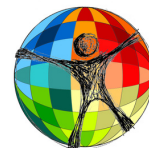


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A Broken Relationship Between Human Rights and the State: The Story of Political Corruption in Peru

Angela Nassar

McGill Centre for
Human Rights
and Legal Pluralism



Centre sur les droits de la
personne et le pluralisme
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McGill FACULTY OF
Law

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ABSTRACT

Peru has suffered from many human rights violations, such as poverty and corruption. Even though the country abides by international human rights laws, deficiencies are felt by the locals. In my internship with the Instituto de Democracia y de Derechos Humanos, I was able to touch on the latter problems.

This paper's aim is to critically analyze the relationship between politics and human rights in the context of Peru's political history and current situation. Particularly, the author focuses on the dissonance between the de jure versus de facto realities of human rights within civil societies. The goal will be to assess the human rights realities in Peru left without credible political commitment from political actors.

To do so, the focus will be on the 22 years specifically post armed conflict, Fujimori's 10-year mandate. In the paper it is shown that the rhetoric of human rights by politicians—such as, corruption and human rights violations—diverges from the realities of the people on the ground. The author emphasizes what this divergence between politicians and the realities of the people does to the advancement of human rights in Peru and subsequently proposes solutions to counter the political shortcomings.

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I. Introduction

“Like any other living, growing thing, love requires effort to keep it healthy.”¹

Contrary to common belief, it is untrue that real love is unconditional. In fact, any healthy relationship requires several basic conditions to be met. Amongst other criteria we can think of, respect, transparency, honesty, and communication to encourage a solid relationship. I have discovered in my internship this summer that these criteria apply to the existing relationship between the State and human rights, as the two cannot properly function without one another—as would, two people that love each other when fighting. In fact, it is near to impossible to have a good day if the one you love is mad at you. This also applies to human rights and the State as, when in disaccord, unrest and turmoil within civil society arise. In this paper, human rights will include the civil, political, and economic rights that the population is—as we will see it—being deprived of.

If we follow Buscaglia’s thought, human rights are a “living growing thing” and by extension, they must be treated accordingly.² Together the State and human rights work much better. It is as though two magnets are forced to be apart. We will see through the case of Peru that a State that does not foster human rights advancement is weak and flawed. And as for human rights, if they are not integrated within the politics of the country, the state will face many obstacles to survive and find great difficulty to make change on a larger scale. Therefore, understanding how the state of politics is directly interconnected to human rights and how both must work towards each other rather than against, is one step forward in the right direction.

¹ See AZ Quotes, “Leo Buscaglia Quotes” (last visited 6 June 2023), online: AZ Quotes <azquotes.com/quote/553800>.

² See *ibid.*

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i. A word on my internship with the Instituto de Democracia y Derechos Humanos (IDEH)

The 20th of April 2022 was the date on which I was supposed to fly to Peru for my twelve-week internship with the IDEH. I had prepared my luggage and I had done extensive research on the political, societal, and economic situation in Peru. Only a few days prior to my departure—as I had now built the habit to listen to the local news—I learnt that violent protests leading to closed roads, curfews, and police violence blocked the streets in many areas.³ Citizens were protesting due to increased fuel prices and violence against human rights defenders. Promptly after, the government of Canada deemed non-essential travel to be duly avoided. Just like that, going to do human rights work in person was not an option for me anymore and I had to conduct it remotely due to the political unrest.

Even prior to the start of my internship, I was beginning to learn invaluable lessons. I was able to touch on an important realization that there lies a fundamental interconnectedness between the state of political institutions and that of human rights. Even though the political situation refrained me from proceeding with my initial plans, this turn of events opened my eyes to the role of politics in the advancement of human rights and how—in the specific case of Peru—this conflict posed itself as an obstacle and not a driving force.

ii. Overview of Peru's political history: an obstacle in the face of human rights advancements

It is first and foremost important to understand the political situation in Peru to contextualize the analysis made in this paper. Indeed, prior to my expected departure date, I had a virtual

³ See Marcelo Rochabrun & Sebastian Castaneda, "Peru imposes curfew to stymie protests over rising fuel costs", *Reuters* (5 April 2022), online: <[reuters.com/world/americas/peruvians-protest-surging-gas-fertilizer-prices-amid-ukraine-invasion-2022-04-05/](https://www.reuters.com/world/americas/peruvians-protest-surging-gas-fertilizer-prices-amid-ukraine-invasion-2022-04-05/)>; CIVICUS, "Peru: protests over price rises and violence against human rights defenders", CIVICUS (12 April 2022), online: <monitor.civicus.org/updates/2022/04/12/peru-protests-over-price-rises-and-violence-against-human-rights-defenders/>; Simeon Tegel, "Peru's Castillo tries authoritarian turn against protests. It fails.", *The Washington Post* (7 April 2022), online: <[washingtonpost.com/world/2022/04/07/peru-protests-castillo/](https://www.washingtonpost.com/world/2022/04/07/peru-protests-castillo/)>.

meeting with a lawyer and professor at the Pontificia Universidad Católica de Perú (PUCP) that explained to me the past and current situation—as it directly affected and still does today—the lives of Peruvians. I will be covering the years since the end of the armed conflict. The focus will be on Fujimori's ten-year mandate and the effects of Peru's political history on human rights. I have chosen this period because it reveals a great dissonance between the *de jure* and *de facto* manifestation of human rights.

In fact, *de jure*, the Peruvian Constitution addresses topics of human rights from its first article and Peru is associated with the American Convention of Human Rights, which makes it subject to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACHR). Whereas, *de facto*, the history and current realities of Peru's politics are marked by great impediments towards the actual fight of human rights such as direct violations against them. As I was working remotely at the IDEH, I realized that my colleagues demonstrated great resentment and disdain towards the ex-president Alberto Fujimori. Therefore, I delved into his case further to understand this collective sense of despise.

