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## THE PITFALLS OF POLICYMAKING IN PERU: ACTORS, INSTITUTIONS AND RULES OF THE GAME

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## Abstract<sup>1</sup>

Policymaking in Peru over the last 25 years has been largely dominated by the Executive, and has been influenced by a variety of structural and political factors as well as by the personal ambitions of presidents and the public perception of crisis. With few exceptions, neither the Congress nor the other branches and levels of government have played effective roles in defining the national policy agenda, promoting inter-temporal cooperation and providing checks and balances on executive power. This is due in part to constitutional arrangements, in part to electoral outcomes, and in part to the historical weaknesses of political parties and other actors. Although this situation has been partially modified since 2001, it is not clear that the general pattern has changed.

While certain arenas of decision-making have been reformed in recent years, in many spheres policymaking remains an arbitrary and unpredictable process, resulting in policies that are of low quality, poorly enforced and easily reversed. Although reforming aspects of the political and electoral systems could contribute to improving this outcome, the instability of the political regime per se has been a deterrent to longer-term institutional development.

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## 1. Introduction

Politics in Peru has always been a volatile undertaking. Since gaining independence in 1821, the country has had 13 constitutions, at least 26 successful coups and 108 different governments, only 19 of which were elected and only nine of which completed their terms. While oligarchic power remained entrenched until well into the twentieth century, governance has often been tumultuous and the armed forces have repeatedly intervened to resolve elite disputes and quell social protest. During the last quarter century this volatility has continued, with two constitutions, three complete regime changes, at least four overhauls of the electoral rules and three sweeping turnovers in the party system and prevailing political leadership.

Until well into the twentieth century, Peruvian politics was also an exclusive undertaking in which the majority of the public did not participate. The colonial legacy of violence and racism, combined with the erratic history of primary export-led development and high concentration of wealth, reinforced patterns of economic inequality and social exclusion that were matched in the political sphere. Multi-class populist and reformist parties in Peru failed to build the kind of broad coalitions that enabled counterparts in Argentina, Brazil, Mexico and Venezuela to gain access to power, modernize the state apparatus and implement essential land, labor and social reforms. Through the 1960s, large sectors of the population—especially the rural and indigenous poor—were denied even basic citizenship rights. Democracy with universal suffrage was first introduced in 1980.

For years analysts tended to blame Peru's erratic political development on structural and historical factors, including external economic shocks, natural disasters and defeat in war. While these have indeed been fundamental challenges to governance, recent analyses have shifted attention to the country's weak institutions and leaders. As noted by several authors, Peruvian elites have tended to promote particular, short-term interests, while the building of institutions to mediate conflict, buffer external shocks, and deliver collective goods has usually been a low priority (Schmidt, 2004: 3).<sup>2</sup> Though constitutions have varied in form, the dominant political tradition has been a high concentration of power in the Executive and an arbitrary and personalist exercise thereof, which inhibits coalition-building and provides few effective checks on policymaking. At the same time, internecine political conflicts and social tensions have led to

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<sup>2</sup> See in particular Schmidt (1996, 2004), Cameron and Mauceri (1997) and Kenney (2004).

repeated crises under both democracy and dictatorship. In such contexts, Peruvians have continued to place their faith in individuals rather than institutions, and especially in charismatic popular leaders—such as General Juan Velasco in 1968 and Alberto Fujimori in 1990—who promise to suspend competitive politics in order to “get things done.”

Clearly, there has been a sort of vicious cycle in Peru in which historical constraints help to perpetuate institutional weaknesses and these in turn inhibit effective reform. Yet in the last 25 years there have also been new opportunities for political action to reduce such constraints and introduce new institutional forms. To date, however, there have been few efforts to analyze either these opportunities or the extent to which post-1980 changes in institutional frameworks have affected the nature and impact of policymaking. This paper represents an initial step in that direction. Section 2 briefly summarizes some of the historical legacies and new opportunities faced by the democracy that was inaugurated in 1980. It then examines the evolution of the political regime and the formal “rules of the game” since 1980, and how different leaders applied, defied or changed the rules. This provides a background for understanding the nature of public policy and policymaking during this period.

Section 3 then identifies some general characteristics of public policies since 1980, as well as a few important exceptions. Section 4 attempts to analyze the policymaking process (PMP) in different periods since 1980, highlighting three distinct scenarios. These scenarios are related not just to formal regime type, but also to other political variables including electoral outcomes, the nature of the party system, the ambitions and preferences of specific leaders and exceptional circumstances generated by crises. Admittedly, this is an ambitious effort to simplify thousands of complex policymaking experiences, but it attempts to illustrate some general trends with specific examples. Section 5 provides more in-depth information on each of the key institutions mentioned, while Section 6 draws general conclusions and discusses possible alternatives for breaking Peru’s erratic pattern.

## 2. Historical Legacies and Changing Rules

“Pendulum,” “labyrinth,” “kaleidoscope,” “*espejismos*,” “enigmas” and “*entornos cambiantes*” are but a few of the terms used by scholars to attempt to characterize Peru’s contemporary political and economic history.<sup>3</sup> The consensus is that Peru is a place where politics is complex and ever changing, where crisis is the norm and “politics as usual” never happens—in other words, where formal rules do not necessarily apply. At the same time, Peruvian elites have invested considerable time in designing constitutions, electoral codes and other forms of legislation in the hope that changing the rules can change reality. As Schmidt recently noted, although this goal has proved elusive, its institutional legacy is complex and poorly understood (2004: 52).

### 2.1 Historical Legacies

As mentioned at the outset, Peru has always had a profoundly unequal society. The Spanish conquest reinforced and institutionalized existing geographic, ethnic and cultural disparities, driving a sharp wedge between a small, European ruling elite and the mass of Indians and African slaves whose forced labor on large haciendas, mines and workshops generated the wealth of the ruling classes. Unlike neighboring Chile and Argentina, post-Independence Peru also lacked a governing class capable of providing firm leadership to the state and unifying the nation. Instead, a series of military caudillos battled for control of the country during its first three decades, forming shifting alliances with landowners and merchants while leaving in place the underlying racial and class structure of colonial society. Civilian elites and their military allies continued to battle for control of the state into the 1960s (see Table 1).

Political instability and social exclusion were historically exacerbated by Peru’s erratic pattern of economic development. While a series of primary-export booms generated wealth for a small group, the latter was historically resistant to redistributing the benefits of such bonanzas. When trade unions, peasant organizations and reformist parties came on the scene in the early twentieth century, they were largely met with suppression rather than incorporation, as occurred in neighboring countries earlier in the century. Even in the 1960s, when much of the region was pursuing more developmental and democratic alternatives, Peruvian elites in power continued to

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<sup>3</sup> See, for example, González de Olarte (1991), Cameron and Mauzeri (1997), Schmidt (2004: 87-127), Tanaka (1998), Tuesta (1996a) and Parodi (2002).

adhere to a primary-export model and a minimalist state, and were inflexible to demands for land reform, extended social welfare and broader political participation. As a result, Peru had one of the most unequal patterns of income distribution in Latin America, and large sectors of the population were denied even the basic rights of suffrage (see Table 2).

Prior to 1968, Peru had one powerful reformist party—the APRA—which represented an important segment of the population including students, workers in the modern sector and emerging middle classes. The APRA was unable to lead a successful reform effort, however, due in part to structural factors—including the persistent power of large landowners, the small size and dispersion of the labor movement and a highly restricted citizenry—and in part to tactical errors by party leaders, including confrontation with the military and a series of ill-fated pacts with conservative forces, seeking access to state power in exchange for abandoning its social agenda (Sanborn, 1991; Adams, 1984). Yet this goal proved elusive, and the brief periods in which the APRA dominated Congress (1945-48, 1963-68) were marked by explosive executive-legislative conflict and military intervention.

When the more moderate *Acción Popular* (AP) party also proved unable to enact a reform program through peaceful means (1963-1968), there was a generalized feeling that civilian elites were incapable of forging genuine national integration and transforming the unjust structures of society. Instead, the Revolutionary Government of the Armed Forces (GRFA) assumed these tasks for itself. Taking power in a 1968 coup, General Juan Velasco Alvarado promised to accelerate economic growth and radically improve distribution, to strengthen the state and integrate the nation, and to eliminate social class conflict and overcome external dependency. To do so, the GRFA enacted radical land and labor reforms, nationalized a large share of the primary export and financial sectors, confiscated the mass media and prohibited all political parties and electoral competition.

The military ultimately failed to achieve its objectives, leaving civilian successors with a country that was still fraught with disparities and social conflicts, as well as an unprecedented external debt and deepening economic crisis. Yet the military “revolution” also left in its wake some fundamental changes in social and political structures. These included the elimination of the old oligarchy as a political force, the consolidation of the Armed Forces as a powerful and autonomous actor, a larger and more modern state apparatus with greater presence in the economic and social spheres, and the emergence of important new political and social actors. The



latter included dynamic new business groups, an expanded middle class and professional sector and a broad range of labor, peasant and “popular” organizations whose demands for social justice and political inclusion could not be ignored by subsequent governments.

In summary, after 12 years of military rule, Peru in 1980 had yet to overcome the historical legacies of authoritarianism or inequality. However, it had made important strides toward expanding social inclusion and reducing various historical barriers to democracy. The challenge would be to design a set of effective, representative institutions capable of reflecting and extending these changes.

**Table 1. Classification of Latin American Regimes, 1945-1999**

D = democratic		S = semi-democratic		A = authoritarian	
Argentina	1945	A	Guatemala	1945-53	S
	1946-50	S		1954-86	A
	1951-57	A		1986-99	S
	1958-61	S	Haiti	1945-99	A
	1962	A	Honduras	1945-56	A
	1963-65	S		1949-54	S
	1966-72	A		1955-56	A
	1973-74	D		1957-62	S
	1975	S		1963-70	A
	1976-82	A		1971	S
1983-99	D	1972-81		A	
Bolivia	1945-55	A	1982-93	S	
	1956-63	S	1994-99	D	
	1964-81	A	Mexico	1945-87	A
	1982-99	D		1988-99	S
Brazil	1945	A	Nicaragua	1945-83	A
	1946-63	D		1984-99	S
	1964-84	A	Panama	1945-47	S
	1985-99	D		1945-55	A
Chile	1945-72	D	1956-67	S	
	1973-89	A	1968-89	A	
	1990-99	D	1990-93	S	
Colombia	1945-48	S	1994-99	D	
	1949-57	A	Paraguay	1945-88	A
	1958-73	S		1989-99	S
	1974-89	D	Perú	1945-47	S
	1990-99	S		1948-55	A
Costa Rica	1945-48	S	1956-61	S	
	1949-99	D	1962	A	
Dominican Republic	1945-65	A	1963-67	D	
	1966-73	S	1968-79	A	
	1974-77	A	1980-82	D	
	1978-93	D	1983-84	S	
	1994-95	S	1985-87	D	
	1996-99	D	1988-91	S	

**Table 1., continued**

	D = democratic	S = semi-democratic		A = authoritarian
Ecuador	1945-47	A		1992-94 A
	1948/60	D		1995-99 S
	1961-62	S	Uruguay	1945-72 D
	1963-67	A		1973-84 A
	1968-69	S		1985-99 D
	1970-78	A	Venezuela	1945 A
El Salvador	1979-99	D		1946 S
	1945-83	A		1947 D
	1984-91	S		1948-57 A
	1992-99	D		1958-99 D

*Note:* The authors coded the year of a regime transition as belonging to the new regime. For example, although the Argentine military dictatorship lasted from 1976 to 1983, 1983 was coded as democratic because the new regime was inaugurated in December of that year. *Source:* Mainwaring, Brinks, and Pérez-Liñán (2001: 49)

**Table 2. Peru: Evolution of Suffrage Rights**  
(Presidential Elections)

Year	Eligible Voters	Type of vote	Voters/Population
1896	Literate, taxpaying men over 21	Optional, indirect and public	0.2 %
1931	Literate men over 21	Obligatory, direct and secret	6.7 %
1956	Literate men and women over 21	Obligatory, direct and secret	18.2 %
1980	Literate and illiterate men and women over 18	Obligatory, direct, secret and universal	37.4 %

*Source:* Datos Electorales, Transparencia (October 1999), Tuesta (2001), INEI, Mainwaring and Scully (1995).

### ***2.2 Transition to Democracy and Remaking the Rules: 1978-1992***

In 1978, Peru's military rulers convened elections for a Constituent Assembly as the first step for a return to civilian rule. The composition of this assembly was unprecedented. While more than one third of the 100 seats went to the APRA party—whose historical founder, Victor Raul Haya de la Torre, served as Assembly President—25 seats went to the new right Popular Christian Party (PPC) and a surprising 28 seats (30 percent of the popular vote) went to four new Left slates, the largest vote for a Marxist left in Latin America outside of the Unidad Popular in Chile. For the first time in Peruvian history, parties of the left, right and center had the opportunity to compete freely for the support of the electorate, and each would participate in the definition of new institutions and rules of the game that would condition their own behavior in the years ahead (Sanborn, 1991).

The Constitution of 1979 established a basically presidential regime that prevailed through 1992 and the subsequent Constitution of 1993 retained many of its core elements. It established an Executive branch with a president who is also Chief of State, a Legislature with two chambers (reduced to one in 1993) and an independent Judiciary, and also provided for popularly elected municipal governments and regional authorities. The president and the entire legislature would be elected simultaneously every five years through direct popular election with universal suffrage. Starting in 1985, the president would be elected by a majority of 50 percent plus 1 or would face a second-round, run-off election (*ballotage*), while members of Congress would be selected in the first round. An open-list proportional representation system known as *voto preferencial doble* (VPD) was also introduced in 1985.

One of the few objectives that generated broad consensus across party lines in 1979 was the desire to promote a stronger and more pro-active Executive, particularly in the realms of economic and social policymaking.<sup>4</sup> The Parliamentary elements of the previous Constitution (1933) were widely blamed for the blockage of Belaúnde's democratic reform efforts by an alliance between the APRA and the right, provoking the military intervention in 1968. In particular, the previous Constitution gave Congress greater budgetary powers and had no provision for presidential veto when the legislature censured ministers or provoked a fiscal crisis (Kenney, 2004). The 1979 Constitution gave the Executive greater control over national finances, enhanced the president's legislative and emergency powers, reduced congressional power of censure over cabinet ministers and provided for at least a weak presidential veto (Kenney, 2004).

Yet although the Executive was given more authority in the 1979 Constitution, its drafters did not want presidents to be dictators, and hence they retained a series of formal checks and balances. These included some important measures of congressional control over presidents as well as a formally independent judiciary. An opposition majority in both houses of Congress could override a presidential veto, block legislation initiated by the Executive, deny the Executive extraordinary legislative powers, censure cabinet ministers, impeach the president (a lengthy process) or declare the presidency vacant, a relatively quick procedure (Kenney, 2004). Indeed,

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<sup>4</sup> According to constitutional expert Enrique Bernales, "There was full consensus over this issue among all the groups represented in the Constituent Assembly, because this was an issue called for by reality itself, and... because modern constitutions have accepted delegation [of legislative authority to the Executive] as an institution stemming from the development of the contemporary state." Bernales and Rubio (1985: 336).

these elements have led some analysts to place the Peruvian regime in a hybrid or “semi-presidential” category.<sup>5</sup>

Competing elites did not agree on the objectives for electoral rules, however, and their nature and evolution reflects this. While direct presidential election and proportional representation have remained constant since 1980, other rules have varied considerably, including those establishing the type of circumscription, the number of elected representatives, the number of chambers and the rules for electing each, preferential voting, the simultaneity of presidential and parliamentary candidacies and immediate presidential reelection. In the 1980s, new rules lowered the barriers to electoral participation by allowing any group of citizens to form a party with the signatures of 1 percent of registered voters in a given jurisdiction. Although these barriers also changed over time, the tendency has been towards expanding competition. The 1979 Constitution also extended suffrage to illiterates and lowered the voting age from 21 to 18, measures that increased the electorate in 1980 by an estimated 150 percent over the last election of 1963 and allowed it to continue to expand significantly in the next two decades.<sup>6</sup>

What was the impact of these new rules and institutions? Although this is addressed in more detail in Sections 4 and 5, it can be said that certain electoral rules encouraged a “coat-tail effect” and presidents enjoyed majorities in Congress for most of the following two decades, a situation that allowed them to exercise considerable power and that had a significant impact on the PMP. However, the introduction of the second-round runoff system for the presidency alone left the door open for an opposition legislature, an outcome that has occurred twice (1990-1992 and 2001-present), and is more likely to occur in the years ahead. Meanwhile, other rules encouraged pluralism and voter choice, at the expense of party unity and discipline. Although the weaknesses and fragmentation of Peruvian parties are due to a series of factors, including ideological and strategic disagreements, personality clashes and succession crises, analysts tend to argue that the electoral rules have made this situation worse.

