improving. The situation that results from this is one where governance mostly matters in discourse rather than practice (Ibid.). In effect, Bebbington believes that “the ways in which the Bank Group has supported mining actually undermine state capacity and weaken potential links between mining and development” (Ibid., 896). Although this is a strong statement, in the Peruvian case it may not be far from the truth. Despite the fact that a monitoring team was on the ground and the IFIs were thus fully aware of the increasing authoritarianism of the regime they were financing, the World Bank provided funds for the electoral campaign of 1995 and 2000 (Ugarteche, 2005, 119).

The World Bank and the IMF may not have contributed to the conditions that facilitated corruption, but they were to a certain extent responsible for providing motivation. Centralization of power and the absence of checks and balances do not figure in the good governance ideology, for obvious reasons. Thus one can conclude that the conditions identified do not correspond to what is advocated by the good governance

agenda. However, the loaning institutions did not include any measures for ensuring that a democratic process would be maintained. Despite the fact that economic reform was carried out through authoritarianism, the Fujimori regime was still supported and seen as completing its end of the bargain.

## **CHAPTER 5**

### **CONCLUDING REMARKS**

#### **Introduction**

This chapter will seek to summarize the main arguments of this thesis as well as to discuss some of the major implications it has for international development. The following section will discuss the questions the case study brings to the good governance agenda. The final section will outline some of the lessons that can be drawn from this study.

This thesis set out to find the conditions facilitating corruption that involved the Fujimori government and the mining sector. It did so in the context of the good governance agenda, as it has important implications for developing countries and includes the fight against corruption as one of its main tenets. The mining sector was chosen both because it has significant influence in Peru, due to its economic importance, but also because its expansion was strongly encouraged by the IFIs. This case study was analyzed using the state crime model. This model provided a way in which to examine corruption of an organizational nature. It also explains how the relationship between the public and private spheres can react in crime and/or social harm. More importantly, the integrated theoretical framework allows for a holistic understanding of the conditions fostering corruption at different levels, though this thesis limited itself to the institutional one.

Using this model, I have argued that attracting and maintaining foreign investment was one of the main motivations behind both examples of corruption analyzed



here. Part of this can be attributed to pressure by the IFIs to perform well economically in order to repay their debts. With regard to the opportunity structure, I found that at the very base of it was the regime's ability to act with impunity. This was facilitated by the concentration of power in the Executive as well as the absence of checks and balances. These two conditions were brought on by Executive decrees, reforms under the 1993 Constitution, the establishment of a unicameral legislature, a pro-Fujimori majority as well as the use of patronage networks. The situation was exacerbated by the absence of social controls, in the form of political pressure, civil society, international pressure, and media scrutiny.

### **Implications for the Good Governance Agenda**

There are several issues found in the Peruvian example. First, what does it mean for the good governance agenda when a government such as Fujimori's administration can carry out authoritarian measures while pretending to be democratic? Fujimori controlled the democratic process in order to obtain a majority that would then write a constitution according to his wishes and allow him to act as he pleased. As Conaghan (2005) writes:

What made the political system authoritarian were the people who inhabited the institutions and the extremes to which they were willing to go in service to Fujimori. The countervailing powers among the three branches of government did not function because there was no one at the helm of institutions interested in or capable of making them work (2005, 66).

However, this is not entirely accurate. It would be too easy to blame it on the people who chose not to enforce democratic principles. One also needs to remember that those in power created the structural conditions that would facilitate corruption and other types of state crime through reforms and legislation they implemented, rather than focus on their

inaction. These conditions, as discussed above, were the centralization of power combined with the absence of checks and balances.

Second, does good governance become less important when an authoritarian government is better able to carry out economic reforms and repay their loans? As Philip (1999) points out, Fujimori's success in improving the state of the economy can largely be attributed to his ability to implement drastic reforms without resistance. Despite the fact that good governance has become part of the international financial institutions' approach, it would seem that they were still able to pick and choose when and where it should be applied. It thus raises the issue of priorities and how important democracy really is.

Third, multilateral organizations such as the World Bank and the IMF bear grave responsibility for creating and maintaining a certain order in which countries operate. Not only that, as Green and Ward (2004) argue, this order also affects the way in which states interact with other actors such as corporations. They state:

The broader political – economic framework mediates the relationship between states and corporations, and thus influences both the individual circumstances of those implicated in perpetuating state corporate crime, as well as the development of institutional frameworks (2004, 45).

While it would be bold to state that the World Bank and IMF were complicit in the Fujimori regime's state crimes, there was a certain degree of responsibility. For example, one can say that the pressure to repay the loan and attract, as well as obtain foreign investment, served as a motivation in both of the examples studied. Furthermore, their level of responsibility is increased by the role IFIs have taken on in the domestic politics of the recipient countries, especially by way of conditionalities imposed through loans. This is an enormous responsibility in and of itself. IFIs are dictating the actions of

developing countries through advising and imposing loan conditionalities. For this reason, I would argue they should be held accountable for the outcome. Whether western multilateral organizations should even be entitled to this responsibility is an entirely different matter. The fact is that they have assumed the role, and it is therefore their duty to do it right and honestly. This means that the goals should be made clearer and more transparent. If the ultimate beneficiaries of the good governance agenda are the citizens of the recipient country, proper measures should be taken and authoritarian behavior not tolerated.