Fujimori was first elected in 1990 after a decade of systematic violations of human rights, characterized by guerilla groups against the Peruvian government.⁴ Shortly after, in the year 1991, it was discovered that the president was implicated in the 'Masacre de Barrios Altos' where a para-military group went into a party in Barrios Altos and assassinated fifteen people including a minor of eight years old, for which he was later convicted. In 1992, Fujimori initiated an auto-coup d'état ('Fujimorazo') to dissolve the current republic and establish his own constitution. Three months later, in the same year following his reformation of the system, he was found guilty of the 'Masacre de la Cantuta' where nine residents and one professor of the *Universidad Nacional de Educación* were kidnapped, tortured, and massacred. At the behest of Peruvian authorities, Interpol issued an arrest order for Fujimori on charges that included murder, kidnapping, and crimes against humanity. In the year 1995, Fujimori was reelected amongst accusations of

⁴ See Néstor Serrano, "Caso Alberto Fujimori: un laberinto judicial en Perú", *El Espectador* (3 April 2022), online: <elespectador.com/mundo/america/caso-alberto-fujimori-un-laberinto-judicial-en-peru/>.

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fraud and corruption of the voting system—not refraining him from beginning his second mandate.⁵

Reportedly following socioeconomic objectives calling for the "total extermination" of "culturally backward and economically impoverished groups" determined by the Peruvian military in Plan Verde, from 1996 to 2000, the Fujimori government oversaw a massive, forced sterilization campaign—referred to as ethnic cleansing measures. In the four-year Plan Verde period, 215,000 primarily Indigenous women were sterilized, and 16,547 men were undergoing vasectomies. Around 90% reported to a national health department commission that they participated only because they had been forced or threatened.⁶

In the year 2000, amongst further accusations of fraud, corruption and economic instability in Peru, Fujimori was elected for the third time, in a process that was highly criticized by electoral organizations such as the Organization of American States (OAS) and European governments. Videos implicating criminal activity were then divulged which finally led to Fujimori's renunciation of power. In the same year, he escaped to Japan for a duration of five years. In 2005, Fujimori went to Chile and was arrested a few hours later. In 2007, he was extradited to Peru after approval of the Court and was directly incarcerated. In 2009, following Court proceedings, Fujimori was found guilty and sentenced to twenty-five years of incarceration for human rights violations. In 2018, due to health deterioration, Fujimori was released from prison. But public uproar emerged as families of the victims of the massacres protested the request of pardon. In 2022, Fujimori filed for *habeas corpus* to revert the decision keeping him in jail for reasons of severe health problems. Yet again, the IACHR suspended the order of liberation in view of the victims' protests.⁷

Amnesty International declared that "the widespread and systematic nature of human rights violations committed during the

⁵ See *ibid.*

⁶ See *ibid.*

⁷ See Leiry Cornejo Chavez, Juan-Pablo Pérez-Léon-Acevedo & Jemima García Godos, "The Presidential Pardon of Fujimori: Political Struggles in Peru and the Subsidiary Role of the Inter-American Court of Human Rights" (2019) 13:2 Intl J Transitional Justice 328.

government of former head of state Alberto Fujimori (1990–2000) in Peru constitute crimes against humanity under international law."⁸

More recently, within the last two years and a half, there has been four new presidents. Impeachment scandals are very common in the history of elected political leaders. During the start of the pandemic, Martin Visquara—then president—was accused of having committed corruption and of being linked to many corrupt parliament members. After his impeachment, new elections were held. In the context of the pandemic, not many people were motivated to vote. Indeed, in the latest turn of elections, two candidates were running: Keiko Fujimori (right-wing) and Pedro Castillo (leftist). The former is the daughter of ex-convict for human rights violations, Alberto Fujimori. Not wanting to fall under the presidency of Keiko Fujimori and relive the past, votes sided with Castillo—rendering him current president. However, not having much political experience, Castillo, faced great trouble in knowing how to lead the country to a better state.

This brings us to the recent protests that inhibited me from travelling to Peru. Peruvians wanting to impeach the current president and voice their concerns about the lack of *de facto* manifestation led to major political unrest. To respond to this, Castillo imposed a curfew. An important portion of the electorate feared this outcome, concerned Castillo might concentrate power and go down an authoritarian path given he has made statements indicating openness to shuttering the legislature should it oppose his suggested economic and political reforms.⁹

Currently, Benavides, the head of the Public Ministry, is reviewing Castillo and six legislators accused of taking part in a criminal web. According to the ongoing investigation, the legislators would have been recruited by Auner Vásquez, the lawyer who was head of Castillo's technical office until December

⁸ Benjamin Dangel & Jesse Strauss, "Peru's Presidential Election: A Battle Over Memory and Justice" (2 June 2011), online: <upsidedownworld.org/archives/peru-archives/elections-in-peru-a-battle-over-memory-and-justice/>.

⁹ See Gabriela Camacho & Paolo Sosa-Villagarcia, "Peru's Democracy Is at a Breaking Point", *Foreign Policy* (15 July 2021), online: <foreignpolicy.com/2021/07/15/peru-democracy-president-pedro-castillo/>.

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2021.¹⁰ Vásquez is presumed to be the coordinator of the criminal network and told Castillo that to guarantee his permanence in the executive power, he had to in exchange comply with the request of these six congressmen. The manifestations back in summer 2022 were also due to the people wanting him to step down from power because of allegations of corruption. The current accusation against Castillo, which is the sixth—on accounts of corruption as well—for, fraud specifically.¹¹ Corruptive acts seem to be a pattern in Peruvian politics.

iii. *Research question and scope*

For the purposes of this paper, the State will comprise of political institutions which encompass political parties, actors, culture, and broader electoral politics that constitute the majority part of the government and are responsible for the activities associated to the governance of the country. The ‘human rights’ term will constitute the social—such as access to basic needs, poverty—and the political aspect—such as the right to freedom of peaceful assembly—and level of actual implementation of it by the politics of the country. When speaking of the violation of human rights law, it will imply the violation of obligations by the State to act in certain ways or to refrain from certain acts, to promote, and protect human rights and fundamental freedoms of individuals or groups.¹²

I will aim to look at the relationship between politics and human rights in the context of Peru’s political history and current state. Particularly, I will be focusing on the dissonance between the *de jure* versus *de facto* realities of human rights within civil society and general population. The aim will be to assess the human rights realities in Peru left without credible political

¹⁰ See Garciela Villasís Rojas, “Fiscal de la Nación investiga a ‘Los Niños’ por organización criminal” *El Comercio* (11 October 2022), online: <elcomercio.pe/politica/actualidad/fiscal-de-la-nacion-investiga-a-los-ninos-por-organizacion-criminal-noticia/?ref=ecr>.