In sum, the new regime structure and electoral rules in force after 1980 expanded the opportunities for participation and competition by a vast new electorate, while reinforcing the weaknesses of parties and the fragmentation and volatility of the party system. They also

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<sup>5</sup> See Martínez (1998) and Sardon (2004). However, most analysts place Peru in the presidential camp, including Mainwaring and Scully (1995), Carey and Shugart (1998) and Tuesta (1996), based on the electoral and party systems and dependent nature of the Prime Minister and Cabinet.

<sup>6</sup> In 1980 there were approximately 6.5 million eligible voters. By 1990 there were roughly 10 million and in 2006 there are 16.5 million.

encouraged a centralized and proactive Executive that was expected to make many of the major economic and social policy decisions that would affect the nation, while including provisions that could check—or obstruct—the Executive’s ability to do so.

### ***2.3 Challenges to Democracy 1980-1992: Critical Junctures and the Politics of Crisis***

The general elections of 1980 inaugurated a new phase of democratic optimism in Peru, with a new constitution, a broader party spectrum and a citizenry better organized than ever to defend its new rights. Although the APRA hoped for a historical victory, Peruvians ultimately opted to return power to the same populist leader who was ousted 12 years before—Fernando Belaúnde. Belaúnde’s party, the Accion Popular (AP) won an absolute majority in the lower house and a near majority in the Senate, where an alliance with the PPC gave Belaúnde the congressional mandate needed to be the decisive but democratic president Peruvians longed for.

The external context for Peru’s new democracy was not so favorable. By 1983, the country faced serious challenges generated by changes in U.S. economic policy, falling export prices during world recession and the debt crisis. Peru also experienced severe natural disasters related to one of the most intense El Niño currents in recent history, while an armed insurgency added to Belaúnde’s troubles. Unfortunately, the Belaúnde administration also made policy choices that exacerbated the country’s persistent social tensions, without achieving greater stability or much-needed public sector reform.<sup>7</sup>

Belaúnde moved quickly to consolidate the power of the Executive branch, giving the PPC control over the ministries of Justice and Industry in exchange for a congressional majority. But Belaúnde and his party loyalists—the *populistas* who comprised most of the AP’s congressional bloc—did not have a broad policy agenda of their own, and for the most part this power was not concentrated for the president’s own use. Rather, it would be used in pursuit of the macroeconomic goals initiated by a small group of technocrats (*técnicos*) led by Prime Minister and Minister of Finance Manuel Ulloa, and initially supported by the President. The Congress granted Belaúnde extraordinary legislative faculties to enact wide-ranging reforms, and by the end of the first year the Executive had promulgated 217 legislative decrees. Most of these involved economic policy measures, but some were also designed to allow the Executive to make

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<sup>7</sup> This discussion of 1980-1985 is based on Schmidt (2004) and Sanborn (1991).

up its own laws of organization and function largely without further oversight (Sanborn, 1991: 229-230).

Yet despite their declared intention to roll back the statist legacy of the military regime, the *técnicos* were not in fact able to reform the bureaucracy and privatize public enterprises, nor did they undertake serious reform of Peru's ineffective tax structure. Instead, this government followed the traditional pattern of using the public administration as a way to reward party loyalists, with state enterprises remaining key sources of patronage. Indeed, analysts argued that by this point, the Peruvian state was in fact becoming weaker in spite of (or due to) its expanding size and responsibilities.

While the consolidation of a strong Executive was actively sought by Belaúnde, the other major political actors contributed to this tendency. Members of Congress assumed a largely reactive role vis-à-vis the Executive, one that the newly-restored private media and political critics began to call a "*parlamento genuflecto*" (Sanborn, 1991: 232). Dominated by a pro-government majority, the legislature for most of this period produced few laws of substance and contributed little in the way of public debate over issues of national importance. This early abdication of legislative and oversight powers was accompanied by a lack of attention to the efficacy and modernization of the institution itself, which would make it harder to reassert parliamentary authority in the years ahead, even though growing numbers of opposition politicians (and some from the governing alliance) wanted to do so. Instead, the weakness of Congress reinforced public views that greater Executive powers were needed to get things done.

Although the weakness of Congress under the Belaúnde Administration was due in large part to the behavior of the AP-PPC majority, opposition parties also bore some responsibility. Both the APRA and the Marxist left parties were mired in internal problems until 1983 and had limited concern for the consolidation of the new democracy and its core institutions. When the opposition parties did revive themselves, they found the parliamentary arena had become relatively marginal to political decision-making and widely repudiated by citizens. As the GDP fell and the government was forced to implement harsh austerity measures, the main arenas of opposition became the media and the streets, where major strikes and social protests in 1983 and 1984 contributed to the rollback of some austerity measures and the resignation of at least one finance minister.

As with prior democratic interludes in Peru, the Belaúnde government ended in economic crisis and social discontent, as well as in increasing political violence. Yet unlike the past, widespread dissatisfaction with the government did not initially bring an end to the regime. Instead, most Peruvians turned to opposition leaders for answers. By 1983 the APRA and the United Left front were leading the polls, with renovated leadership and apparent political unity. Although they were minorities in Congress, both parties won important municipal victories in 1983 and participated in widespread social protests. In the 1985 general elections, the APRA's charismatic new 35-year-old leader, Alan García Pérez, won a landslide victory with 53 percent of the valid vote and a majority in both houses of Congress. Alfonso Barrantes, the Izquierda Unida candidate and the popular mayor of Lima, finished second with 25 percent of the vote and pledged tacit support to García. Hence 75 percent of the electorate had voted for similar, left-of-center alternatives, an outcome that seemed to herald a new era of political consensus as well as social change.

Yet in fact, the citizenry had elected another populist leader, more ambitious than his predecessor, and one whose arbitrary style of rule and impetuous policy decisions would lead Peru to the brink of economic and political collapse. García's electoral triumph was based on his personal but transitory appeal to non-*apristas*, including workers in the informal sector, independent professionals and also leading business and military figures whose support he personally cultivated (Sanborn, 1991; Graham, 1992). It was not accompanied by an institutional renovation of his party, which was ill-prepared for governance in the 1980s and inclined to reproduce the traditional patterns of clientelism and corruption that prevailed under the AP. During his time in power, García managed to alienate many of his new friends on the left and right, in business and labor, and many *apristas* as well.

This outcome was not immediately foreseeable. García's initial proposals—to limit debt service payments, pursue heterodox economic policies and build consensus through regular dialogue with major interest groups (*concertación*)—generated unusually broad support at home and abroad. This support, combined with a firm and relatively disciplined congressional majority, allowed García to concentrate significant personal power and implement policies quickly. In this case, the President took a personal interest in virtually all policy areas, from agriculture to anti-terrorism. Initially, he was aided by reserves built up through suspension of the debt, which financed a boom in consumption and imports. Through populist measures that immediately

touched the lives of the poor, delivered through rallies and widely-covered *balconazos* from the presidential palace, García's popularity exceeded 90 percent in 1986, and the APRA won major victories nationwide in the 1986 municipal elections (Sanborn, 1991: 356-358).

By early 1987, however, the reserves began to run out and it became apparent that García and his advisors did not have coherent plans for moving beyond the short term. The consumption boom and incentives to the private sector failed to stimulate the kind of new investment García hoped for, the public sector deficit widened and inflation began to rise once again. The promised *concertación* also did not develop as anticipated. Economic deal-making was conducted in a personalist fashion between García and a small group of leading businessmen (popularly dubbed the "Twelve Apostles"), bypassing trade associations and generating considerable resentment among those left out. García also alienated organized labor by giving priority to his meetings with business and not attempting a tripartite effort.

Finally, a highly controversial decision to nationalize the private banking system in July 1987 generated major economic and political disruption without regaining the popular support García had bargained for. In fact, the bank takeover was apparently a personal decision by the President, without adequate preparation and against the warnings of key party leaders. Novelist Mario Vargas Llosa led a backlash movement against the measure, adopting the name *Movimiento Libertad*, which mobilized not only businessmen and center-right politicians but also many from the independent middle classes who had voted for García. Numerous APRA leaders also opposed the measure, and some prominent Cabinet members resigned over it. After protracted conflict in the streets and resistance in Congress, the measure was eventually halted (Sanborn, 1991; Graham, 1992). During its last two years, the García government went into a policy paralysis reminiscent of the end of the Belaúnde Administration, while the rapid downward spiral of the economy ended in a crisis of even greater proportions.

It is important to bear in mind that during the course of the 1980s, two armed movements—the Shining Path and MRTA—also posed challenges to the new democracy, as did the alarming increase in illegal cocaine production and drug trafficking (Schmidt, 2004: 31). The most serious threat came from the Shining Path, which launched its armed struggle in 1980 and grew steadily over the subsequent decade. In response to the violence, the Belaúnde and García governments placed increasing expanses of the country under states of emergency, and handed political as well as strategic authority to the Armed Forces, which were already weakened by 12



years in power, economic crises and public distrust. The lack of an effective counterinsurgency strategy led to widespread, often indiscriminate violence and the suspension of newly won civil liberties. The weakness and corruption of the Judiciary, exacerbated by political interference, also left judges vulnerable to intimidation by armed groups and unable to exercise consistent authority over either side. By the late 1980s, emergency zones covered nearly one-third of Peru's provinces and more than half of the population. According to the Truth and Reconciliation Commission, an estimated 69,000 Peruvians died from political violence between 1980 and 1999, and at least 200,000 refugees fled the countryside to Lima and other cities, swelling the ranks of the precarious informal sector (Schmidt, 2004; Truth and Reconciliation Commission, 2003).

The external challenges García faced at the outset were exacerbated by the arbitrary nature of decision-making, the incapacity and corruption of the governing party and a structure of power that García inherited and expanded to its very limits. By 1989, voters had lost confidence in virtually all political institutions, with parties among the least respected; 77 percent of citizens distrusted them. Yet remarkably, 61 percent still believed that democracy was the best system of government for their country (Schmidt, 2004: 32). What they sought was new leadership, not necessarily a new regime. What they got was both.

#### **2.4 The Fujimori Decade: 1990-2000**

*“En el Peru no existen partidos politicos (...). El poder soy yo, es verdad. Pero es un poder que me fue dado por el pueblo. Yo lo represento.” – Alberto Fujimori, 21-6-93*<sup>8</sup>

By 1990, the Peruvian public faced another vacuum of political leadership. The frontrunner to fill the spot was Vargas Llosa, leading an alliance of parties and independents (FREDEMO) with a neo-liberal policy agenda and generous backing from prominent members of the business, political and ecclesiastical establishments. Polls initially gave second place to the leftist Alfonso Barrantes and a distant third to the APRA candidate Luis Alva Castro, but as the FREDEMO began to show its internal contradictions, the voters cast around for more palatable alternatives. The dark horse in the race was Alberto Fujimori, a little-known mathematician and university rector, the son of Japanese immigrants, who had entered the race in search of a Senate seat, and who had no clear program or party base. Promising “honesty, technology and hard work,”

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<sup>8</sup> *Diario El Comercio*, 21/6/1993, cited in *Idéale* No.71-72, December 1994, p. 98.

Fujimori's campaign also stressed vigorous rejection of Peru's entire political and social elite. In a celebrated second-round run-off, Fujimori won by a landslide.<sup>9</sup>

Fujimori began as one of the weakest presidents in Peruvian history, a political neophyte with a minority in Congress and a context of extreme economic and social crisis. In the first round election, the FREDEMO won a plurality in both houses, while the APRA had the largest bloc of any single party and the divided Left still retained an important presence (Tuesta, 2001). In contrast, Fujimori's hastily constructed Cambio 90 list held just 32 seats in the 180-member lower house and 14 of 60 seats in the Senate, and none of his followers was an experienced legislator. Yet Fujimori had a majority of the voters on his side, strong support from the military, and the legitimacy of being a true "outsider" who was untainted by politics as usual.

Initially, the widespread perception of crisis and this initial legitimacy allowed Fujimori to initiate dramatic policy measures, much as his predecessors had done. A majority of the new Congress also gave this president broad authority to pass urgent legislative decrees in areas of economic policy and counterinsurgency. Fujimori used these powers to enact structural adjustment, privatize many state enterprises, resume payment on the foreign debt and restore international credit. He also launched a sweeping reform of the tax authority, signed a controversial anti-drug agreement with the United States and gave greater authority to the military and peasant self-defense leagues in the fight against the Shining Path. Through these measures, Fujimori quickly won over large numbers of wealthy and middle-class citizens who had voted for the FREDEMO, while holding on to his initial popular support.

During his first two years in office, Fujimori did not try to form a governing coalition with other groups represented in Congress, holding firm to the independent image that made him attractive to voters. Instead, he regularly ridiculed the Legislature, the Judiciary and the established parties, expressed disdain for politics in general and promised practical, technical solutions to the nation's problems. Although the FREDEMO-led majority in Congress supported his initial adjustment policies and subsequent free-market reforms, legislators challenged presidential actions that were not clearly within the bounds of the 1979 constitution, especially executive decrees that overturned regular legislation or violated civil liberties (Schmidt, 2004: 35). Disagreement over the 1992 budget was also more intense, as legislators resisted new taxes and other measures proposed by the Economy Minister (Kenney, 2004). Legislators also

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<sup>9</sup> For excellent analysis of the Fujimori victory, see Schmidt (1998) and Degregori and Grompone (1991).

demanded more fiscal support for the agricultural sector, which Congress declared in emergency, and censured the new Minister of Agriculture (McClintock, 1993:115). The conflict reached a climax in early 1992, when Congress elected opposition figures to replace the Cambio 90 presidents of both houses and overrode Fujimori's veto to pass several bills into law, including a new Law of Parliamentary Control, which regulated subsequent use of executive decree authority (Schmidt, 1998 and 2004: 35). The Tribunal of Constitutional Guarantees also ruled against Fujimori on the use of certain emergency powers.

On April 5, 1992, President Fujimori abruptly announced the closure of Congress, the reorganization of the Judiciary, and the appointment of a commission to draft a new constitution for submission to voters (Schmidt, 2004: 36). With support from the military hierarchy, Fujimori had opposition leaders confined to their homes and the press momentarily silenced. This *autogolpe* was condemned by all major parties except Cambio 90, by the major news media and by most interest groups, with the notable exception of business associations. The public was generally supportive, however, and Fujimori's approval ratings rose to 79 percent the week after the coup and remained well over 50 percent for the rest of his first term, reinforced by important victories in economic stabilization and counterinsurgency. Although Fujimori was surprised by the negative international reactions to the coup, he responded by promising to restore civil liberties and hold elections for a constituent assembly that would also operate as a legislature. The CCD elections in 1992 were boycotted by the larger parties, and Fujimori's hand-picked candidates won 49 percent of the valid vote and 44 of the 80 seats, giving him a firm majority and control over the drafting of the new constitution (Schmidt, 2004: 36).

In 1993, Peruvians narrowly approved a new constitution that retained the essential presidential nature of the 1979 regime, while reducing Congress from two chambers to one and from 240 members to 120, and—importantly for Fujimori—permitting immediate re-election of the president. At the same time, it reduced the formal economic role assigned to the state, established checks on executive decree authority and eliminated the Executive's role in the selection of judges. The new constitution also created a semi-autonomous Ombudsman (*Defensor del Pueblo*) and introduced innovative measures of direct democracy and government accountability. Although many of these features would be ignored by Fujimori, some would gain new importance after his departure in 2000.