### **Lessons for Development**

The Fujimori regime was not the only case of serious corruption in Latin America. President Fernando Collor de Mello, reigning over Brazil from 1989 to 1992, was eventually impeached due to corruption scandals. He and his friends are believed to have amassed as much as US\$ 2 billion during that short span of time (Flynn, 1993). They obtained much of that through forcing “entrepreneurs to pay higher bribes for favors that the latter had been used to receiving at cheaper rates from previous administrations” (Weyland, 1998, 112). Argentina under the regime of President Carlos Menem was also notoriously corrupt. In this case the privatization and economic deregulation processes “were rigged to obtain bribes” (Manzetti and Wilson, 2008, 134).

However, Fujimori’s Peru was an extreme case due not only to the amount of money involved, but also because of the pervasiveness of corruption throughout the political system and society. Bribes were not only received by the regime, they were paid out in order to prolong their stay in power. It is also unique in that the regime pretended

to be a democracy and maintained the support of the international community while committing various state crimes.

This work is important for the study of development for several reasons. On a local level, knowing what conditions facilitated the unprecedented levels of corruption attained during the Fujimori regime, and arguably different state crimes such as repression and violence, could help prevent such a situation from happening again. It is manifest that the centralization of power and the absence of checks and balances were made possible by reforms in the 1993 Constitution and the actions of the Fujimori majority in Congress. It is important to note that the same Constitution is still in place. Therefore, until replaced the stage is set for another authoritarian figure to come into power and follow his example. This would entail installing proper measures to ensure the balance of power between the different branches of government and reducing the ability of one to interfere in the affairs of the others.

On a broader level, identifying the conditions that facilitated corruption during the Fujimori administration could also be applied to different contexts. Although different local factors would need to be considered, any indebted developing countries could succumb to the pressures of maintaining foreign investment by catering to industry interests. Furthermore, concentration of power and the absence of checks and balances in any political context, combined with the absence of social controls, could result in an opportunity structure for any type of state crime to take place. However, these particular conditions would also need to be accompanied by bad motives such as those of Fujimori and Montesinos. The most important preventative measure would be to have provisions to hold the government in check. This, however, would only be possible in a democratic

system. It should be noted that democracy cannot always prevent these types of abuses, as the Fujimori case demonstrates. Despite the fact that his regime was undoubtedly authoritarian in nature, it operated as a democracy on paper. Therefore, what is needed is above all a system of checks and balances, combined with a free and independent media as well as an active civil society. As long as some institutions are able to provide a check on government, the chances of state crime are already reduced.

A further advance, in terms of preventing state crimes in the mining sector, could be participating in an agreement such as the Extractive Industries Transparency Initiative (EITI) started in 2003. The premise behind the initiative is that “with good governance the exploitation of [mineral] resources can generate large revenues to foster growth and reduce poverty. However, when governance is weak, it may result in poverty, corruption and conflict.” It seeks to improve governance by increasing “transparency and accountability in the extractives sector” (“What is the EITI?”, n.d.). The criteria for implementation of EITI includes regularly publishing payments and revenues made by companies, whether private or state-owned, to governments; conducting audits; and including civil society in the design, monitoring and evaluation of the process (“The EITI Principles and Criteria”, n.d.). This would encourage accountability and transparency while strengthening the system of checks and balances by inviting civil society to participate<sup>14</sup>.

What this thesis also demonstrates is that neo-liberalism is not a solution to the problem of corruption, as some have claimed. The same can be observed in other cases, such as Menem’s Argentina and Collor’s Brazil, where “the dismantling of state

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<sup>14</sup> Peru is currently working on achieving compliant status. It was admitted as a Candidate country in 2007 (“Peru: Candidate country”, n.d.).

interventionism seems to have gone hand-in-hand with an increase in corruption” (Weyland, 1998, 111).

I would argue that the most important contribution this thesis makes to the field of development is the use of the state crime model. This model can be applied to study development issues such as human rights abuses, repression, and corruption. The state crime model - and the conditions it identifies - can be extremely important because of its implications for the protection of human and civil rights. Although I chose to focus on the conditions forming an opportunity structure, the state crime model could be applied in a variety of political and cultural contexts to explain how, and under what circumstances, different state crimes occur. This is very important when studying countries where democracy is not the norm and abuses of power occur frequently. Understanding the motivations and conditions that facilitate these would also help to inform policymakers as to the reforms they should encourage. This work also makes an important contribution by applying the state crime model to case studies in a developing country, because much of the literature thus far has focused on a North American or European context. This work, along with the work of scholars such as Green and Ward, demonstrates that the state crime model can easily be applied to different political and cultural situations in the global South. Furthermore, although there is growing literature on various aspects of the Fujimori regime, my work is the only one that has studied it using the state crime model.

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