¹¹ See Jacqueline Fowks, “La Fiscalía de Perú abre la sexta investigación por corrupción contra Pedro Castillo”, *El País* (11 August 2022), online: <elpais.com/internacional/2022-08-11/la-fiscalia-de-peru-abre-la-sexta-investigacion-por-corrupcion-contra-pedro-castillo.html>.

¹² See United Nations, “Human Rights” (last visited 9 June 2023), online: *United Nations* <un.org/en/global-issues/human-rights>.

commitment from political actors. Are public institutions in Peru captured by vested interest? How does this disincentivize the *de facto* advancement of human rights? To answer these questions, I will first look at the divergent agendas existing between political institutions and human rights violations, such as rights or fundamental civil, political, and economic rights. Then, I will move on to understanding the problem of weak institutions, especially in terms of corruption and how that negatively affects human rights. Finally, I will propose a few solutions to when human rights and the State clash, to attempt to tackle the problematic—as many States have yet to do.

II. Working towards divergent agendas: political institutions versus human rights

As Marvin Bell declares it, “[...] [t]he rights of the few must be written down by the many.”¹³ I would add to this statement, that once they are legislated, they must be enacted in a concrete and tangible form by political institutions. Indeed, the importance of channeling human rights within the political scheme is often under-rated. It does not suffice to merely have them voiced or written in the law—they must also be felt. In fact, the social meaning of rights is exhausted by the content of legal rights, by the institutional politics that gives them meaning and applicability.¹⁴ From this, we understand that the relationship between human rights and the State must interconnect to ensure both *de jure* and *de facto* application of human rights. They both must reach for some common goals to ensure positive outcomes.¹⁵

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¹³ Marvin Bell, “The Dead Have Nothing to Lose by Telling the Truth” (1998) 28:2 Iowa Rev 1 at 1.

¹⁴ See Martti Koskeniemi, “Human rights, politics and love” (2001) 19:4 Nordic JHR 33 at 35.

¹⁵ See United Nations, *supra* note 12.

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We observe a conflict between the human rights and political institutions which instigates a polemic about whether to directly include controversial human rights issues—which might damage the support that a political party receives. On the one hand, many times, political actors are more concerned about surviving or getting enough funding and fear raising fundamental human rights flaws that need to be corrected within the system. In most cases, human rights remain an external burden that other entities must worry about ensuring their implementation. In a country like Peru, where political history is marked by corruption, human violations, and lack of action for the people, this issue poses itself as a barrier to the advancement of human rights. Further, when there is a deeply enshrined web of corruption it is very difficult to untangle it.¹⁶ On the other hand, survival of human rights organizations (NGOs) is also present in their agenda.¹⁷ If they do not receive sufficient funding from donors interested in their projects, the organization risks total shutdown. Therefore, both entities tend to need to fulfill a self-image required from the public that could often be counterproductive in terms of doing positive action. Survival often takes the lead rather than taking on the risk of causing negative comments, criticism, or total collapse. What are the possibilities for people to be involved in agenda setting? How unequal is society? Do only elites set agendas?

In this way, politics and human rights are two different forces that clash in their own path towards survival. While some may argue that most changes do not merely come from the politics that regulate a country and rather, attack this top-down approach, a political system that fosters self-interest rather than human rights can never make room for advancements. Top-down and bottom-up approaches should ally their forces and harmonize their agendas to optimize efficiency in terms of change.¹⁸

¹⁶ See Rania Abouzeid, "How Corruption Ruined Lebanon", *The New York Times Magazine* (28 October 2021), online: <[nytimes.http://real.mtak.hu/39093/7/29_ijga_summer16_eng_www_color_1_u.pdfcom/2021/10/28/magazine/corruption-lebanon.html](http://real.mtak.hu/39093/7/29_ijga_summer16_eng_www_color_1_u.pdfcom/2021/10/28/magazine/corruption-lebanon.html)>.

¹⁷ See CR Bijoy, "The Politics of NGOs-Beyond Survival" (1992).

¹⁸ See Vicki Chartrand, "MMIWG: The spirit of grassroots justice lives at the heart of the struggle", *The Conversation* (12 June 2019), online: <theconversation.com/mmiwg-the-spirit-of-grassroots-justice-lives-at-the-heart-of-the-struggle-118424>.

Mutua argues that there must be a dissociation of the state and the one characterized as the 'real savage.' Indeed, according to the scholar, the "state should be unmasked as being a mere proxy for the real savage."¹⁹ In his article, it is explained that that the "culture, and not the state, is the actual savage."²⁰ As he describes it, culture is composed of a mix of many variables, "including religion, philosophy, politics, environmental factors, language, and economics."²¹ While I do not wish to paint the Peruvian government as the "savage," in the Savage, Victim and Saviour prism that the author establishes, it is important to keep in mind that my criticism here is a means of redress and a call for change. Politics is a crucial factor in terms of bettering human rights as advanced by the author. It is one of the crucial components that could either be helping the reach of human rights or be impeding it.

Peru's political history is marked with politicians that were in power that had different goals in total disaccord with the ones of human rights such as corruption. There was never credibility in terms of *de jure* manifestation. Certainly, governments are not the sole actor or sole "savage" as Mutua puts it, but as they are the figures in power, they do have relatively important consequences on the lives of their citizens. Peru's political unrest was in fact due to a lack of human rights. The citizens were protesting the stagnation that they are suffering from—such as societal, economic, and political redress.²²

ii. *Media's role: a powerful weapon and protective shield*

The reason I talk about media first is because it is a highly used tool of manipulation and control when it comes to corruption.