From 1992 to 2000, Fujimori governed with a heavy hand, a rubber stamp Congress and a purged and politically dependent Judiciary. During this period, he also relied on national security advisor Vladimiro Montesinos and a growing clandestine intelligence apparatus to bribe or intimidate opponents while maintaining a façade of democratic legitimacy. Although voters expressed concerns about human rights and signs of high-level corruption, the economic and security results under Fujimori's watch largely kept the public on his side. By late 1994, political violence had declined to 20 percent of 1990 levels. The GDP grew by 4.8 percent in 1993 and 12.5 percent in 1994, while inflation fell to 15 percent in 1994 and 10 percent in 1995. "These achievements," says Schmidt (2004: 38), "made Fujimori's Peru a showcase for the World Bank, IMF and international financial community." Meanwhile, the political opposition remained divided and uncertain as to how to confront this regime. In 1995, Fujimori was re-elected with 64 percent of the vote, and his Cambio 90-Nueva Mayoría list won 67 of 120 seats in the unicameral congress.

During his second term, Fujimori's capacity to maintain popular support and a strategic civil-military alliance would be more strongly tested. The economy began to take a downturn, human rights concerns and military scandals increased, and polls suggested that Fujimori would lose a second re-election contest. Despite this declining support, and despite widespread objection from opponents and the Constitutional Tribunal to his running for a second re-election, Fujimori nearly won a third term in office in 2000. Fraud, intimidation and bribery accounted for part of this, but the nature of the opposition—divided into eight separate candidacies – also made it possible. While Fujimori failed to win a congressional majority in 2000, he was initially able to buy or coerce enough members from other parties to come over to his side. Yet when a videotaped copy of one of these transactions was leaked to the media, Fujimori's alliance began to crumble and he fled to exile Japan. The network of corruption that was subsequently exposed was far greater than even his stronger critics suspected (Schmidt, 2004: 43).

### ***2.5 Transition (Back) to Democracy: 2000 Onward***

As the 21st century began, there appeared to be significant agreement among Peru's political and economic elite concerning the errors of the recent past, including broad recognition of the damage that had been inflicted by violent political confrontation and by radical and erratic shifts in national policies and priorities. In 2001, a National Accord was signed by government officials, leading opposition parties, business, labor and other civil society representatives, all of

whom committed to working towards the achievement of 29 common policy priorities over the next 20 years.

A brief interim government led by Congressional President Valentín Paniagua governed largely by consensus and initiated a series of reforms aimed at restoring democracy and the rule of law, investigating human rights abuses and prosecuting the corruption of the past era. In 2001, Alejandro Toledo, a leader of the democratic opposition to Fujimori, won the presidency in a second-round runoff with former President Alan García, after the latter narrowly edged out center-right UN leader Lourdes Flores for the spot. While Toledo's loosely knit party, Peru Posible, did not win a majority in Congress in 2001, he initially crafted one with the Frente Independiente Moralizador (FIM) and other minor groups. Toledo also enjoyed initial broad authority to continue the re-democratization and other reforms initiated by the interim government, and launched an important new decentralization effort with the cooperation of Congress. To date, his government has followed relatively orthodox liberal economic policies and the economy has grown at around 5 percent per year.

Nonetheless, the president's inability to deliver on other campaign promises, especially in the area of employment and social policy, along with his apparent lack of vision or decisiveness and growing signs of corruption in his entourage, led his popularity to plummet dramatically and his weak congressional alliance to fray. Half way into his five year term, the National Accord was all but abandoned and the Toledo Administration faced increasingly impatient opposition both in the streets and in Congress. Public disenchantment with the entire political establishment had once again sunk so low that analysts in 2003 were speculating about whether the next step would be a change in the president, the government or the regime itself. By 2006, the major players had opted for the electoral path to change; however, neither Peru Posible or FIM proved able to field presidential candidates, and polls suggested that voters might exclude both of them from the next Congress altogether.

### **3. Public Policies in Peru: Characteristics and Cases**

Given the erratic path of Peru's institutional and political development, it is no wonder that the policymaking process—if one can call it that—has experienced erratic swings on numerous fronts: between democracy and dictatorship, between more inclusive or exclusive modes of governance and between market-oriented economic policies and those that favor state intervention. The damage inflicted over the long term by these swings is notable, not only in

Peru's inability to sustain economic growth, but also in its failure to consolidate the rule of law and achieve greater social equity, objectives that are fundamental if the country is ever to break the historical cycle of failed populism, crisis, authoritarianism and crisis again.

It is important to note, however, that since 1990 there have also been some important policy successes. In the 1990s, policymakers advanced considerably in achieving general financial stability and strengthening market-oriented policies. From 2000 onward, important inroads were made in the areas of political decentralization as well as the protection of human rights and civil liberties. Although this paper examines why some specific policies have succeeded or failed, the underlying concern here is why the general pattern of policymaking remains so erratic and short sighted.

To this end, certain general characteristics of public policies in Peru over time are identified and are the focus of this section. Generally speaking, public policies have been made arbitrarily, they have often been volatile, and they tend to be easily reversed. They also tend to be of low quality and are poorly enforced. This is admittedly a generalization, and a dismal one, which requires further definition and elaboration.

### ***3.1 Theoretical Discussion***

First, following Pritchett (2004), we define a *policy* as a conditional mapping from political and economic interactions into a concrete action. A *policy action* is thus the specific result of the application of that mapping; in turn, a *policy outcome* is the consequence (intended or otherwise) of applying a specific policy action within a particular real world context.

Given this definition of policy as a conditional mapping, it is important to note that not all changes in realized policy actions need be interpreted as volatile. If we observe a different policy action due to a change in the state of the world we are looking at a flexible policy.<sup>10</sup> For example, in Figure 1 we have  $S1 \rightarrow a3$  and  $S2 \rightarrow a4$  with the same policy C. However, when changes in a policy action occur in the absence of change in the underlying circumstances, we would identify this as a volatile policy shift. Such policy volatility is displayed in the move from  $a3$  to  $a2$ , where  $S1$  remains constant but the actual policy changes from C to B. Under this setup we define an inflexible policy as policy A, which remains at position  $a1$  regardless of the relevant state of the

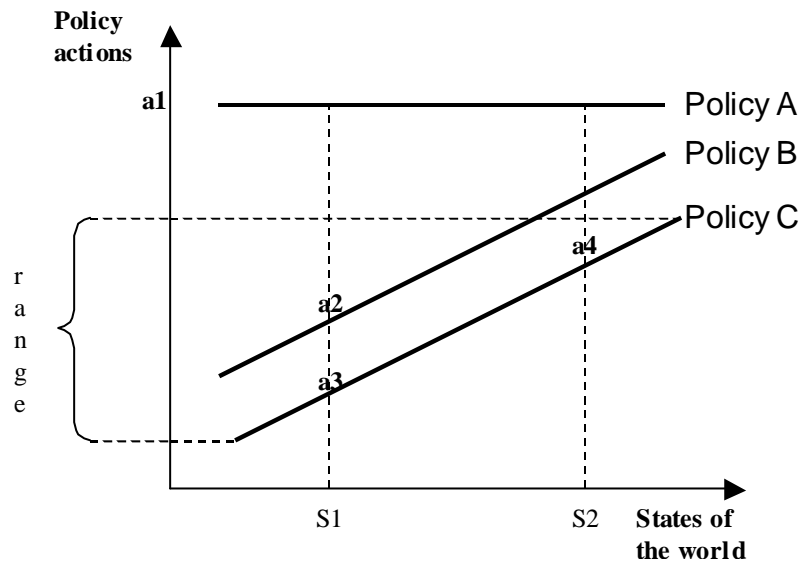
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<sup>10</sup> This distinction between volatile and flexible policies was also stressed in personal communication with John Carey, who provided valuable input for our analysis of this case.

world. Conversely, we can say that a policy is easily reversible if it tends to switch from policy A to B to C or the other way around.

In most of the cases examined here we will not be able to observe policy mapping in a given issue area, but rather the policy actions. In doing so, we will bear in mind these definitions and make use of the information provided when discussing the characteristics of the public policies in Peru’s PMP.

**Figure 1. Policies as Mappings**



### 3.2 Main Characteristics

#### 3.2.1 Arbitrary, Volatile and Easily Reversible

Policymaking in Peru seems above all to be an arbitrary process, determined by the will and preferences of the “*gobierno de turno,*” or individual leaders, and easily reversed within a short period of time. This generates a high level of uncertainty, which hinders longer-term investments and erodes public confidence.

As stated above, volatility involves the inability to articulate and stick to core goals. As such, it is a curse for any political system. Reversibility is the probability of observing a change in the direction of a policy. The higher reversibility is, the more fluctuating and unpredictable is the policy. Policymaking in Peru tends to follow this latter path, as both core goals and the means to achieve them are frequently brought into question. For reasons analyzed below, policy

decisions under both democratic and authoritarian rule have, for the most part, been unpredictable and subject to unanticipated reversals.

These traits are reflected most notably at the macroeconomic level. Drawing on the information in Spiller, Stein and Tommasi (2003), Peru ranks in the middle income group (an annual per capita GDP of about US\$2,000), but is also characterized as one of the most volatile economies in Latin America in terms of the fluctuation in GDP rates (see Table 3) and its historically high inflation rates.<sup>11</sup>

**Table 3. Volatility in Latin America**  
(Standard deviations of growth rates by decade)

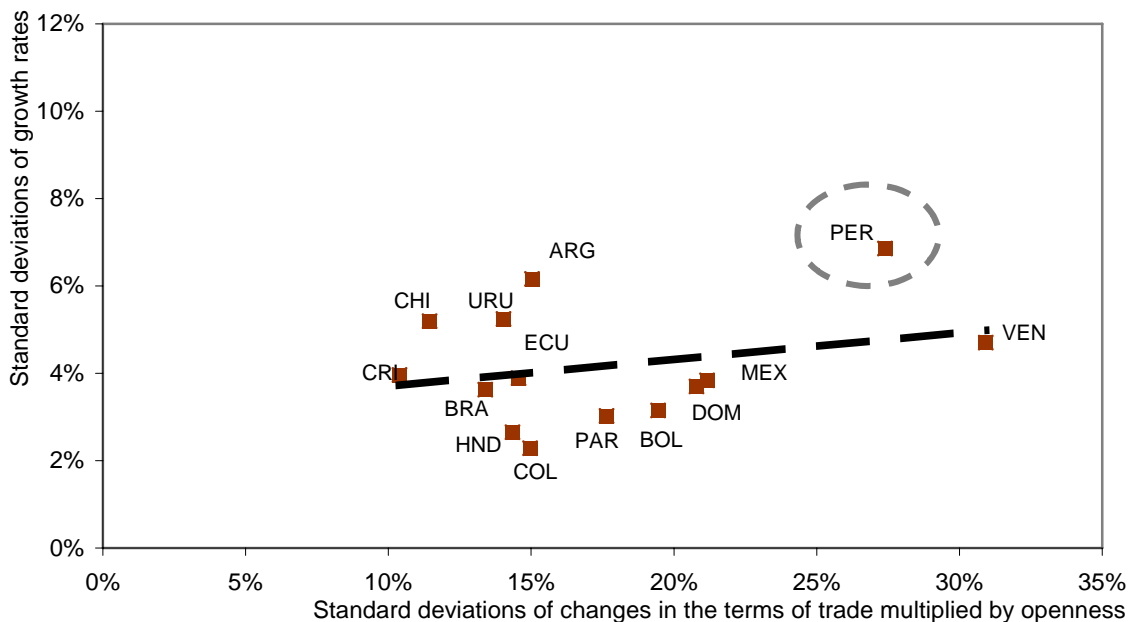
<b>Country</b>	<b>1980s</b>	<b>1990s</b>
Argentina	5.6	5.5
Bolivia	2.9	1.0
Brazil	4.6	3.0
Chile	6.4	3.5
Colombia	1.5	3.3
Costa Rica	4.5	2.4
Dominican Republic	2.7	4.4
Ecuador	4.5	3.4
El Salvador	5.7	1.9
Guatemala	2.7	0.8
Honduras	2.5	2.5
Haiti	2.9	6.4
Mexico	4.4	3.6
Nicaragua	5.4	2.3
Panama	6.5	2.6
<b>Peru</b>	<b>8.4</b>	<b>5.2</b>
Paraguay	5.3	1.5
Uruguay	6.6	2.8
Venezuela	4.8	5.0
Unweighted average	4.7	3.3
Weighted average	4.6	3.5
Overall Median	4.6	3.0

*Source:* Inter-American Development Bank and World Bank (2002).

<sup>11</sup> The average inflation rate in Peru between 1980 and 2001 was 586.2 percent, whereas the average for the Latin American countries in the same period was 203.9 percent (see ECLAC Database).



**Figure 2. Volatility of GDP vs. Volatility of Terms of Trade in Latin American Countries (1981-2000)**



Source: World Development Indicators (World Bank, 2002), World Economic Outlook (IMF).

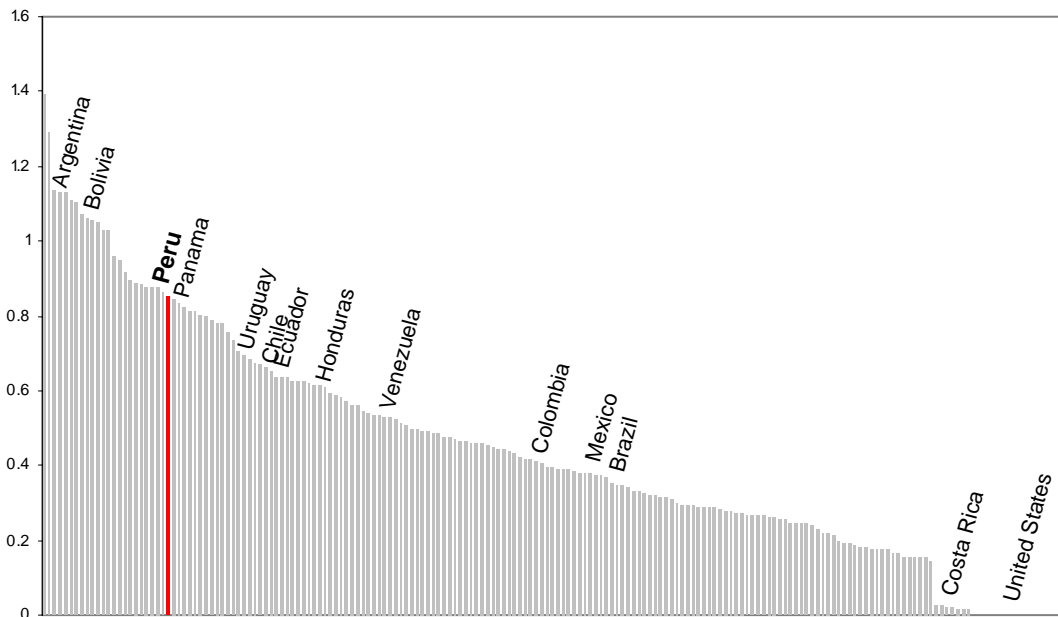
This volatility is usually attributed to the fact that Peru is a small open economy that has been subjected to frequent and substantial external shocks. In fact, the evidence (see Figure 2) shows that Peru has the most volatile GDP in the region and is among the group of countries for which GDP volatility could not be explained only by volatile terms of trade (conditioned on openness).

One possible explanation of this residual volatility can be attributed to the performance of political institutions and decision-making processes. Another indicator of Peru's volatility is its constant change in the rankings of the Fraser Institute index of economic freedom. According to this index, Peru went from being ranked 43 in 1970 to 109 in 1985 and back to 41 again in 2000 (see Figure 3).<sup>12</sup>

Clearly, these kinds of policy swings take a toll on a country's ability to sustain economic growth, and especially on the perceptions and practices of private economic actors. Figure 4, for example, shows how international investors rightly perceive that these swings render the price of doing business in Peru especially costly.

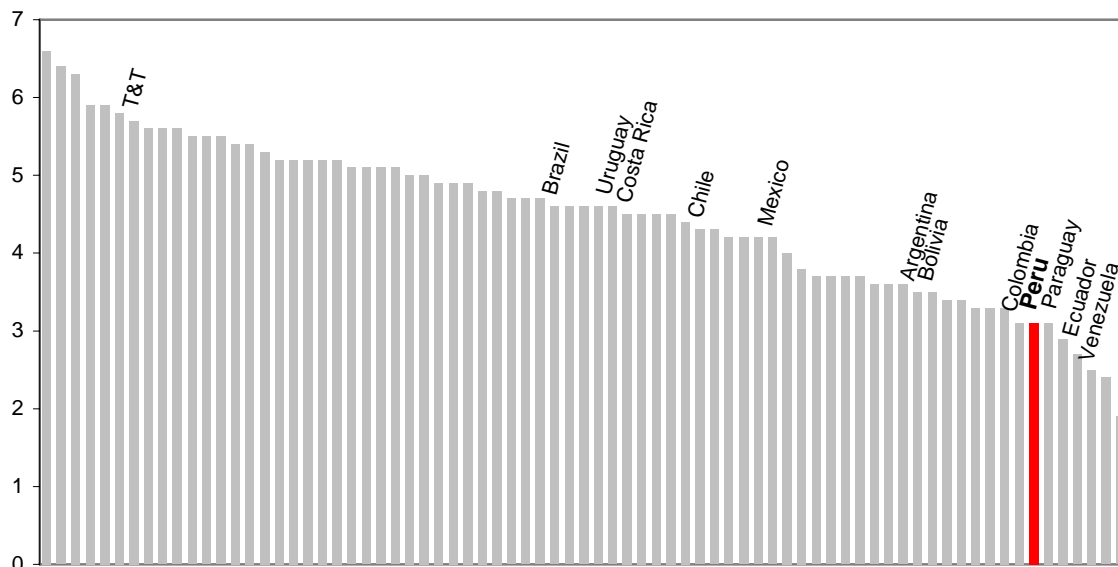
<sup>12</sup> See the recent *Economic Freedom of the World: 2004 Annual Report* available at <http://www.freetheworld.com>.

**Figure 3. Volatility of Economic Policies**  
 (Standard Deviation of the detrended Index of Economic Freedom  
 (1973-1974 to 2000-2001))



Source: Freedom House

**Figure 4. Cost of Policy Change**



Note: Legal or political changes over the past five years are assessed on a scale from 1 to 7 (1=severely undermined your firm's planning capacity, 7=had no effect). Source: Spiller, Stein and Tommasi (2003).

### 3.2.2 *Low Quality, Inefficient and Ineffective*

The outcome of a particular policy action is determined both by the quality of policy formulation and by the way it is implemented. In the Peruvian case, the outcomes tend to be policies of low quality that are best described as ineffective. All too often, and across most (but not all) sectors, public policy objectives are only partially achieved even when there is broad consensus amongst the various stakeholders. Furthermore, across diverse sectors we find that policies are implemented in an inefficient manner, both in terms of coverage and use of resources.

Some of the most sobering examples of this trend occur in the area of basic service delivery, including education policy, nutrition and anti-poverty programs. Recent studies show, for example, that less than 30 cents of each dollar budgeted to social programs in Peru reach the targeted populations.<sup>13</sup> One specific case is the *Vaso de Leche* (Glass of Milk) program, created in 1985, which is funded by the central government and managed by local governments. A direct food assistance effort aimed at extremely poor children and nursing mothers, this program is one of the most important in the social sector in terms of its scope, budget requirements and political and social implications. Nevertheless, recent studies show that 71 percent of the more than 6 million people belonging to the target population are not covered, and 42 percent of those who receive the “Glass of Milk” are not from the target group. Similar problems of seepage to non-targeted beneficiaries and lack of coverage for the most needy occur with the *Comedores Populares* (community dining halls).<sup>14</sup>

These results reflect the broader failures of social service delivery in Peru, which is hampered by a lack of clear objectives and division of responsibilities on the part of those in charge. With considerable duplication in the application of programs across sectors and levels of government, and a low capacity to evaluate and reform policies when necessary, it would be difficult to overstate the weaknesses inherent in Peru’s social policy. A better understanding of this vicious circle lies in an analysis of the incentives that drive the PMP, which will be discussed in Section 4.

Other examples of low-quality policies lie in the educational sphere.<sup>15</sup> In terms of enrollment rates, Peru is ranked second in Latin America, after Uruguay. However, when other

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<sup>13</sup> See Inter-American Development Bank and World Bank (2002: 62).

<sup>14</sup> See Vásquez (2003) for more details. The control and funding of these programs are slated to be transferred to new regional governments in 2004.

<sup>15</sup> For a thorough discussion of education policies in Peru, see Wu et al. (2000) and World Bank (1999).

indicators of public school quality are taken into consideration, Peru ranks much lower. A main reason for this situation is that Peru spends very little of its public budget on education (about 2.4 percent of GDP versus 4.5 percent in the rest of Latin America), and that spending takes place without the establishment of clear priorities for distribution or accountability mechanisms.<sup>16</sup> As a consequence, although enrollment rates may run at a respectable pace, repetition and desertion rates are relatively high,<sup>17</sup> standard comprehension and academic performance are very low,<sup>18</sup> and functional illiteracy remains prevalent despite widespread access to public schools.<sup>19</sup>

### 3.2.3 *Poor Enforcement*

As Grindle and Thomas (1991) have effectively put it, the *implementation* of policy is as much an interactive and dynamic process as the initial policymaking action itself. One of the most striking characteristics of the Peruvian case, however, is the limited ability of all branches of government to put policy decisions into practice and to confer upon them the proper evaluative and oversight mechanisms. This is evident in the area of contract enforcement, for example, where 441 days are required to enforce a contract, regardless of judiciary involvement, according to a recent World Bank report (2004). That report ranked Peru 105 among 127 countries on this score.

Two other spheres of activity in which poor enforcement is notorious are tax and labor policy. In both cases, official policies have been seen by some as too costly to comply with, while state capacity to consistently enforce them across the board has been limited. The incentives are such that, over time, there have been high levels of tax evasion and low levels of compliance with labor codes regarding such basic issues as the minimum wage, regulation of work hours, severance pay and the provision of a pension plan. For example, private sector employers complain about the steep mandatory severance payments required by law (in the absence of a national unemployment insurance scheme), and although a third of those workers in the formal

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<sup>16</sup> For example, per capita expenditure on tertiary schooling is six times the expenditure on primary schooling. See Wu et al. (2000).

<sup>17</sup> According to a 1999 World Bank study, only 40 percent of students finished primary school without repeating a year, and 43 percent of secondary students dropped out.

<sup>18</sup> In standardized tests of language and mathematics taken in 2000, Peru ranked among the last three compared with the rest of Latin American countries. See Willms and Somers (2000).

<sup>19</sup> This figure has diminished from 10.6 percent of people ages 15 and above to 9.5 percent between 1999 and 2002. See the World Development Indicators of the World Bank.

private sector are entitled to this benefit, studies find that less than 4 percent of those who are dismissed actually receive it.<sup>20</sup>

This low compliance with stated policies also stems from the lack of efficient oversight mechanisms, including a credible system of rewards and punishments. Thus, compliance is low even when policies are not widely perceived as being too costly. This deficiency is endemic across the state bureaucracy, including the line ministries responsible for a given sector, the relevant autonomous regulatory agencies, the tax authority and the judiciary. One example is the private pension system, where regulations established in the early 1990s now require that firms enroll their workers in a privately administered pension plan (AFP) and that they deposit a corresponding payment each month on a worker's behalf into his or her individual pension account. Yet, more than half of Peru's formally registered firms do not make their legally mandated pension contributions, and neither the AFP nor the workers have the power to enforce compliance by negligent firms. State authorities have not found a more efficient way of enforcing payments than the regular courts which, as is discussed further on, are among the most inefficient institutions in the country.

In any case, the aforementioned examples suggest how this failure to enforce policy decisions and rules can trigger a vicious cycle. Both poor policy design and low enforcement encourage evasive behavior, which in turn leads to the expansion of a huge "informal" economy as a major source of new employment in this country—a sector which, by definition, perpetuates the violation of basic legal obligations to both its workers and the state.

### ***3.3 Escaping the Curse or Adapting to It?***

As has been mentioned previously, there has been significant effort in a few key areas to reduce the range of possible policy swings, and also to improve the quality and effectiveness of policy outcomes. One example of the former is the exchange-rate policy. In the past five decades, Peru switched back and forth from flexible to fixed exchange-rate systems and all the possible choices in between, and from a unified exchange-rate market to a multiple exchange-rate system (with 17 different rates). Amazingly, in the midst of its worst hyperinflation ever (1990), Peru opted for a floating exchange-rate regime that has survived until now despite a series of external shocks and political changes. More importantly, the old debate on the need to use this policy as a key

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<sup>20</sup> See Table 5 in MacIsaac and Rama (2001). It is important to note that not all the people who lose their jobs are entitled to receive this benefit.

instrument for fostering development has virtually disappeared. There is almost no agent in the policy game proposing changes to this policy decision. This outcome is due to a combination of strategic choices. First and foremost was the granting of political independence to the Central Bank. The second is the fact that all agents came to understand that there are other ways to boost their effective protection without tinkering with the exchange rate.

In this kind of political context, however, some actors will prefer to try and reduce the uncertainty of arbitrary policy swings by resorting to mechanisms to close off all routes of policy change. An example of such a mechanism is the tax stability contracts that some major corporations signed with the Fujimori Administration in the 1990s. Obviously, these actors saw changes in the tax codes as a source of potential disruption of their cash-flow projections, and such contracts guaranteed them that future tax changes would not be applied to their firms.<sup>21</sup> During the 1990s, most of the foreign direct investment that entered Peru enjoyed such stability contracts, including multinational mining and telecommunications interests.<sup>22</sup> However, in the more competitive post-Fujimori context, there are numerous politicians seeking not only to avoid renewal of these agreements, but also to challenge their validity.

This example points to the larger issue of observed versus latent volatility, which is discussed further in a policy example regarding pensions (see Appendix 1). We believe the presence of arbitrary decision-making does not always lead to observed volatility or policy reversal but rather to latent volatility, a situation in which most actors *behave* as if policies would be volatile and reversible. In that scenario, it is considered optimal to have a mechanism to remove the issue from this circle of uncertainty.

There are other examples in which policies have been designed and implemented in order to avoid inefficiency or low compliance. One example is the recent use of private-sector capabilities to improve tax collection. While the VAT tax should yield 9 percent of GDP, it currently yields just 6 percent; the difference is basically the size of the tax evasion that occurs. In the last two years SUNAT, the tax collection agency, has delegated the role of tax collection to the largest private sector firms, forcing them to withhold taxes to their providers and subjecting

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<sup>21</sup> By the same token, the group most interested in promoting the National Accord as a deterrent for policy swings was CONFIEP, Peru's main business peak association. Members hoped to use the Accord as a tool to block possible congressional initiatives leading to major policy swings.

<sup>22</sup> During the 1990s, more than 500 "convenios de estabilidad" were signed. See the PROINVERSION website for details. <http://www.proinversion.gob.pe>. Those stability contracts came under severe questioning in the post-Fujimori period. This explains the relatively small number of new contracts signed after 2000.

them to fines if they make mistakes. In this way, tax revenues have been growing at more than 10 percent per year in real terms, reducing the tax-evasion gap.

#### **4. Policymaking Since 1980: Scenarios and Patterns**

Given Peru's repeated opportunities for democratic governance and consensus around national development goals, how can one explain these generally unfavorable policy outcomes? Why are the main actors in this story generally unable to cooperate, make critical reforms under democratic rules and sustain them over time? This section examines the policymaking process (PMP) in Peru since 1980, highlighting how it works, as well as what factors perpetuate this higher level of volatility and inhibit efforts at cooperation. The latter include historical legacies, contemporary political and institutional variables, the character and ideology of specific leaders and the exceptional circumstances generated in times of crisis.

##### ***4.1 Distinguishing Scenarios***

In order to understand policymaking over the past 25 years, it is important to make three fundamental distinctions.

First, one must distinguish between two basic regime types, constitutional democracy and semi-authoritarian rule. Policymaking is inherently different under a formally democratic regime with open-party competition, a free and lively press and general respect for the rule of law (1980-1992 and 2001-present), as opposed to semi-authoritarian rule where competitors are harassed, silenced or kept out of the game, and where the constitution is suspended or overruled by autocratic leaders (1992-2000).

Second, in the context of democratic regimes, one can also distinguish between two political situations: when presidents have enjoyed majority support in Congress (1980-1990) and when they have not (1990-1992, and 2001-2006). In this case, the difference is not based on formal rules, but rather on different electoral and party variables.

In the first situation, when presidents have majority support, they have been granted broad powers to make policy decisions without prior deliberation by the legislature, and congresses have been reluctant to check Executive authority. This was the case under Belaúnde and García (and was the extreme case under Fujimori post-1992). When presidents do not have a partisan majority, on the other hand, they face greater scrutiny from Congress and greater restrictions on

their actions. Historically, the latter situations have been short-lived, fraught by political conflict and ending in the breakdown of democracy. This outcome is not inevitable, and the post-1979 constitutional framework was intended to help prevent it. However, assuming President Toledo completes his term in July 2006, it will be the first time in Peruvian history that a president without a clear majority in Congress has done so (Schmidt, 2004: 103).

Some analysts emphasize a third distinction, based on the relative strength of the party system and the role of ideology.<sup>23</sup> According to this view, during the 1980s the existence of four main parties or blocs (APRA, AP, PPC, Izquierda Unida), with identifiable institutional structures, ideologies and links to civil society, as well as leaders who were professional politicians, provided some checks on executive authority, although these checks were often extra-parliamentary. In contrast, by the late 1980s the loss of credibility and fragmentation of these parties, the crisis of socialism (democratic or otherwise) and the emergence of transitory electoral “movements” led by political independents weakened the ability of the party system per se to influence policy or provide checks on government.

Although this is a relevant distinction, it is important not to overestimate the role of the party system in the 1980s. The parties of that era were also fraught with internal weaknesses, their roots in civil society were shallow and in practice, the ambitions of individual leaders frequently took precedence over ideologies or programs. At the same time, they have not vanished from the political landscape, and in the wake of Fujimori’s flight the parties of the 1980s, and their main leaders, have regained electoral presence. Alan García of the APRA and Lourdes Flores of the PPC vied for second place behind Toledo in the 2001 election, and they are among the top three contenders going into the 2006 race.

Based on these distinctions, it is possible to identify three basic scenarios for the PMP during the last 25 years:

**Scenario 1:** A strongly presidentialist but formally democratic process, in which executives with majorities in Congress make major policy decisions and exercise considerable powers, including frequent use of legislative decree authority, with little interference from the other branches of government. The main controls on their power are their own weak parties, a lively and free press, and the mobilization of civil society, as well as their own ambitions (1980-1990).



**Scenario 2:** A more attenuated presidentialist process, in which executives operate under similar rules as Scenario 1, but with minorities in Congress. In this situation, they are generally granted a honeymoon period, during which time they also wield considerable authority through legislative delegation and decrees of urgency (1990-1992 and 2001-2006). However, the legislature can exercise greater oversight and is more likely to withdraw or challenge decree authority if members are not content with the president's proposals. In theory, this can create a desirable balance of power in which presidents should negotiate with other actors and build consensus, and parliaments should deliberate over major issues that affect the daily lives of citizens. In practice, this was not the case in 1990-1992 and has only partially applied since 2001.

**Scenario 3:** "Unbridled presidentialism," in which a popularly elected president wields strong and arbitrary power over the other branches of government, through both constitutional and extra-constitutional means (1992-2000). A backdrop of severe economic and social crisis enhances the president's popular support and his initial ability to enact sweeping reforms, but his lack of an institutional base or alliances inhibits the ability to sustain power once the crisis abides.