¹⁹ See Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42:1 Harv Intl LJ 201 at 220–21.

²⁰ *Ibid* at 221.

²¹ *Ibid* at 220.

²² See US Department of State, Bureau of Democracy, Human Rights, and Labor, "Peru 2021 Human Rights Report" (2021) at 14, online (pdf): *Country Reports on Human Rights Practices for 2021* <state.gov/wp-content/uploads/2022/02/313615_PERU-2021-HUMAN-RIGHTS-REPORT.pdf>.

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As simple as it may seem, the first element in solving human rights issues—in this case corruption—is to acknowledge their existence. Censoring media is known to be a strong weapon when it comes to the political leaders in power.²³ We often see that whenever unrest arises in a country, the first thing that is done by the leaders is to shut down or fake the media so that there is no avenue for external awareness of the atrocities being made.²⁴ In this sense, the media can be used as a weapon against external criticism as well as a shield that protects the desired self-portrait of the ones in power.

When there is no knowledge of the problems faced by society, it is difficult to find solutions to them. Therefore, allowing for unbiased and transparent reporting of information is crucial to making advancements.²⁵ Indeed, one of the main justifications for freedom of the media is that a lack of censorship will enable the media to act as a watchdog over the government and thereby render the government more responsible and responsive.²⁶

Not only does media allow to control the external image from receiving criticism but it also aims to chain the civil society from mobilization and unrest. Domestic suppression within the territory itself shields the State from having the civil society manifest the on-the-ground realities that it is living. Instead of promoting the rights of citizens, state authority in Peru was seen violating protocols and imposing curfews to silence civil society in a way.²⁷ Indeed, “[d]emocratic governments empower the police

²³ See Jenifer Whitten-Woodring, “Watchdog or Lapdog? Media Freedom, Regime Type, and Government Respect for Human Rights” (2009) 53:3 Intl Stud Q 595.

²⁴ See Chris Hedges, “Ukraine, media censorship and the ruthless politics of permanent war”, *Salon* (31 August 2022), online: <salon.com/2022/08/31/ukraine-media-censorship-and-the-ruthless-of-permanent/>.

²⁵ See Sarah Joseph, “Social Media, Political Change, and Human Rights” (2012) 35:1 Boston College Intl & Comp L Rev 145 at 145.

²⁶ See Bill Kovach & Tom Rosenstiel, *The Elements of Journalism: What News People Should Know and the Public Should Expect* (New York: Three Rivers, 2001).

²⁷ See Human Rights Watch, “Peruvian National Police Committed Multiple Abuses During November Protests” (17 December 2020), online (video): YouTube <youtu.be/tuyFIIGaET8>; Human Rights Watch, “Humala Implicated in

to regulate the conduct of citizens, who in return expect a degree of professionalism on their behalf. Allegations of excessive use of force, intentional homicide, racism, and other forms of misconduct and corruption, unfortunately, have been levelled at the law enforcement community and the public has grown wary of the inability of agencies to control the actions of their own officers.”²⁸

In addition to this is the crucial requirement for people in power to be able to provide legitimate data that would then serve the purpose of promoting awareness and therefrom, making change. In corrupt States, data and media are used to benefit the ones in power and not human rights’ organizations. They are used as tools to twist reality and further contribute to the politicians’ survival agenda. It is important to reverse this and no longer let it be the case.²⁹ Media and collection of data should be aimed towards bettering human rights and not embellishing political leaders’ masks.

iii. Economic globalization: stepping on human rights?

Another issue that could arise is the need for countries to further integrate the evolving movement of globalization.³⁰ Evans’s central arguments are that the cause of many human rights violations can be found in the structures of the global political economy and that human rights now legitimize the economic actors and practices at the heart of globalization rather than support the interests of the vulnerable.³¹ The problem with this is that sometimes, the negative impact of these types of advancements could leave behind human rights issues—labor

Peru Atrocities” (7 September 2017), online (video): YouTube <youtu.be/nWNPkppqvAM>.

²⁸ Frank V Ferdik, Jeff Rojek & Geoffrey P Alpert, “Citizen oversight in the US and Canada: an overview” (2013) 14:2 Police Prac and Research 104 at 104.

²⁹ See Amnesty International, “Press Freedom: Journalists in Need of Protection” (2 May 2006), online: Amnesty International <[amnesty.org/en/documents/act78/001/2006/en/](https://www.amnesty.org/en/documents/act78/001/2006/en/)>.

³⁰ See Tony Evans, *The Politics of Human Rights: A Global Perspective*, 2nd ed (London: Pluto Press, 2005).

³¹ See Paul Gready, “The politics of human rights” (2003) 24:4 Third World Q 745.

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rights or environmental issues, for example—which furthers the gap directly felt by the already most vulnerable.³²

As Harari puts it when talking about technological advancements, it is crucial not to throw the negative impacts that they entail in our blind spots as “we thought we were saving time; instead we revved up the treadmill of life to ten times its former speed and made our days more anxious and agitated.”³³ Often times, technological advancements or innovations impact human rights advancements in a negative way. For example, post-industrialization technological progress was made at the expense of the environment. How to ally both economic prosperity goals without having to step over the State’s human rights’ agenda has yet to be further addressed.

iv. The importance of a context-based approach: universalist versus relativist discourse

Countries suffering from economic and societal instability may find the fight towards human rights secondary to other issues occurring in the country. In some way, there is a need for the people in power to juggle between economic stability and human rights—where one is usually left behind in the pursuit of the other.³⁴ This conflict usually brings chaos and outbursts within the country as seen in Peru.

Further many scholars criticize the “too aspirational, almost fictitious discourse that human rights advocates resort to.”³⁵ However, before criticizing the nature of the discourse, it seems important that it exists—and not only coming from the people; it must also be addressed by the leaders of the country directly.