Between 1980 and 2005, Peru had 10 years under Scenario 1, seven years under Scenario 2, and eight years under Scenario 3.

#### ***4.2 How Does It Work?***

In each of these scenarios, major policy changes are most often initiated by the Executive through the use of legislative decree authority. Table 4 provides a picture of this. In the past 25 years, 60 percent of all legislation involved decrees of urgency or congressional delegation of legislative power. Although the Fujimori regime was unique in many ways, it should be pointed out that the perception of crisis accompanied each of Peru's presidents during their first years in power (with the partial exception of Toledo), and each enjoyed an initial honeymoon period enhanced by such perceptions. During such periods, Congress can be considered obstructionist if it does not grant the president discretionary power and if the public expects the president to use these powers decisively to end the crisis and enact audacious reforms.

For example, under Law 23230 the Belaúnde administration was granted sweeping powers for 180 days to legislate by decree on a wide range of issues, and more than 200 of the 348 legislative decrees issued during his five-year period were issued during this initial window

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<sup>23</sup> Fernando Tuesta and Martin Tanaka, leading Peruvian political analysts, emphasized this distinction in conversations with the authors.

of opportunity. In 1990, an opposition majority in Congress also granted Fujimori broad discretionary powers, and 92 percent of all legislation in this period involved executive decree authority, including the initial agenda of liberal economic reforms and counterinsurgency policy. In this period, Fujimori was granted power over all tax policy issues (Law 25276), reorganized the national tax authority, assumed greater control over national defense and enacted measures to favor private investment (Law 25327).

In Scenario 1, the president continues to lead most important policymaking beyond the honeymoon period, taking advantage of a relatively quiescent partisan majority to control Congress, as well as a historically weak and politically manipulated Judiciary and the weakness of other actors (see Section 5). As indicated, in 1980-1985 Belaúnde won a majority in the Chamber of Deputies and forged an alliance with the center-right PPC to secure a majority in the Senate

In Scenario 2, presidents face greater difficulties in pursuing policy objectives once the “honeymoon” wears off. Within a year of Fujimori’s first election, for example, the majority was moving to challenge and retract his discretionary powers as he attempted to enact more extensive structural forms and curtail civil liberties. Although Toledo’s Peru Posible movement made a post-electoral alliance in 2001 with the FIM and other minor groups to form a shaky majority, by July 2004 an opposition alliance won internal elections in Congress, challenging the balance of power for a president who, in stark contrast to Fujimori, was unpopular and widely perceived as ineffective.

One common reason for delegating legislative authority under both scenarios is that representatives simply do not want to handle certain issues and prefer to avoid public deliberation thereof. This is understandable when dealing with very technical issues, as with aspects of economic policy, or with a piece of legislation in which the details are quite important in order to provide a consistent law (e.g., reforming the civil code). However, it also occurs when legislators do not want to be held responsible for controversial policy initiatives, as in the case of a tax increase.

As noted, all presidents since 1980 have had the opportunity to undertake audacious reforms. In all three scenarios, therefore, the personal ambitions and preferences of each leader are also important factors in explaining how certain reforms were implemented (or not). Belaúnde was primarily interested in restoring a free and privately owned press and overseeing

ambitious public works and housing programs, and both were accomplished, the latter despite a pending debt crisis and high cost to the dwindling public treasury. Initially, he also supported an important economic liberalization program, placing it in the hands of the Minister of Finance and Prime Minister Manuel Ulloa and a team of technocrats. However, his own political will to support these reforms faded, as popular discontent rose and his own party bases were not keen about them. As economic crisis began to set in once again, everybody—including the President—laid the blame on the liberal economic reforms, which were cut short.

President García also began with dramatic reforms in a context of crisis, linking foreign debt payments to 10 percent of export earnings. He also initiated political decentralization and tried to nationalize the private banks. However, widespread civic opposition led by Vargas Llosa and the Movimiento Libertad, along with internal resistance from his own party members in Congress, was critical to the approval of a watered-down version of García's initiative. The initiative itself was ultimately blocked, and it marked the beginning of the end of García's popularity. For his part, Fujimori carried out comprehensive pro-market reforms and drastic counterinsurgency measures, the success of which allowed him to extend his honeymoon with the citizenry despite congressional resistance, and ultimately allowed him to change the regime.

The transitional government of Valentín Paniagua (November 2000–July 2001) was something of an eight-month honeymoon, in which decisive but democratic action and exemplary collaboration among democratic elites enabled the government to undo some of the damage done by Fujimori and restore the rule of law. Some have argued that this transition period spoiled Toledo's honeymoon in 2001, since by the time the new president was elected the public was anxious for more progress on the social front, which was not forthcoming. However, Toledo did preside over an important new decentralization effort, with the collaboration of Congress.

How do presidents retain their loyal majorities in the scenarios described above? This requires some analysis of party structure and discipline. From the outset, one might expect legislative discipline to have been strongest when Peru's most organized and longest-lasting party, the APRA, was in power, but harder to maintain among parties characterized by weaker structures and a lack of clear ideology or agenda (see Section 5). At the same time, the nature of the entire "game" would seem to encourage short time horizons and opportunistic behavior on the part of individual legislators, whatever their party identity. Unfortunately, there is little empirical data or analysis available on political parties or congressional behavior in Peru with which to

definitively assess these variables. However, interviews with party leaders and former top executive branch authorities describe policymaking in Scenario 1 as relatively easy, at least in the area of macroeconomic policy.

One factor is the extent to which implemented policies run against the ruling party's own agenda. In the Belaúnde period, part of the intended liberalization was blocked by pressure from the populist wing of the Acción Popular (Sanborn, 1991: 234). However, some of the large public investment projects, which were dear to Belaunde, were also blocked by the economic team, with the latter arguing that there was simply no money or credit left with which to finance them (Webb, 1999: 101). Economic ministers were also sacked by a disgruntled president as a response to strikes and popular protests. During García's term, the situation was distinct in that his impetuous policies were more in line with the preferences of his party (and its tactical allies on the left). The turning point came in 1987, however, when important party leaders opposed the bank nationalization—again, a measure resisted by widespread extra-parliamentary protests by civil society and the independent media.

Another means for keeping followers in line was patronage and “pork,” controlled by the Executive and distributed through party operators in Congress. The easiest mechanism was public-sector jobs, which were prevalent under Belaúnde and García. In 1980 there were more than 200 public enterprises and around 300,000 public-sector jobs.<sup>24</sup> By 1990, the number of public jobs was more than 700,000 (Ugarte, 2000: 391). While state enterprises were sold off under Fujimori and the number of public-sector jobs initially shrank substantially, today the total number hovers around one million. Although evidence suggests that the Toledo Administration has also tried to keep its shaky alliance together through similar means, these efforts have often backfired due to widespread criticism from the media and political opposition, and the efforts of anti-corruption investigators initiated under Paniagua.

Of course, enacting important reform legislation was an even easier process in Scenario 3, when Fujimori exercised firm control over the other branches of government and his congressional majority was largely a rubber stamp (in Peru the term used was “beeper controlled”). How did the president keep his followers in line? Through patronage and outright corruption. The total number of Congress members Fujimori had to patronize was cut in half during this period, and in addition to public-sector jobs for friends and followers, Fujimori

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<sup>24</sup> These figures were used in Prime Minister Ulloa's first speech to Congress on August 27, 1980.

offered them increased pay, benefits and perquisites. The lack of a party structure facilitated this process, as most *fujimoristas* were political “nobodies” without the president’s approval. After his controversial third re-election in 2000, however, Fujimori’s majority was not as solid (43 percent), and he initially moved to buy off or blackmail opponents to increase his numbers. As McMillan and Zoido (2004) show in detail, Fujimori’s former spy chief Vladimiro Montesinos bribed members of Congress to stay in line (or cross the line), just as he did judges, media owners and prominent business and military leaders, forcing them to sign contracts as if their political affiliation were a tradable asset. Many of these transactions were recorded on videotape, and the revelation thereof was the beginning of the end for that regime.

How do macroeconomic policies, those of the greatest concern to international financial institutions and private investors, get enacted? The Executive typically leads the process, starting with the basic policy design. In this case, the Executive has evolved significantly in the last two decades, though not in a linear direction. Under Belaúnde, Fujimori and Toledo, a core economic team chosen or approved by the President typically consisted of 10 or fewer people, who were generally not active party members and had good technical credentials. Under García, the same applied, but without the credentials or expertise (Graham, 1992). The most important decisions were discussed in this closed circle. In the late 1990s, the Ministry of Economics and Finance became a more technical unit and the decision-making process came to involve a somewhat larger group, which included not only the Minister’s advisors but also a staff of technocrats.

Depending on the President, he will either let the economic team work out the details (Belaúnde, Toledo) or engage himself personally in them (García, Fujimori). In either case, the President signs off, the Cabinet signs off, and then the next step is to turn the initiative into a law through one of three routes. The Executive can pass it through Congress, request authorization to legislate by decree, or use urgency decrees. As mentioned previously, until 2001 most major economic policy was made through the latter two means. In Scenarios 1 and 3, Congress rarely questioned such decrees, presidents vetoed less than 10 percent of legislation coming from Congress, and few of these vetoes were overridden (none under Belaúnde, 5 percent under García). In Scenario 2 (1990-1992) Fujimori vetoed 52 percent of all laws passed by Congress and saw 23 percent of these vetoes overridden (Kenney, 2004).

The Toledo administration to date does not entirely fit this picture. Despite forging an initial post-electoral majority coalition, the Executive is no longer leading the legislative process,

and has made far less use of decree authority than its predecessors. Between 2001 and 2005, Congress produced 80 percent of all legislation (see Table 4) and delegated legislative faculties only twice. Although a number of laws produced by Congress were trivial or merely declarative, most involved such normal activities as approving presidential travel and high-ranking officials' nominations, passing tax and budgetary measures, and modifying the legal frameworks of other branches of government. Furthermore, the few major reforms undertaken by this government seem to have been passed through Congress rather than bypassing it. Such was the case with decentralization—the creation of new regional governments—which Toledo promised and Congress has largely legislated. Other reforms passed by Congress include a new Political Party Law, as well as laws to promote transparency and access to public information, require participatory budgeting in local governments, reform the public pension system and exact new royalties on private mining activity. In this case, evidence suggests that neither the President nor his party *had* a more ambitious reform agenda. However, it is notable that Toledo has exercised his presidential veto authority more than any of his predecessors, returning nearly one-third of all laws made by Congress, and Congress has overridden very few of these (Table 4). Unfortunately, the public perception of both branches of government by the end of his term was extremely negative, as neither was seen as effectively addressing issues of most concern to the electorate (Apoyo Opinión y Mercado, 2004 and 2006<sup>25</sup>).

#### ***4.3 Why Does it Work This Way?***

For most of the past quarter century, presidents made major policy decisions in an arbitrary and personalist fashion, and the formal checks and balances of politics did not work well in practice. Why was this the case? Figure 5 depicts the various factors that contributed to this outcome. As mentioned at the outset, to a considerable degree this reflects longer-term historical legacies, including the traditionally high concentration of power, the tendency towards authoritarian exercise thereof, often in the hands of popular caudillos, and the tendency to resolve disputes through confrontation rather than negotiation. Peru's profound social and economic inequalities have long served to sustain this dynamic and to debilitate the kind of mass-based parties and civil society organizations that could effectively challenge it.

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<sup>25</sup> In February 2006, 75 percent of respondents in a national poll disapproved of the performance of the Toledo Administration, while 84 percent disapproved of Congress. Apoyo Opinión y Mercado.

While recognizing the weight of the past, we nonetheless argue that important changes in the 1970s reduced some of these structural constraints, creating more favorable conditions for the construction of democracy and for collaborative decision-making. We also argue that the decisions and actions of leading players in the last two decades have helped to perpetuate, rather than reverse, the remaining historical legacies.

**Table 4. Peru: Decrees and Legislation, 1980-2005**

Legal Instrument	Fernando Belaúnde		Alan García		Alberto Fujimori						Valentín Paniagua		Alejandro Toledo		Total
	1980 -1985	%	1985 - 1990	%	1990-1992	%	1992-1995	%	1995 - 2000	%	2000 -2001	%	2001 - 2005	%	
<b>Legislative Decrees</b>	348	20	263	13	156	20	174	15	119	9	10	4	37	4	<b>1107</b>
<b>Urgency Decrees</b>	667*	38	1033*	53	562*	72	744	62	507	38	122	49	174	17	<b>3809</b>
<b>Laws</b>	724	42	665	34	67	9	275	23	725	54	117	47	828	80	<b>3401</b>
<b>Total Legislation</b>	1739	100	1961	100	785	100	1193	100	1351	100	249	100	1039	100	<b>8317</b>
<b>Laws vetoed (as % of laws approved by Congress)</b>	38	5.2	60	9	35	52.2	46	17	88	12	16	14	249	30	
<b>Vetoes overridden (as % of vetoes)</b>	0	0	3	5	8	22.9	2	4.3	6	6.8	2	13	45	18	

Source: Delgado Guembes (1992: 43,226); Schmidt (1998: 110,118) and Archivo Digital de la Legislación en el Perú.

(\*) Prior to 1993 these were not formally called urgency degrees, but rather extraordinary measures under Article 211(20), although both carried the same weight.



Such actions begin with the new constitutions and rules of electoral competition, with elements explicitly designed to strengthen the power of the Executive, including significant budgetary and taxation authority. Equally important are the decisions of congressional majorities to further strengthen the president's hand by delegating legislative decree authority across a wide range of other policy issues. However, Peru's constitutions also provide for formal mechanisms of checks and balances by other branches of government, which as has occurred in other cases, are subject to varying degrees of influence and control by political parties, organized interest groups and/or lower levels of public authority. Such is the case, for example, with the Judiciary in Brazil, and federal governments and local party bosses in Argentina.<sup>26</sup> Yet in practice, for most of the last quarter-century, neither Congress, the Judiciary, the lower levels of government nor the state bureaucracy have played their anticipated roles in terms of generating policy inputs, exercising due oversight or providing effective counterweights to the Executive.

Why is this the case? The answer lies in part in the predominance of partisan majorities that consolidated executive dominance early on. But it also lies in the persistent weaknesses of Peru's political parties and party system, of most civil society organizations and the weak links between the two, which in turn inhibit these actors from exercising effective influence over the various branches of government. Although the party system inaugurated in 1980 involved four clear options across a Left-Right spectrum, the parties in general remained institutionally weak, acting largely as vehicles for competing caudillos (of all ideological persuasions), with limited incentives to build lasting social bases, uphold consistent programs or policy agendas, or engage in cooperative agreements with others.

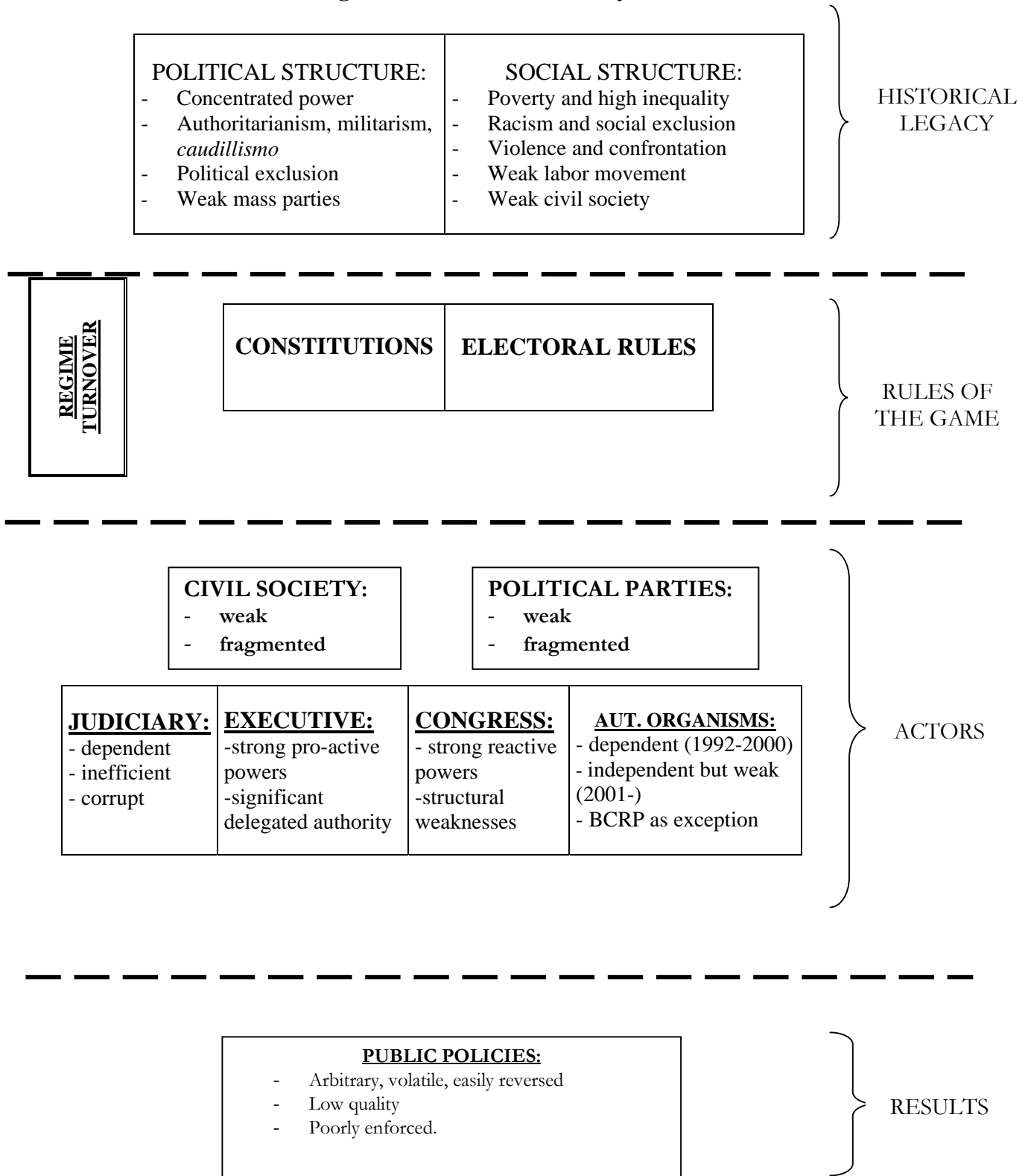
They also had limited ability to maintain discipline in their own ranks and were debilitated by internecine conflicts and divisions. In the 1990s, these features were exacerbated by the emergence of multiple new "independent" movements that were even less institutionalized or politically effective than the older parties, and voter preferences across this expanding lot became extremely volatile. Meanwhile, the labor, peasant and urban popular organizations that emerged from the 1970s were subsequently devastated by external factors (e.g., economic crises, political violence and the impact of structural adjustment) and by the inability of parties to defend them in the political sphere.

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<sup>26</sup> See Alston, Melo, Mueller and Pereira (2004) and Spiller and Tommasi (2003).

Why have Peruvian parties been so weak? In this case, their natural inexperience in 1980 (after 12 years of military rule) was exacerbated by electoral and political rules that shaped subsequent party behavior and the incentives of individual politicians. These include the majority runoff format, low barriers to competition, simultaneous candidacies for the presidency and Congress (to 1993), preferential voting, the single unity district (1993-2001) and provisions allowing individual legislators (rather than parties) to sponsor legislation. All told, they served to encourage intra-party conflicts and divisions, reinforce “personality politics” over institutional and program development, facilitate the entrance of new contenders and discourage inter-party alliances and coalitions.

**Figure 5. Peru: Brief Anatomy of the PMP**



The interaction of the above factors – historical legacies, constitutional structures, electoral rules and outcomes, weak parties and civil society organizations – produced an Executive that has been powerful vis-à-vis the other branches of government, and Presidents that have governed with a high degree of personalized authority and little effective support from their cabinets and line ministries. It also produced a Congress with both structural limitations vis-à-vis the Executive, and political limitations on exercising the considerable constitutional authority it retains.

What about the other components of government? As shall be described in more detail below, although the Judiciary has institutional weaknesses of its own, and its ability to exercise an autonomous influence over policymaking in this period has been primarily restricted by the constant political interference and manipulation by the other branches, especially the Executive. And although an array of constitutionally autonomous organisms were created to regulate the system and uphold the rules of the game—including election-related agencies (JNE, ONPE, RENIEC), a Constitutional Tribunal, the Comptroller General, the Public Defender (or Ombudsman), and the Central Reserve Bank—only the latter two have played this role in practice, for reasons that appear to be *sui generis*. Finally, unlike Brazil and Chile, Peru has never had a professional civil service that was above political manipulation and could thus keep the “ship of state” on a minimally steady course.

In summary, with brief exceptions, Peru’s presidents have made major policy decisions with little input from or accountability to the other actors in the political game. This is the result of historical legacies, of strategic choices made by key players and of the rules they designed, which have perpetuated these legacies over time. The results have been arbitrary and erratic decision-making, an inability to undertake fundamental second generation reforms, and a tendency to confrontation and crisis. As long as the fundamental institutions are not changed and urgent reforms effectively implemented, the public will continue to place its faith in “*salvadores de la patria*” who perpetuate the vicious cycle of regime crisis and change—the predictable volatility that characterizes the Peruvian case.

## **5. Institutions and Actors**

The purpose of this section is to provide a more detailed analysis of components of the PMP since 1980.

## 5.1 The Executive

Since 1980, the Executive branch has been largely responsible for setting the national policy agenda and initiating major reforms. Individual presidents, along with their hand-picked cabinets and personal advisors, have made most major policy decisions, particularly in the areas of macroeconomic policy, social policy, national security and state reform.

During this period, Peru's constitutional regimes have been presidential. The President, who is Chief Executive and head of state, is directly elected for a five-year term, along with the entire legislature. Beginning in 1985, the president needed to win with a majority of 50 percent plus 1 or face a second-round, run-off election (*ballotage*), while members of Congress were selected in the first round. Until 1993, presidential and vice presidential candidates could run simultaneously for a seat in the Senate. Immediate presidential re-election was proscribed in the 1979 Constitution, a measure that was removed from the 1993 version but reinstated by amendment in 2001.

The Executive has strong pro-active powers, including significant control over national finances and legislative and emergency decree authority, and partial veto power over congressional decisions.<sup>27</sup> The President has the formal authority to create, modify and eliminate taxes as well as to initiate the budgetary process. In regard to the latter, the Executive presents an initial budget proposal to be modified and approved by Congress, but Congress can neither create nor increase public expenditures. Furthermore, if Congress does not pass a budget by a given date, the Executive's original proposal becomes law for the following year.<sup>28</sup> The President can also dictate "decrees of urgency" in economic and financial matters that have the force of law.<sup>29</sup>

The granting of executive decree authority to presidents comes in various forms and degrees, including the extension of formal constitutional authority and the temporary congressional delegation of its own powers (Carey and Shugart, 1998; Schmidt, 1998). Both

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<sup>27</sup> See Payne et al. (2002). Peru appears second overall in presidential powers among Latin American countries.

<sup>28</sup> For a thorough discussion of the budget process, see Morón et al. (2003).

<sup>29</sup> Article 118 (19) of the 1993 Constitution authorizes the President "to dictate extraordinary measures, through urgency decrees with the force of law, in economic and financial matters, when so required by the national interest and with the duty to give notice (*dar cuenta*) to Congress" (boldface added by authors). Congress may subsequently modify or derogate these measures. Although the 1979 Constitution did not formally contemplate the urgency decree authority with the force of law, the Belaúnde government relied on a similar passage in Article 211(20) that did allow the President to dictate extraordinary measures on economic and financial matters, and in practice these were treated as laws. Schmidt (1998: 116).

patterns have been present in Peru, and the results are dramatic. Table 4 shows that between 1980 and 2001, most legislation was passed through executive decree. Notably, 77 percent of these decrees involved the exercise of direct constitutional authority (decrees of urgency), rather than that delegated by congressional vote for specific purposes and time periods. The majority of these decrees have been related to budgetary and economic policy (including tax reforms and trade policies), followed by national defense and security.

While the ability of the Executive to assume legislative powers has been facilitated by pro-government majorities in Congress, minority presidents have also justified such measures as necessary and expedient, in order to respond to crises and enact certain important and controversial policy initiatives. Even during the heightened executive-legislative conflict of the 1990-1992 period, for example, *92 percent of all legislation involved executive decree authority*, including the initial agenda of liberal economic reforms. Other major initiatives launched by Fujimori through delegation of power by the opposition-led Congress were the reorganization of the national tax authority (SUNAT), the creation of a national social compensation fund (FONCODES), the liberalization of prices and the enactment of measures encouraging private investors to participate in public firms. Peru's international creditors also encouraged this trend, for similar reasons of expediency and efficiency in achieving policy objectives.<sup>30</sup>

The President also has greater veto power over the actions of Congress than he did in past eras. Legislation approved by congressional majority, for example, may be vetoed in whole or part by the president within 15 days. Formally this veto is weak, in that an absolute majority of Congress is sufficient to override it. In practice, however, such overrides have been rare (Table 4). Meanwhile, most laws passed by Congress cannot be implemented without comprehensive administrative regulations (*reglamentos*) formulated by the Executive branch (Schmidt, 2004; Kenney, 2004).

Formally, the Constitution requires the validation of all presidential acts through a process of ministerial oversight. The President of the Council of Ministers (PCM) must authorize (*refrendar*) urgency and legislative decrees, and ministers are legally responsible for the presidential acts that they countersign. Unlike the Prime Minister in a parliamentary system, the

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<sup>30</sup> In the 1990s, the World Bank and other IFI (international financial institution) involvement in Peru included support for structural adjustment programs that generated high costs in political and social terms, which many legislators may have deemed necessary but did not want to take direct responsibility for. See Nelson (1997), and Campodónico (1997).

PCM and all other cabinet members are appointed and removed by the President, and they do not have independent political authority. They are also accountable to Congress, as described below, and legislators frequently hold cabinet posts. At times of heavy criticism or protest against unpopular policies, cabinet members also become easy targets for blame by both Presidents and their opponents. The average span of a Minister in office since 1980 has been 13.7 months, and the average duration of the PCM is just 10.4 months.

## **5.2 The Congress**

The Peruvian Congress had two houses and 240 members from 1980 to 1992 and was downsized to a single chamber with 120 members after 1993. In both cases, members of Congress were elected concurrently with the President for five-year terms.<sup>31</sup> Formally, Congress has considerable powers: to debate and pass legislation, approve the national budget, create investigative commissions, censure and impeach cabinet members, impeach the president or declare the presidency vacant. However, the exercise of such powers has been intermittent and is limited by other political and institutional variables.

While only the president may initiate expenditure bills, Congress can amend his proposals during the appropriations process, and a Permanent Commission must approve any supplementary spending bills or modifications to the budget while Congress is in recess. As mentioned above, Congress can also override presidential vetoes on legislation with a simple majority. Thus, a majority of legislators can repeal a decree issued under legislative delegation, and may also annul or modify decrees of urgency by passing resolutions that cannot be vetoed. The Constitution itself can be amended by a simple majority and a national referendum, or by two-thirds of the members of Congress in two successive legislative sessions (Schmidt, 2004: 55).

Although the president selects the cabinet, the Prime Minister and other cabinet members are subject to congressional confidence and can be formally questioned and censured. The President, cabinet members and other high officials can also be impeached by a simple majority of the Permanent Commission and convicted by a simple majority of the remaining legislators (Schmidt, 2004: 55). If Congress censures two consecutive cabinets, the President may dissolve Congress and convoke new elections, albeit not during his final year in office. In turn, by a

simple majority Congress may declare the presidency vacant due to “permanent moral or physical incapacity.” This occurred after Fujimori’s flight to Japan in 2000, and was discussed as recently as 2003 as a way to end Toledo’s unpopular presidency. In theory, the open-list, PR system of electing members of Congress should enhance their responsiveness and accountability to the voters. Such accountability may be further enhanced by such elements as electronic voting boards and a congressional website, established in the late 1990s, where citizens can follow legislative decisions and members’ voting records (Carey, 2003). In practice, however, the public approval ratings of Congress since 1980 have remained among the lowest of all public institutions, and turnover among individual legislators is fairly high.<sup>32</sup> Since 1980, the average legislative experience of a member of Congress has been 4.4 years. In 1985, only 25 percent of the members of Congress had been re-elected, in 1990 only 23 percent, and only 22 individuals participated in all three consecutive democratic congresses between 1980 and 1992. The current Congress is composed of a majority of individuals with no prior experience in this arena.<sup>33</sup> For their part, the media pay little attention on a normal basis to the voting records of individual members of Congress and few voters have access (or the motivation) to check the legislature’s website.<sup>34</sup>

The downsizing and restructuring of Congress after 1993 are also cited by some analysts as contributing to its lack of responsiveness to the electorate. In 1990, there was one member of Congress for every 30,000 voters. In 1995, the ratio rose to one per 111,345 voters (or 206,675 residents), the highest ratio among the Andean countries, and by 2001 it had increased to 122,087. Because the number of members is constitutionally fixed at 120, the distance between citizens and their representatives continues to widen. During 1993-2000, the transformation of the country into one single voting district also appears to have decreased constituency service, as well as the presence of the provinces in Congress. While this shifted back to 25 districts in 2001, some political analysts believe that the size and density of these jurisdictions remains a handicap.

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<sup>31</sup> Sources for this section include Sanborn, Eguiguren and Kay (2000); Schmidt (1998) and Carey (2003).

<sup>32</sup> In 2003 Congress had a public approval rating of 10 to 12 percent, while its member parties received just 6 to 9 percent, and by 2006 Congressional approval had fallen to 8 percent. In 1989, approval was 20 percent for Congress and 17 percent for the parties. See Apoyo, *Informe de Opinión*, various years.

<sup>33</sup> Sixty-two percent of current legislators had never served in Congress before their election in 2001, and 85 percent have less than five years of experience.

<sup>34</sup> While the media shows little interest in following voting records, it gives considerable attention to “scandalous” increases in congressional salaries and benefits, reinforcing public perceptions that members are basically rent-seekers rather than public servants.



What do Peruvian legislators actually do, and why do they do it? Why is their performance so poorly evaluated? These are not easy questions to answer, and there is a notable lack of empirical research in this area. What is known is that legislators do not always legislate; as Table 4 shows, more than half of all legislation from 1980 to 2001 was issued by the Executive, including most major public policies affecting the economy, the labor market and the provision of social services—in other words, those policies that directly impact voters’ daily lives. Congress also tends to function poorly as a forum for effective public debate of major policy issues; delegation of legislative authority means ducking public deliberation. When congressmen do legislate, as in the “pro-active” post-2001 Congress, they invest large amounts of time initiating laws of minor policy importance, as well as producing numerous “projects” that have little chance of being passed.<sup>35</sup> Congressional rules allowing legislators to initiate projects individually, rather than by party blocs, appear to favor this trend. At the same time, legislators do not have spending initiative and thus cannot deliver the “pork” or public works that many voters expect, except by drawing on contacts and favors from the Executive.

Polls and qualitative evidence suggest that citizens in Peru today perceive most legislators as ineffective, and 60 percent of the public perceives them as corrupt (Apoyo Mercado y Opinión, 2004). The stereotype of a legislator is an individual who aspires to Congress in order to enrich him or herself (as quickly as possible, given the volatility of politics *per se*), obtain jobs for friends and family members and secure other sources of income and power through political contacts or outright corruption. Although individual members’ motivations are more complex (and some are indeed motivated by ideology, party militancy or commitment to public service), the widespread clientelism and corruption of the parties in power during the past 25 years tends to confirm these stereotypes.