A universalist approach to human rights must be allied with a relativist one as the former may step over rights that are already

³² See David L Richards & Ronald D Gelleny, “Economic Globalization and Human Rights” in Michael Goodhart, *Human Rights: Politics and Practice*, 3rd ed (Oxford: Oxford University Press, 2016) at 216.

³³ Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (New York: HarperCollins, 2014).

³⁴ See Gready, *supra* note 31.

³⁵ *Mutua*, *supra* note 19.

a given in the Western world.³⁶ Not only is the discourse criticized on this level but also regarding the universalization of it when referring to human rights.³⁷ In this sense, it is necessary for us to understand that some cultures and contexts inhibit basic human rights which in the Western world are already a given. I advance that it is first and foremost essential to tackle these countries' stalling and stagnation to harmonize and equalize the level of human rights reached across the world. There will be discrepancies and different rights specific to each country, yet it seems contradictory to have such advancements in terms of human rights in the Western world that are completely overthrown in other regions where the discourse is being given in the same way. For instance, adopting a context-based approach in Peru may bring benefits when it comes to truly understanding the realities felt by the people and not merely, remain at a superficial level that does not properly correspond.

We cannot only impose a universalist approach to human rights without taking a relativist one too. In some way, there must be both to encompass the individuality of each country's human rights. When there is dissonance with human rights across countries, it does not make sense to solely advance a universalist approach; it is like moving one step forward and one step back—just on different lands. Therefore, if we wish to impose a universalist approach, it must still be accompanied by relativism so that specific country-level human rights issues are not stepped over and forgotten.³⁸ The relationship between politics and human rights must be brought to an international state of harmony before even thinking of only applying a universalist approach—and we are not there yet. There cannot be one country advocating feminism in terms of being able to have equal wages and another country where beating women based on showing some hair is still occurring. There must be a common base to all

³⁶ See Sally Engel Merry, "Transnational Human Rights and Local Activism: Mapping the Middle" (2006) 108:1 Am Anthropologist 38.

³⁷ See Brooke Ackerly, "Human Rights Enjoyment in Theory and Activism" (2011) 12:2 Hum Rts Rev 221.

³⁸ See Vishakha Wijenayake, *International Human Rights: Challenging the Paradigm*, MyCourses Class 21 Presentation (Faculty of Law, McGill University, 2022).

countries³⁹—at least in terms of basic rights before thinking of allowing a universalist approach to neglect the specificities of each group.

III. Toxic relationship portrayed within weak institutions: the effect of corruption on human rights⁴⁰

i. Corruption: an impediment that weighs down on the fight for human rights

“It is a fact that states with high corruption rate (or high corruption perception) are at the same time those with a bad human rights situation.”⁴¹ In most cases weak institutions have a common denominator which is corruption—which entails, weakly enforced human rights.⁴² At the IDEH, there was a whole working section devoted to tackling the issue of corruption. At the institution, corruption meant abuse of power and misuse of it for personal purposes—which by extension, does not only imply economic repercussions but also non-received social rights by the people. That is why it is so linked to human rights.⁴³

Indeed, the abuse of power directly affects the implementation of human rights, such as healthcare, access to water, and education. Since 2012, the IDEH has investigated this

³⁹ See Margot E Salomon, “Why should it matter that others have more? Poverty, inequality, and the potential of international human rights law” (2011) 37:5 Rev Intl Stud 2137.

⁴⁰ See Víctor S Peña-Mancillas, “Combatir la corrupción en el Perú: a diez años de Fujimori” (2011) 51 Revista del CLAD Reforma y Democracia 1315; Julio Arbizu, “El espiral de la corrupción en el Perú” (2014) 3:8 Argumentos 14.

⁴¹ Anne Peters, “Corruption and Human rights” (2015) Basel Institute on Governance Working Paper No 20.

⁴² See Julio Bacio-Terracino, “Linking Corruption and Human Rights” in *Proceedings of the 116th Annual American Society of International Law Meeting* (Oxford University Press, 2017).

⁴³ See IDEHPUCP PUCP, “[Amigos con Derecho] Episodio 3 Corrupción y Derechos Humanos” (3 November 2022) at 00h: 10m:10s, online (video): YouTube <youtube.com/watch?v=nvH9nKocBeM>; IDEHPUCP, “Lucha contra la corrupción” (2017), online: *Líneas de trabajo* <idehpucp.pucp.edu.pe/lineatrabajo/lucha-contra-la-corrupcion>.

area with the objective of contributing to a better development of the judicial system in terms of persecution, investigation, and judgement of the corruptive acts and in order to optimize the participation of the civil society in the fight. Therefore, the fight for human rights must be made in parallel with the fight towards anti-corruption.

The history and ongoing occurrences of corrupt politics in Peru has instigated the need for such a fight to take place. However, while the efforts of the Institute are necessary, I wonder to what extent they have concrete power on changing things on their own without the State's *de facto* support. I, for instance, was stopped from going to do human rights work in person in Peru due to political unrest. Politics control the advancement of human rights—especially in countries where the top-down interests clash with the on-the-ground needs and realities.

ii. *Lessons to learn from Chile on public probity*

Chile has had a political history that is comparable to Peru's and from which lessons could be extracted—specifically regarding Chile's dealing with corruption. Indeed, since re-democratization started in 1989, the Chilean political process displays important signs of renovation. Chile has a long record of public probity, representing an exception in Latin America. Probity implies ethical behavior that upholds public values and ensures impartiality, accountability, and transparency—a list of criteria that was not present in Peruvian political history. It goes back to the late colonial period when the country was ruled by relatively efficient and honest governors. Chileans have been ever since aware of the exceptionality of their country in terms of the strength of their political institutions and the scrupulousness of their rulers.⁴⁴ Since the re-democratization of the local arena began in 1992—after twenty years without municipal elections—there are several indications that lend credence to the belief that local political practices have been partially restored.⁴⁵

⁴⁴ See Patricio Silva, "'A Poor but Honest Country': Corruption and Probity in Chile" (2016) 32:2 J Dev Societies 178.

⁴⁵ See Alfredo Rehren, "Corruption and local politics in Chile" (1997) 25 Crime L & Soc Change 323 at 324.

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What seems to be a decisive factor in generating and maintaining the culture of public probity in Chile has been the quality of the colonial governors and their administrative cadre. Several historians, both national and foreign, stress the fact that during the late eighteenth century, until Independence in the early nineteenth century, Chile was blessed with the presence of exceptionally efficient and honest colonial governors.⁴⁶ As such, ensuring the continuation of having high levels of public integrity was the solid consolidation of the Chilean State in the early nineteenth century. Following independence, most Latin American countries were involved in a vicious circle of civil wars and severe social and political convulsions, resulting in long periods of authoritarian rule. In most cases, this led to a constant struggle among local leaders ('caudillos') for controlling the governments and the spoils of power. This generated a scenario of permanent abuse of power, rampant corruption, and arbitrariness on the part of the political elites. Chile followed a different path. After a period of relative instability (1818–1829), Chile managed to establish exceptionally solid state institutions which guaranteed the rule of law, economic progress, and political stability.⁴⁷

More recently, during the Frei government (1994–2000), the modernization of the State and the public administration in general were presented as one of the executive's top priorities. The CODELCO case generated a broad political debate on public probity and Frei quickly adopted a series of measures to guarantee higher levels of transparency and accountability at all levels of the state apparatus.⁴⁸ To this end, Frei established a high-level National Commission on Public Probity ('Comisión Nacional de Ética Pública'). Members of the Commission were commissioned to produce a concrete agenda including specific measures to be adopted to improve the quality of public probity. This includes Chile's new democracy, new constitution, and truth and reconciliation process.⁴⁹

⁴⁶ See Silva, *supra* note 44.

⁴⁷ See *ibid.*

⁴⁸ See Fabian Cambero, "Chile's Codelco says uncovered \$22 million insurance fraud involving unions", *Reuters* (14 January 2020), online: <[reuters.com/article/us-chile-codelco-idUKKBN1ZD28E](https://www.reuters.com/article/us-chile-codelco-idUKKBN1ZD28E)>.

⁴⁹ See Mark Ensalaco, "Truth Commissions for Chile and El Salvador: A Report and Assessment" (1994) 16:4 Hum Rts Q 656.

Nevertheless, during the third government of the Concertación coalition (2000–2006), a series of corruption scandals emerged involving high-ranking public officials and members of political parties in power. In October 2002, it became known that several members of the Lagos government were linked to a bribery scandal (i.e., Caso Coimas).⁵⁰ This included a member of the parliament, the deputy minister of public works and transport (MOP), and other officials of that ministry. They had asked a businessman for a bribery payment to obtain a license to operate a plant for the regular inspection of vehicles at Rancagua. As a result, several top officials had to face justice. The same judicial investigation led to an even larger scandal (the so-called “MOP-gate”) involving the same ministry.⁵¹ It established a series of irregular payments by this ministry to several subcontractors for activities which were fictitious. That money later flew back to this ministry and was used to pay extra bonuses (‘sobresueldos’) to a large group of top officials, including the minister, deputy minister, and chiefs of several departments. The investigation made clear the broad extent of this corrupt practice under the Lagos government. Several Lagos officials were prosecuted, including the former minister for public works. The “MOP-gate” affair dominated the public debate for months and asserted a big political blow to the prestige of the government and President Lagos. In addition, this scandal provided a great opportunity for the right-wing opposition to exert pressure on the Lagos government to force him to adopt a series of reforms. Following a historic meeting between President Lagos and the leader of the largest opposition party, Pablo Longueira, the establishment of a common legislative pro-probity agenda was announced.

It comes down again to the Savage, Victim and Saviour theory by Mutua.⁵² The victim in this case are the people. The savages are the political leaders that need to make a choice

⁵⁰ See El Mostrador, “Caso coimas: cuando Chile perdió la inocencia”, *El Mostrador* (1 January 2003), online: <elmostrador.cl/noticias/pais/2003/01/01/caso-coimas-cuando-chile-perdio-la-inocencia/>.

⁵¹ See Abril Becerra, “MOP-Gate, CAE y privatizaciones: El oscuro pasado de Ricardo Lagos”, *DiarioUchile* (2 September 2016), online: <radio.uchile.cl/2016/09/02/mop-gate-cae-y-privatizaciones-el-oscuro-pasado-de-ricardo-lagos/>.

⁵² See Mutua, *supra* note 19.

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between their personal interest and the actual manifestation of human rights. Chile's history assured a certain credibility or legitimacy—as it is one of the main pillars of good governance⁵³—to leaders in power throughout history from which Peru can learn from to foster a *de facto* application of human rights. As for the saviors, NGOs, Institutes (like the one I was assigned to in Peru) or leaders remedy the symptoms felt by the population. However, they only tackle the symptoms as the *de facto* application is inhibited by the lack of manifestation of the *de jure* laws.

To render the impact of organizations superior and more effective, the Raoul Wallenberg Institute advocates the need for more:

“systematic and in-depth examinations by human rights mechanisms of corrupt acts wherever they happen, particularly state review and monitoring mechanisms. At the global level, UN treaty bodies and special procedures can integrate corruption consistently in their work. These mechanisms offer the possibility for anticorruption organizations to provide specific, detailed information, which would be examined with a human rights lens. These mechanisms have a crucial role to play to establish what duties states have and what rights people have when affected by corruption.”⁵⁴

IV. Some solutions to counter the eventual repercussions of a bad integration—or lack thereof—of human rights in political institutions

i. *Understanding the interconnectedness of political institutions and human rights*

A key element to solving the clash between the two domains, is internalizing their interconnectedness. Once human rights are well integrated within the aims of the political sphere, many

⁵³ See Erzsébet Németh, “Pillars of Good Governance” (2016) at 29, online (pdf): [International Journal of Government Auditing, <real.mtak.hu/39093/7/29_ijga_summer16_eng_www_color_1_u.pdf>](http://real.mtak.hu/39093/7/29_ijga_summer16_eng_www_color_1_u.pdf).