### **5.3 The Judiciary**

The Peruvian judicial system has been historically characterized by under-funding, inefficiency, corruption and political manipulation. Despite important constitutional changes in 1979 and again in 1993, this pattern largely remained intact through the 1980s and 1990s. Because political control by the Executive, backed by a complicit Congress, also tended to be the norm, it

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<sup>35</sup> In the last years, more than 10,000 *proyectos de ley* have been presented (and 1,200 approved) in the “proactive”, post-2001 Congress, compared to fewer than 1,000 in Colombia and fewer than 300 in Chile.

remained difficult for the judiciary to undertake necessary institutional reforms and play an autonomous role in the PMP.

The judicial branch is organized into a Supreme Court and a set of superior courts in each judicial district, with judges in the first instance and justices of the peace who are called upon to adjudicate minor infractions. According to Schmidt, the 1979 Constitution first established the principle of constitutional supremacy, and it created a hybrid judiciary combining a European-style constitutional court with U.S.-style, litigation-based review in the regular courts (Schmidt, 2004: 55). The 1979 Constitution also established the Public Ministry as an autonomous organ of the judicial branch, and assigned it the task of leading criminal investigations and heading up penal actions, among other functions.

The administration of justice under both Belaúnde and García was slow and corrupt, with regular cases backlogged for years. As cases of terrorism and human rights abuses began to mount in the latter part of the Belaúnde administration, the courts could not begin to cope and insecurity mounted (Sanborn, 1991: 233; Americas Watch, 1984: 19). The García administration allegedly packed the courts with APRA party loyalists, without improving its general efficiency or capacity to contribute to the counterinsurgency effort. Although the judiciary did attempt to exert independence in 1987 by issuing injunctions against the García Administration's takeover of private banks (and again in the early 1990s, by ruling that several decrees issued by Fujimori before the *autogolpe* were unconstitutional), its capacity for action was limited by its politicization and incompetence (Schmidt, 2004: 56). These factors were cited by Fujimori to justify intervention in this branch in 1992.

In theory, the 1993 Constitution and an ambitious 1995 reform program were meant to introduce important changes into the judicial system, including the elimination of the president's role in appointing magistrates and judges (Schmidt, 2004). Instead, a National Judicial Council (CNM) was charged with monitoring the designation, promotion and dismissal of judges. Council members were to be designated by the Supreme Court, supreme attorneys, public and private university presidents and the Peruvian Bar Association, theoretically excluding the direct participation of the Executive and Legislature in the process. A National Judicial Academy was charged with the selection of applicants to judgeships and promotions, and the training of judges at all levels. The Tribunal of Constitutional Guarantees (TC) was to rule on the constitutionality of laws passed. Formally outside the Judiciary, a new *Defensoría del Pueblo* (Ombudsman) was

entrusted with the defense and protection of civil rights, with oversight over the public administration and provision of public services.

In practice, however, congressional majorities and the demand for urgent reform allowed Fujimori to retain a high degree of political intervention in the judiciary through 2000. After the *autogolpe*, the Executive disbanded the Judiciary, expelled 13 members of the Supreme Court, named a large number of provisional judges and formally placed the Judiciary under Executive control. By 1997, 73 percent of the judges had been shifted to provisional status, making them subject to dismissal by the government at any time and hence highly susceptible to political and economic pressures (McMillan and Zoido, 2004: 13). Under the post-1992 regime, members of the judiciary were coerced, intimidated and bribed in order to advance the political objectives of the President and his core group of advisors.

Even the Constitutional Tribunal was politically vulnerable, and has not had the same kind of power to reverse government policies as that of its counterparts in Brazil and elsewhere. The seven TC members are elected by Congress, serve five-year terms that coincide with the President and Congress, cannot be immediately re-elected, and may be removed through impeachment by Congress. In 1996, a majority in Congress passed a law requiring that the TC obtain six votes out of seven to declare a law unconstitutional. This cleared the way for Congress to pass a countervailing law of arguable constitutionality and thus assure enforcement of its own legislation. Furthermore, any ruling of unconstitutionality made by the TC has to be determined within six months of the enactment of the law. The Ombudsman also serves a five-year term and can be dismissed or impeached by a congressional majority.

The most notorious manipulation of the TC involved efforts to clear the way for President Fujimori's second re-election. In August 1996, the Congress passed a so-called "Law of Authentic Interpretation" of Article 112 of the Constitution, which classified the 1995-2000 term as Fujimori's first term, thus allowing him to run for office again in 2000. When three of the seven TC members dared to declare the law unconstitutional, the President retaliated by having them dismissed, thus blocking the Tribunal's ability to operate for 10 years. Only in 2002 did the Congress reinstate these three members.

Under the interim government of President Valentín Paniagua (2000-2001), the Executive Commission in control of the Judiciary was deactivated, and another Temporary Council was charged with reforming this branch. Major anti-corruption proceedings were also

initiated against leading political and military figures of the 1990s, led by respected special prosecutors who were named by the Executive and continued to operate through 2004, when they began to be replaced by new figures (allegedly due to their efforts to initiate anti-corruption investigations of the current administration). Since January 2003, under a new Supreme Court President, judicial reform has again taken priority, led by a *Comisión de Reestructuración del Poder Judicial*. This has led to a number of positive steps, including a significant reduction in the number of provisional judges. By the end of Fujimori's period, 67 percent of the magistrates and 73 percent of the prosecutors were temporary; but since the re-establishment of democracy the average index of provisional magistrates and prosecutors has decreased to 30 percent (Villavicencio, 2003).

Yet, resource limitations and case backlogs remain acute, along with poorly qualified judges and attorneys and the continued use of outdated procedures and technology. The incentives for corruption remain great, and experts suggest that it will take considerable time before independent behavior by the courts can become the norm.<sup>36</sup>

#### **5.4 Political Parties**

Formally, the President and Congress are elected by and are accountable to the voters through a process of electoral competition among candidates fielded by various political parties and movements. Yet, as discussed above, Peru has never had a strong and cohesive party system in which parties with deep roots in society negotiate, engage in sustained alliances, make inter-temporal agreements and assure compliance with them. While levels of association and collective action in general are high in Peru, partisan identification is low and parties are highly unpopular even by Latin American standards. Indeed, comparative analyses rank Peru as having the weakest party system in the region (Mainwaring and Scully, 1995: 16-17; Payne et al., 2002: 143).

For most of the 20th century there was only one party with a nationwide organization, disciplined cadres and consistent leadership—the APRA. As with the Partido Justicialista in Argentina, the APRA has always counted on a core of fervent supporters and a hierarchical organization, but this cohort never surpassed one-third of the electorate, while the party's pact-making efforts have been ill-fated and anti-APRA forces in society and in the Armed Forces

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<sup>36</sup> Less than 2 percent of the national budget goes to justice in all its forms. See Lovatón (2003), Hernández (2003) and Lawyers Committee for Human Rights (2000).

have been equally staunch in their opposition. By the 1960s, new reform and radical parties to the left of APRA emerged to compete for younger voters, but their development was truncated by the military regime.

The introduction of universal suffrage in 1980 further changed the arena for competition. During the 1980s, three main parties and one alliance (the Marxist United Left front) claimed the majority of votes, and each had the chance to govern or share power at some point during that decade.<sup>37</sup> Yet each was troubled with acute internal divisions, personalist and *caudillista* leadership, and the predominance of short-term electoral calculations over the advancement of programmatic goals or the strengthening of party structures. By the time the 1990 elections came about, none retained truly strong roots in civil society and none proved capable of governing effectively.

It was in this context that Peru's disgruntled voters turned *en masse* to new political movements and "outsider" candidates. Citizens first chose popular television personality Ricardo Belmont as Mayor of Lima in 1989, and his makeshift *Movimiento Obras* (as in "*obras y no palabras*," or "deeds and not words") swept numerous other municipalities across the country. While the low barriers to entry and other electoral rules facilitated these movements, it was voter disgust with the performance of the so-called "traditional parties" that made such movements more attractive.

In 1990, the virtually unknown Alberto Fujimori captured the presidency with a platform that was critical of all existing parties, and proposed to replace them with a more efficient Executive and mechanisms of "direct democracy" that would link the President directly with the masses. This proposal resonated with the electorate, and from 1992 onward Fujimori and his allies proceeded to carry it out – by reducing the size and representative capacity of Congress and by encouraging the multiplication of looser movements.

As a result, Peru entered the twenty-first century with a fragmented multi-party system in which the virtue of pluralism is overshadowed by the weakness and volatility of the actors, traits that are perpetuated by the electoral system and other elements of the political game. In varying degrees, parties revolve around personalities, have weak roots in society and are largely electoral

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<sup>37</sup> The AP held the presidency in 1980-1985, allying with PPC to form a congressional majority and share cabinet posts. The APRA held the presidency and a congressional majority in 1985-1990. The IU won the mayoralty of Lima and a significant number of other municipal governments in the 1980s, and was the second national vote winner in the 1985 elections.

vehicles, and their leaders have few incentives to aggregate interests and forge clear programmatic and policy alternatives.<sup>38</sup> Even longstanding parties have been characterized by a lack of internal democracy, transparency or true institutional life. The majority of Peruvian citizens do not participate in or even identify with any specific party, and voting behavior is quite volatile. These traits, in turn, reinforce the political weakness of civil society and the lack of government responsiveness to organized social demands. Hence it remains the case that teachers, doctors, community groups and other citizens with legitimate grievances believe they must go on strike, or hold media-oriented protests, so as to be heard by their government.

This is also a system in which it may be increasingly difficult to forge working majorities or successfully implement national accords among leading competitors. Fujimori ruled with disciplined majorities from 1992 to 2000, but within the context of a semi-authoritarian regime based on corruption and coercion. While the more experienced APRA, AP and PPC parties returned to the electoral fray from 2001 onward (the latter as part of the Unidad Nacional coalition), they have faced greater competition from a multiplicity of smaller movements whose appeal is largely media-based.<sup>39</sup> President Alejandro Toledo himself was an inexperienced outsider, and his Peru Posible movement remains a loose amalgam of divergent interests.

From 1980 to 2002, proposals for stronger legislation to reform the party system (including campaign financing) were thwarted in Congress. According to political scientist and former *Oficina Nacional de Procesos Electorales (ONPE)* head Fernando Tuesta, there was an implicit pact among all competitors to avoid setting clearer and stricter rules in this arena (Tuesta, 1996b). In 2003, however, Congress passed a new Law of Political Parties that, if effectively implemented over time, could have a rationalizing impact on future competition. This law is designed to raise the barriers to new party formation and competition, encourage alliances among smaller and locally based movements, encourage internal democracy and leadership rotation, and require greater transparency and accountability in the area of campaign financing. In the short term, however, 24 parties and movements (and 20 presidential slates) were able to register for the 2006 elections (compared to eight presidential candidates and 13 congressional

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<sup>38</sup> Even the APRA reflects these traits, as witnessed by higher levels of voter support given to the party when its charismatic leader Alan García is a candidate, as opposed to when he is not.

<sup>39</sup> An average of 11 parties and movements has been represented in Congress since 1992. Toledo's Peru Posible movement won 39.2 percent of congressional seats in 2001, followed by the APRA with 23.3 percent and the center-right Unidad Nacional with 12.5 percent.

lists in 2001). Yet some argue that the current party system is still in transition and may consolidate over time—assuming the regime itself is able to do so.

### ***5.5 Civil Society***

Political theory and historical experience suggest that the development of a strong and autonomous civil society is fundamental to sustaining democracy and effective, representative government. In Peru as in much of South America, organized labor and civic associations of many kinds played an important role in pressing for the transition to democracy in the 1970s and again in the late 1990s. In the past two decades, the amount of civil society organization overall appears to have increased, and Peru has among the highest levels of voluntary associative activity in the region (Sanborn, 2001). Given the decline in credibility of most governmental institutions and parties, in the past decade there have also been increased expectations that this dense civil society will assume greater responsibility for the expansion of participation and the articulation of interests in the public sphere.

In terms of their influence on the PMP, however, most civil society organizations in Peru have only a limited capacity to do so. A complete explanation for this lies beyond the framework of this paper.<sup>40</sup> In part, however, the limitations of civil society are due to the historical legacy mentioned above, namely, the disparities and fragmentation of society itself. The weakness of the party system in terms of organizing and representing broad sectors of society is also a contributing factor. Furthermore, the combined impact of prolonged recession and economic crisis in the 1980s, and dramatic structural adjustment in the 1990s, served to undermine the structural bases of the most important labor, peasant and urban popular organizations of prior years.

As in many Latin American countries, the power of labor unions in particular has eroded in the last two decades, although certain union leaders and confederations retained political presence in the marches against Fujimori, had a seat at the table in the National Accord and other venues, and engaged in social protests under Toledo. Their decline in real power, however, is due in part to broader economic reforms including labor market deregulation, and in part to deliberate political action. Unions were hit hard by the recession and crisis of the 1980s, the market-oriented policies of the 1990s, and the demise of the Leftist parties that dominated their

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<sup>40</sup> For a more in-depth analysis of civil society in Peru in a comparative regional context, see Panfichi (2002), Kahatt (2002: 449-483), and Sanborn (2001).

leadership. Union membership dropped from more than 17 percent of the labor force in 1981-1982 to approximately 7 percent in 2000 (or approximately 250,000 members), and this contraction of union members has been exacerbated by the increasing share of the work force now residing in the informal sector (estimated at two-thirds of the total). Tellingly, the Ministry of Labor has ceased to play a prominent role in resolving disputes between private sector employers and workers, and although the basic rights to unionize, earn a minimum wage, have safe working conditions and have access to health and pension benefits are still guaranteed by the Constitution, these rights are routinely violated.

While unions have lost most of their power in recent years, the strength and presence of business associations (*gremios*) increased in the late 1980s and 1990s. Historically, organized business was not very influential in the policymaking process since large multinational firms and the country's wealthiest families preferred to wield informal influence behind the scenes. While some business leaders were prominent critics of the GRFA in the 1970s and even supported national strikes against the military government, the *gremios* per se kept a lower profile in the early years of the new civilian regime. With the establishment of the National Confederation of Private Business (CONFIEP) in 1984, this situation began to change. In the wake of a 1987 bank nationalization attempt, CONFIEP became a vigorous defender of private property rights and strong backer of the Vargas Llosa candidacy. With generous support from USAID, the World Bank and other external donors, the CONFIEP also professionalized its operations and expanded its profile in society. Its more powerful members include the National Society of Mining and Petroleum, the Association of Exporters (ADEX) and the National Industrialists Society (SNI).

In the 1990s, the opening of markets and the privatization of public enterprises brought increased vigor to certain sectors of private enterprise. The Fujimori government proved to be strongly pro-business and CONFIEP leaders played a prominent role in the Cabinet, in economic policy posts, and among pro-government forces in Congress. In turn, the CONFIEP publicly supported the *autogolpe* of 1992, and many business leaders encouraged the president's re-election in 2000. By hitching their star to the Fujimori bandwagon, however, business leaders lost public credibility among pro-democracy actors and had to scramble to rebuild confidence after Fujimori resigned. Meanwhile, the allegations of corruption and favoritism surrounding the privatization efforts, the awarding of tax stability and other contracts, and the emergence of videotapes of leading business figures negotiating privately with Montesinos to further their



particular interests and provide clandestine support to the re-election effort demonstrated that lobbying behind the scenes remained a common form of doing business.

In contrast to the decline of conventional interest groups, a variety of newer civic and social organizations have gained policy influence in specific spheres. These include more than 65,000 community based organizations that distribute food aid and other services to poor members, peasant self-defense leagues or *rondas* that provide security in rural areas (with an estimated 400,000 members in 2001), and more than 1,600 development-oriented NGOs staffed largely by middle-class professionals and offering a variety of services in such areas as urban and rural development, education, health, micro enterprise, local government and legal aid, as well as legal and political advocacy (Portocarrero, Sanborn et al., 2002). Their visibility has increased in recent years as both international financial institutions (IFIs) and government authorities find them attractive partners in various policy initiatives.