⁵⁴ See Raoul Wallenberg Institute, “The Nexus Between Anti-corruption and Human Rights” (2018), online (pdf): Nexus-report-online.pdf.

problems would no longer exist. In fact, human rights serve as a 'dominal effect solutionizer' to most of the State's greatest problems. When corruption is replaced with policies that directly aim to resolve poverty, hunger, inflation, political outbursts are not likely to occur anymore. If equality, fairness, and human rights are an integral part of the State's politics instead of being replaced by corruption, there lies hope for advancement, trust, credibility, and prosperity.

For example, poverty is a direct consequence of corruption. Where corruption exists, poverty is bound to take place—as governments are taking away the money for individual interest rather than collective purposes. Capital is necessary to address human rights issues and once it is stolen instead of redistributed to benefit civil society, violations of human rights proliferate. Indeed, as declared by the UN Office of the High Commissioner:

"For those living in poverty, many human rights are out of reach. Among many other deprivations, they often lack access to education, health services, safe drinking water and basic sanitation. They are often excluded from participating meaningfully in the political process and prevented from seeking justice for violations of their human rights."⁵⁵

Understanding that one can solve the other is a first step at reconciling political institutions with human rights. They should be dealt with by the actors that have the most power to reach actual, tangible progress. When the political actors in power do not integrate the concerns of their citizens within their agendas and ensure their *de facto* application, unrest and problems occur within civil societies.

ii. *The importance of good governance*

We have seen the consequences of having a weak government and understood the pressing need to reform this flaw if there lies any hope for change in terms of human rights. According to the Organization for Economic Co-operation and Development (OECD), good governance refers to the management of government in a manner that is essentially free of

⁵⁵ OHCHR, "About extreme poverty and human rights" (last visited 16 June 2023), online: *United Nations* <[ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights](https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights)>.

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abuse and corruption, and with due regard for the rule of law.⁵⁶ It is characterized by participation, transparency, accountability, rule of law and effectiveness. For instance, one solution to counter the negative effects that politics may have in human rights, is to establish “good enough governance”⁵⁷ with all the criterion that the OECD includes.

iii. Reconciling with history and rebuilding an ambience of trust

Another solution to the problem is to rebuild an ambience of trust. As we have established it with the comparison to Chile, trust in the system is fundamental in terms of advancing human rights. Whereas a climate of corruption results in a state of stagnation which inhibits any change.

An important difference between Chile and Peru is that the former has broken its people’s trust within the system multiple times throughout history. Merely electing a new candidate does not assure revamping of trust in the system—it must systematically be rebuilt. For things to ameliorate, there needs to be an alliance of both the State and human rights. They cannot be regarded separately or drive on, never coinciding routes. What does this entail in practice? It means allowing for people from vulnerable groups to represent the needs and rights of the people suffering from them. Women for instance should be able to be more implicated within the political domain and voice their specific rights and needs. Integration and inclusivity within politics is recognized as one step closer to acknowledgment and therefore, change of a pressing issue.⁵⁸

⁵⁶ See OECD, “Recommendation of The Council on Public Integrity” (last visited 16 June 2023), online (pdf): *Public Integrity* <[oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf](https://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf)>.

⁵⁷ See Merilee S Grindle, “Good Enough Governance Revisited” (2007) 25:5 *Dev Pol’y Rev* 553.

⁵⁸ See UN Women, “Progress on the Sustainable Development Goals: The gender snapshot” (2022), online: *Publications* <unwomen.org/en/digital-library/publications/2022/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2022?gclid=Cj0KCQjwj7CZBhDHARIsAPPWv3fSiffPONaxKONX26P21xy8IL5o-X9gfwHdSQn-bwgvmL7V1MSU2WAaAhvLEALw_wcB>.

"Ignorance is strength" as the dystopia's motto reads in George Orwell's novel.⁵⁹ And, in fact, if there are no data and no people speaking up, the first reaction is to neglect the problem as it more comfortable than struggling with the process of change. Stemming from this, we could think of the need to undergo reconciliation methods that many countries having experienced historical wrongs apply.⁶⁰

iv. *Solving the lack of de jure manifestation through de facto change*

Furthermore, there remains the need "to start over with an approach to promoting wellbeing in foreign countries that is empirical rather than ideological".⁶¹ While it is important for politics to integrate human rights within their bodies, it must not stop there. Minow accentuates the need for extra-legal strategies to promulgate social change.⁶² I agree with her view that "law is also the practices of governance and resistance people develop behind and beyond the public institutions."⁶³ Concrete, practical change must be made. And, here it is important to understand change "not as a leap, but a succession of brief, amazing movements each one making possible the next".⁶⁴ Indeed, as Lord Chief Justice Hewart declares, "justice must not only be done, but it must also be seen to be done."⁶⁵ *De facto* change must be seen within civil society's realities—which is instigated by the State but also, by civil society.

⁵⁹ George Orwell, 1984, (London: Secker and Warburg, 1949).

⁶⁰ See Paul Seils, "The Place of Reconciliation in Transitional Justice" (2017) ICTJ briefing 1.

⁶¹ See Eric Posner, "The case against human rights", *The Guardian* (4 December 2014), online: <theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

⁶² See Martha Minow, "Law and Social Change" (1993) 62:1 UMKC L Rev 171 at 175.

⁶³ *Ibid* at 176.

⁶⁴ *Ibid* at 182.

⁶⁵ Delhi High Court, "Mahender Yadav v Central Bureau of Investigation on 4 November (2016)" (4 November 2016), online: <indiankanoon.org/doc/144841144/?type=print>.