Peru's significant human rights community, with more than 65 grassroots organizations nationwide grouped in the *Coordinadora Nacional de Derechos Humanos*, is another important political player. Backed by sectors of the Catholic Church and international allies, rights groups and leaders have been fundamental in defending the rule of law, promoting judicial, military and police reforms and spearheading the anti-corruption effort (Sanborn, 2001).

### ***5.6 The Public Bureaucracy***

What we call the public bureaucracy includes the longstanding line ministries (such as Economy and Finance, Education and Health) and also the so-called "autonomous agencies" established during the 1990s. In the 1980s, the line ministries played little direct role in the PMP. This stems in part from the fact that Peru does not have a highly qualified, professional civil service as in Chile or Brazil, and instead governments blatantly use public sector employment as a source of party and client patronage. Having inherited an already inflated public sector from the military government in 1980, the Belaúnde and García governments proceeded to triple the size of the bureaucracy, a trend most notable under the APRA regime when the number of public employees rose from 282,400 in 1985 to 833,000 in 1990.

In the 1990s, the Fujimori Administration partially changed this situation through the creation and extensive reliance on special autonomous public agencies to undertake and monitor priority reforms. Originally created to support market reforms and to compensate for the

historical deficiencies of the public sector, these new “islands of efficiency” had their own revenues and special labor and administrative regimes, and were managed by the *Oficina de Organismos e Instituciones del Estado (OIOE, now FONAFE)* within the Ministry of Economy and Finance (Ugarte, 2000: 401). Yet as Wise and others have noted, with this process the state apparatus in Peru took on a dual nature. On the one hand there is a highly capable upper tier of small agencies with administrative and financial autonomy, qualified professionals at the helm and a small and educated workforce with salaries that run two to six times higher than those paid by the line ministries. On the other hand, there is a lower tier of line ministries whose inefficiencies, resource limitations and low staff morale have changed little over time (Wise, 2003).

Beyond the performance of specific agencies, the creation of this new tier of institutions was not part of a coherent or consistent state reform process, but was instead an almost inadvertent endeavor. New agencies were created in an erratic fashion, each somewhat distinct from the other (hence the “island” analogy is quite apt), and for the purposes of implementing market reform goals defined elsewhere. To some degree, their development also reflects the divergent priorities of the various multilateral creditors that helped to finance them. Hence, they were established for rationalizing public finances, enforcing property rights and facilitating the short-term delivery of certain public goods, but not for undertaking educational reform, improving labor conditions or other long-term social changes. While these institutions provided technical input into the drafting of new rules and were in charge of enforcing those approved, their overall contribution to the PMP will remain limited until these “islands” are more closely integrated into the broader public bureaucracy.

With the exception of the Ministry of Economics and Finance (MEF), which has been renovated into a “super ministry” (and has now internalized the same dualistic structure in-house), and to a lesser extent the Ministry of Trade and Industry, much of the remaining public bureaucracy mirrors Peru’s traditional sector of the economy: underpaid, inefficient, poorly utilized and, if anything, an obstacle to the effective functioning of the PMP in the sense of blocking the implementation and enforcement phases. Despite a 1996 IFI-backed initiative to modernize the line ministries and their outdated employment practices, Fujimori shelved the plan for fear of the political costs of further downsizing.

During the 1990s, the President promoted “autonomous” agencies for pragmatic, short-term reasons, not because he was committed to institution building or state reform (Wise, 2003). And he encouraged mediocrity in the rest of the central government for the same reasons that he encouraged a weak Congress—because it eliminated possible challenges to his authority. Meanwhile, by revamping the Ministry of the Presidency and using it as his personal patronage fund, he was able to further circumvent public accountability and political competition. The legacy of this pattern is particularly notable in the area of human capital investment, where longstanding neglect of the line ministries in health and education constitutes an enormous obstacle for the current government’s commitment to promote job creation and improve real living standards.

### ***5.7 The Armed Forces***

No discussion of the PMP in Peru would be complete without mention of the Armed Forces, which have ruled the country for longer periods than any civilian government and have retained considerable policy influence even while out of power. In the last two decades, however, both the policy stances and relative power of the military have been as volatile as that of civilian actors.<sup>41</sup>

When the military left power in 1980, it had become significantly divided by its 12 years in government and discredited by its poor economic performance and the repression of social protest. Nonetheless, in the 1980s the Armed Forces retained considerable power and autonomy since their dominant role in combating guerrilla insurgents rendered them largely immune to civilian control. In 1992, just 12 years after the military regime ended, the generals returned to power, but now as a fundamental component of Fujimori’s reign. Analysts have characterized this unorthodox relationship as a civil-military *pact*, brokered in large part by the National Intelligence Service (SIN). This pact enabled the President to execute the 1992 *autogolpe*, thwart a subsequent coup attempt and defeat the Shining Path. A loyal military leadership stood by the President in exchange for protection against prosecution for corruption, drug trafficking and human rights violations. At the same time, Fujimori, with the aid of security advisor Vladimiro Montesinos, used the SIN to identify and promote loyal officers, retire disloyal ones and

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<sup>41</sup> This section is based largely on Obando (1999) and Sanborn et al. (2000).

distribute patronage and opportunities for illicit enrichment. Key institutional reforms also afforded Fujimori greater latitude with respect to military policy.<sup>42</sup>

In the wake of the Fujimori debacle and videotaped revelations of corruption among the military hierarchy, the power and credibility of the military eroded once again. To date, most of the generals who backed the regime are in prison or exile. Taking advantage of this situation, interim President Valentín Paniagua began to restructure the Armed Forces, removing officers who had collaborated with the past regime and eliciting a formal apology to the Peruvian electorate for the 1992 coup. The Truth and Reconciliation Commission, also convened in 2001, held public hearings where atrocities committed by both the military and the Shining Path in the 1980s were investigated. Hence, two full generations of military leaders fell into disrepute, and many still await trial for human rights violations in the 1980s and early 1990s, and for widespread corruption in the 1990s.

Under Toledo the armed forces were primarily engaged in campaigns against drug traffickers, the remnants of the Shining Path and other small insurgent groups. As his popularity fell and social tensions increased, however, the President relied more heavily on military support, and gave military leaders increased autonomy and presence in the Cabinet (replacing civilians in Defense posts) as well as an increased share of the budget (Rospigliosi 2005). In this context, Congress approved new voting rights for members of the armed forces and police, which they would exercise for the first time in 2006, and candidates included security issues and other military concerns in their programs. . Furthermore, one of the three leading candidates in the first round race for president was former military commander Ollanta Humala, a self-styled nationalist who led a belated uprising against Fujimori in 2000 and whose brother led an armed rebellion in 2005 to demand Toledo's resignation.

Although the military is not seen as a major threat to democracy, and voting rights for military personnel are seen as a positive step towards full citizenship, the fundamental issue of military respect for the rule of law remains an open question. Military leaders and civilian allies are pressing for a new amnesty measure for officials accused of human rights abuses, key institutional reforms appear to be stymied, and it remains to be seen whether a new generation of officials will emerge with greater commitment to constitutional rule than their predecessors.

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<sup>42</sup> In 1991, Fujimori eliminated the promotional system based on seniority and succeeded in getting a law passed that allowed the President to name the military commander-in-chief and permit the appointee to serve as long as the President saw fit.

## 6. Conclusions

Since the late 1970s, the drafters of Peru's constitutions and electoral rules have sought to encourage strong and legitimate civilian presidents who could effectively lead the country and undertake much-needed social and economic reforms while avoiding the political impasses and military interventions of the past. They have also sought to design congresses that could provide necessary checks and balances on executive authority, and have encouraged a plural, multi-party system that could represent the country's large and socially diverse electorate. Following the dramatic social transformations of the 1970s, it was hoped that such changes could lead to a democracy that was both more inclusive and more effective than past efforts.

Unfortunately, the decisions made since that time helped to perpetuate the historical legacies of authoritarianism and personalism, social inequality and conflict. As indicated, in this context a formally strong president can also become an "unbridled" one, with a docile majority in Congress and weak channels of political accountability. This situation can generate widespread abuses of power and the perpetuation of misguided policies, as was the case with García in 1985-1990 and even more so with Fujimori after 1992. Alternatively, a president without a majority may face opponents with few incentives to cooperate for longer-term policy objectives, leading to political standoffs reminiscent of the past. In both cases, the likelihood of regime crises and turnover persist.

In the post-Fujimori period, however, it may be difficult for future presidents to win majorities, sustain alliances, and govern in the autocratic style to which they were becoming accustomed. This could be a positive turn of events, to the extent that it requires greater public deliberation and negotiation rather than arbitrary exercise of power. Specific reforms introduced since 2001 may also help to improve the quality of political representation and competition, both of which are important for the PMP. These include the introduction of 25 geographical districts in Congress, the establishment of regional governments and the transfer of new resources and programs to the regional level (where there is potentially more direct citizen oversight), and new legislation on political parties that aims to raise barriers to competition, promote institutionalization and encourage fewer and more transparent organizations. However, it is too early to predict the impact of these reforms on the dynamics mentioned above. Unfortunately, opinion polls suggest that many Peruvians are already fed up with the entire lot of current contenders and are looking for another "outsider" to save the day.

Other reforms under debate in 2001-2005 included the elimination of the preferential vote, which if combined with the new party law (requiring transparent primary elections for party candidates), might increase party unity without reinforcing the *caudillismo* of the past. In terms of improving the independence and responsiveness of Congress, reforms under debate include renovation by thirds (also seen as a way to force parties to have a more active life between presidential elections), expanding the number of voting districts and returning to a dual chamber system. Public opinion regarding any expansion of Congress has been negative, however, and none of these reforms has been enacted to date.

Ultimately, despite the existence of design problems that could theoretically be addressed by political engineering, we want to stress that in the Peruvian case the constant change of rules and regimes per se has been a deterrent to longer-term institutional building and inter-temporal collaboration. Since high-order change has been the norm rather than the exception, the horizons of all participants in this game are fairly short. When critical junctures and new opportunities to reverse the historical tide present themselves, the actors have been unable to overcome this sort of “volatility curse.” Hence it is difficult to predict whether the pitfalls of policymaking in Peru will be smoothed over, or whether the road to democracy and development will remain bumpy indeed.

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## Appendix 1. Cases for Understanding the Peruvian PMP

### *1. The Social Assistance Programs: Political vs. Technical Incentives*<sup>43</sup>

After the economic stabilization package of 1990, the Peruvian government was forced to create a series of social compensation programs to offset the negative impact of these measures on the poorest sectors of the country. The story of how these programs evolved over the 1990s reflects several of the general PMP characteristics mentioned at the outset of this paper.

First of all, these programs began with a serious “birth defect.” While objectively necessary as a social stabilizer, they were not something that President Fujimori or his advisors had initially contemplated, and they were reluctantly adopted due to pressures from the IFIs. Because Fujimori did not come up through the ranks of party competition, he did not initially see these as sources of political capital, either. Nonetheless, over the decade they evolved from their original emergency purposes into an ongoing mechanism for channeling public funds to the poor and a preferred means for political patronage. The resources assigned to these programs increased from \$12 per capita in 1990 to \$85 per capita in 1997. This was due not only to the growing ambition of these initiatives but also to the President’s desire to increase his popular support and win re-election.

In 1993, the government created the CIAS (*Comisión Inter-ministerial de Asuntos Sociales*), which was charged of the coordination of all such social policies. Between 1991 and 1995, this agency exhibited good performance and the social compensation programs were credited with helping to reduce poverty from 55 percent to 45 percent in this period. Nonetheless, targeting problems were present from the outside, and more than 60 percent of resources were destined to people who were not considered “extremely poor.” In 1996, these programs entered a new phase involving more explicit targeting of intended beneficiaries. Highly qualified professional staff was hired to define new objectives for these efforts: to improve efficiency in social expenditure and increase investment in basic infrastructure (provision of water, sewage, etc.). Yet perhaps not surprisingly, the recommendations made by politically naïve technocrats were not implemented, and the programs remained a source of political patronage and clientelism.

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<sup>43</sup> Based on Portocarrero et al. (2000), Chapter 4.

One example is the PRONAA or National Food Administration Program, charged with administering food assistance to meet the basic nutritional needs of the extremely poor. In 1996, a new group of technocrats narrowed the target population more explicitly, to 0-to-3-year-old children and nursing mothers living in extreme poverty. This was intended to prioritize longer-term social needs over short-term demands from the voting-age population, including those of the highly-organized *comedores populares* (community dining halls) that were also part of the anti-poverty effort. However, this effort faced political resistance since the food distribution itself had become a key component in the pro-government clientele network. Through PRONAA, the government rewarded the support of politically loyal *comedores* and mother clubs, and also favored loyal farmers and firms by purchasing foodstuffs from them. Thus, although state-of-the-art information systems were implemented, impact indicators were defined and measures to decentralize the execution of the programs were formulated, most of these changes were of little use in improving nutritional standards, and were dismantled when the technocrats were forced to resign.

The same kind of political incentives are documented by Schady (2000) with respect to the Peruvian Social Fund (FONCODES). In the beginning, this program was a darling of the IFIs and a model of how to design a social fund. Yet Schady found that expenditures increased significantly before national elections and FONCODES projects were directed at provinces in which the marginal political effect of expenditures was likely to be largest.

## ***2. Private Pension Reform under Attack: The Effect of Latent Volatility<sup>44</sup>***

The fundamental problem of volatility lies in its unpredictability. One can imagine a case in which an economy switches every year from policy A to policy Z with a probability equal to one. In that case, the certainty of this policy switch will allow everyone affected by this change to react appropriately. The main reason behind the type of volatility in Peruvian policies is the high degree of arbitrariness in the decisions to adopt them in the first place. The lack of checks and balances on executive policymakers leads to an equilibrium in which an arbitrary policy is temporarily maintained, but with is a strong perception that a policy reversal can occur. One case that illustrates this point is the constant threat of reforming the private pension system.

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<sup>44</sup> This is largely based on Carranza and Morón's (2003) review of the first 10 years of the private pension system reform.

The history of this reform is remarkable, since Peru was the second country in the world to adopt a private pension system (1993) after Chile (1983). As in many countries, the public pension system had severe governance and transparency problems. This pay-as-you-go (PAYG) system was routinely used as a source of funding for the central government. As the funds did not belong to anyone in particular, government authorities used them arbitrarily for whatever they deemed important.

No surprisingly, the PAYG funds were decimated by the hyperinflation of 1988-90 and the pensions were reduced accordingly. This situation led to a policy initiative to move from the PAYG to a fully-funded system similar to that in Chile, administered by private firms (AFP).<sup>45</sup> In contrast to what has occurred in many countries in which a private pension system has been introduced, in Peru the public pension system (SNP) remained in tandem with the new AFPs. This produced a tension that is not present in other countries: a permanent threat to return to the old regime. The main cost of this threat is that long-run investment decisions are blurred by political tensions.

It is important to emphasize that government policymakers have many ways to reduce the “privateness” of this privatization process. They can force AFPs to accept public bonds with high default risk, or overtly confiscate the intangible individual funds by transferring to a common pool fund such as the PAYG system.

Why do some actors continue to promote changes in this system? The answer, in part, is that the short-run payoff for politicians is high. AFPs are seen as easy to attack, and have media attention. The combination of an ever growing private fund and a cash-strapped government is an explosive mix. The possibility of having access to these funds might be enough for the Executive to let a supportive Congress play with the idea of a significant policy reversal. Another way to understand why this permanent threat of policy reversal is attractive to members of Congress is that the number of potential beneficiaries of the use of those funds is larger than group of current beneficiaries of the policy.

Clearly, many of these reform initiatives clash with efficiency, property rights and fiscal sustainability. Yet these arguments are not enough for legislators who need to attract public attention, and who see this kind of issue as a way to advance their political careers. Such opportunism may explain why there have been so many legislative initiatives attempting to

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<sup>45</sup> A very detailed account of the process of adopting this policy decision is found in Roggero (1993).

change the nature of the private pension system, and so little progress in actually helping workers and their families protect themselves after retirement.