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In my internship, I had a lot of jurisprudential work related to the efforts of the IACHR within Peru. The efforts of the Court, while reading the cases, relied mostly on giving their recommendations regarding multiple cases of human rights violations. Here again, the actual efficiency of the Court with Peru's context remains unclear. Bernardi argues that the impact of the Court "depends on the domestic political context, particularly the relative balance of power between key actors that are inside and outside the state."⁶⁶ The author further explores after the fall of Fujimori and in the subsequent period, the political shifts between constituencies that have produced different levels of impact over time. Here-from reappears the need for the jurisprudence and decisions taken within to be applied by the people in power. Indeed, while the IACHR has rendered decisions ranging from constitutional reforms, property limitations for Indigenous communities, self-amnesties, freedom of thought and expression, forced disappearances, to massacres to women's rights, there remains inadequate enforcement of the recommendations and efforts it has yet to reach.⁶⁷ Many scholars criticize the fact that countries that sign international human rights treaties do not necessarily comply with them.⁶⁸ We have seen this is Peru and this flaw must be tackled by promoting collaboration and concrete applications of the *de jure* promises.

The limit of the international framework for the advancement of human rights is that by trying to implement international standards there is a risk of neglecting the realities of the society on the ground.⁶⁹ Just as politicians sometimes abuse of their

⁶⁶ See Bruno Boti Bernardi, "Transitional Justice and the Inter-American Human Rights System in Peru: The Role of Anti- and Pro-compliance Constituencies" in Par Engstrom, *The Inter-American Human Rights System: Impact Beyond Compliance* (London: Palgrave Macmillan, 2019) at 222.

⁶⁷ See Manuel E Ventura Robles, "Impacto de las reparaciones ordenadas por la Corte Interamericana de Derechos Humanos y aportes a la justiciabilidad de los derechos económicos, sociales y culturales" (2013) 2:1 *Revista Redpensar* 1.

⁶⁸ See IFC Review, "CANADA: Most international treaties are ineffective, study finds." (3 August 2008), online: <ifcreview.com/news/2022/august/canada-most-international-treaties-are-ineffective-study-finds/>.

⁶⁹ See Dipika Jain & Debanuj DasGupta, "Law, gender identity, and the uses of human rights: The paradox of recognition in South Asia" (2021) 20:1 *J Hum Rts* 110.

power to advance their personal agendas, human rights diplomats should be aware of truly addressing the problems of the people they are representing rather than getting caught up in a sub-category of traditional diplomacy.⁷⁰

v. *Human rights as an innovation and the role of leaders in power*

In my Innovation Law course, I have understood that innovations, transformations, or change were best fostered where the power of the State allowed for them. In fact, this was observed in Florence and in Venice where each were the spotlight of innovation for a delineated period, one being the home of free-thinkers—such as Michelangelo—and the other being, the dynamic center of commerce. Shortly after this period of creation and change, all this movement was dimmed down with the switch of political powers that was more concerned about profit rather than the ongoing innovation. Human rights as innovations must be fostered within the State's agendas. Political power exerted against human rights is instead looking to gain individual wealth and power through corruption will at minimum lead to unrest.⁷¹

vi. *Branching out: a collaboration of extra-legal and legal strategies*

When the state fails to advance societies rights, the need for extra-legal strategies grows—such as community organizing and grassroots activism. As Lobel puts it, efforts such as “grassroots mobilization, community organizing, alliance building, shaming, public campaigning, and active protest” must be made.⁷² To this argument, I would emphasize that the collaboration of both legal and extra-legal strategies are needed to optimize better integration of human rights. People can protest as much as they

⁷⁰ See James R Hollyer & B Peter Rosendorff, “Why Do Authoritarian Regimes Sign the Convention Against Torture? Signaling, Domestic Politics and Non-Compliance” (2011) 1.

⁷¹ See Daron Acemoglu & James A Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown, 2012).

⁷² Orly Lobel, “The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics” (2007) 120:4 Har L Rev 937 at 964.

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want, but if the state and the law do not eventually follow, their effects will not be very promising—or at least, not as much as if they were to be in collaboration.⁷³ To counter this point, Minow reflects on the circular relation between the law and social change.⁷⁴ She highlights the effects of context in terms of how far both components will reach. She explains that just because there is a new law that was introduced, it does not mean it will necessarily work. Indeed, sometimes society is way ahead of the law and the law therefore, too outdated. Or for example, an established law does not necessarily imply social change within the current context. Through this article, one reflects on the nature of the relationship that law and human rights have. However, even though Minow says that there is not always a harmonious collaboration between the two, it is undeniable that they both influence each other. On the one hand, human rights need the law to be enforced *de jure* and respected by all. On the other, the law has the power to enhance human rights and make better change in collaboration with other methods referred to earlier as extra-legal strategies *de facto*. In Peru, both methods need to be reinforced in order to change the state of human rights.

V. Concluding thoughts

This paper has allowed us to highlight specifically within the context of Peru, the interconnection that must lie between the political institutions and human rights. One cannot function efficiently and optimize amelioration without the other. We must understand human rights and politics as a human relationship. A political State that reinforces corruption and is based on a history of distrust has a lot of work to put into regaining trust necessary for concrete change. Credibility of the State must be protected and worked for. For instance, *de jure* manifestations of human rights framework must be enforced and truly felt within civil society's day-to-day realities. Public institutions in Peru are captured by vested interest and therefore, deviate the *de facto* implementation of human rights felt by civil society.

⁷³ See Chartrand, *supra* note 18.

⁷⁴ See Minow, *supra* note 62.

However, when pursuing human rights criticisms, it is as necessary to think about possible alternatives and other models that would resolve the conflict between human rights and the State. The beauty of human rights is that it is a multi-faceted field that encompasses a constant, diverse pool of thinking and re-thinking. It adds complexity to implementing them but ensures a breadth of learning and unlearning.

This uniqueness and complexity of the relationship between human rights and the State must be restored through transparency and trust—as would a loving relationship—in order to foster bettering and change. The human aspect of this process—that applies to any fight for human rights—is highlighted by many scholars when addressing social change.⁷⁵ Indeed, the uniqueness of human rights lies in its holistic need for persistent efforts addressing politics but also, hearts, minds, and structure.

⁷⁵ See Glenn E Singleton, *Courageous Conversations About Race: A Field Guide for Achieving Equity in Schools*, 2nd ed (London: Corwin Press, 2015) at 36.

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