

A failed Social Licence to Operate for the neoliberal modernization of Amazonian resource use: the underlying causes of the Bagua tragedy of Peru

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The concept of a social licence to operate (SLO) was originally developed for mining and has since been extended to other resource extraction operations, such as forestry. We develop and apply SLO theory as the conceptual framework to analyse neoliberal economic development in the Peruvian Amazon. The Peruvian administration of Alan García secured a legal licence to pursue this programme through legislative decrees, but the policies were not considered legitimate by Amazonian communities. As such the administration lacked a SLO from the communities affected by the policies. The failure to obtain a SLO led to civil protests culminating in violent confrontations between police and citizens causing 33 deaths. Theoretically, the study extends SLO analysis from projects proposed by companies and contested by communities to government policy decisions that may support actions by companies but which are contested by a range of social actors. The state, we argue, is not a neutral arbitrator in economic development and resource extraction but an active political agent. As such, it needs to legitimize its policies. In addition to the SLO literature, therefore, we also draw from legitimacy theory and argue that legitimacy requires both legal compliance and coherence with wider societal norms and standards.

Introduction

This paper analyses the social acceptability of the neoliberal economic policies pursued by Peru's government among Amazon basin residents during Alan García's second presidency (2006–2011). The García administration sought political and social approval for economic policies that profoundly differed from those advocated by indigenous groups, their representatives and support organizations, and other actors with a stake in the future of the Amazon region. The García administration sought to open the Amazon as a space for large-scale private sector investment from national and transnational corporations that would have expanded estate crop plantations, mostly in oil palm. It was believed that these policies would promote development pathways of the country's Amazon region at the expense of indigenous traditional livelihoods and self-determination (Vittor, 2008). The policies encountered widespread organized social resistance in the Amazon resulting in the so-called Bagua tragedy of 2009 that made international headlines (Carlsen, 2009), resulting in 33 deaths and some 170 injured, at least half by gunfire.

We use the concept of a social licence to operate (SLO) to interrogate why the policies of economic reform in the Amazon failed to secure social legitimacy. Since 1997, the concept of a

SLO has assumed a growing importance in the theory and practice of corporate governance. However, so far the concept has been developed and applied only to private sector businesses. We broaden the definitional scope of the concept of a SLO and apply it not to the private sector actors who sought to benefit from the García administration's opening of the Amazon, but to the administration itself. We argue that the resistance against the administration of Alan García in the Amazon can be explained in terms of a failure to secure a SLO? While the García administration was successful in obtaining legal approval from the political machinery of the Peruvian state, it failed to secure a SLO for these policies from an important section of Peru's society, despite significant efforts to obtain such acceptance.

The paper is structured as follows. The next section reviews the literatures on SLO, situating this concept in relationship to other forest policy tools such as legality verification, forest certification and corporate social responsibility (CSR). A central concept to all these tools is legitimacy. The related concepts of SLO and legitimacy form the analytical framework for the paper. The following section presents the case study, including a brief introduction to Peru and its forest communities. It also explains the policies of the García administration that were intended to open vast tracts of the Peruvian tropical forest region to mineral exploitation and agro-industrial production by national and

international corporations. We consider the Peru-US Trade Promotion Agreement, which the García administration used as an instrument to pursue these policies. In the final discussion section, we argue that SLO analysis should be broadened from projects proposed by companies to a wider scale, namely government policies that enable business investment in resource extraction projects that are contested by social actors. We argue that in the case of Peru, the state is not necessarily a neutral arbitrator or intermediary that pursues optimal outcomes for society at large, but an active agent that is ideologically predisposed to certain models of economic development over others.

The SLO and legitimacy of the state

Defining the SLO

The concept of SLO emerged from the mining sector (Joyce and Thomson, 2000; Gunningham *et al.*, 2004; Thomson and Boutilier, 2011a, 2011b), where it has become so well established that it is now the 'language of choice' for mining operators and affected stakeholders (Nelson, 2006, 161). The Canadian mining executive Jim Cooney first used the term in 1997, considering it a strategy for the survival of the mining industry. A SLO is an informal, implicit and ongoing permission granted to a business to engage in economic development or the extraction of natural resources. It is a form of bargain between a business corporation and one or more social groups, often including one or more communities. The SLO includes the conditions under which social groups and communities grant permission, and these conditions may change over time (Pike, 2012). The social licence has to be earned and then maintained, as it reflects the quality of a relationship that may change over time (Thomson, 2012). A SLO has been described as 'intangible, informal, non-permanent and dynamic' (Thomson, 2012). In order to obtain a SLO businesses should demonstrate respect for human rights, avoid corruption and take steps to minimize environmental harm (Bice, 2014).

SLO is a relatively new concept that has become part of the technical vocabulary of academics and of advocates supporting communities experiencing the negative impacts of mining operations. The emergence of the concept has had an emancipatory effect on communities, with corporate actors now seeking social approval in areas where they operate, even though they may have the necessary legal and political permissions and their environmental impact may remain within legally-established limits. SLO has thus come to be understood as the informal socially-defined requirement that a company needs to comply with in order to reduce the risks of social protests against its operations (Joyce and Thomson, 2000; Martin and Shephard, 2011).

A SLO is not to be confused with the formal, legal licence that may be granted by a publicly-accountable body to a private company for the extraction of natural resources. As Moffat *et al.* (2015) argue, while both legal and social licences constitute a recognition of what is acceptable corporate conduct, they each come from very different perspectives: 'Where the terms of a legal licence are located in the legislation of the relevant jurisdiction, the terms of a social licence are located in the values, expectations and perceptions of a broad set of stakeholders' (Moffat *et al.*, 2015, 5). Whereas the granting of a legal licence

is usually a one-off process, a social licence can be withdrawn at any time should a business lose the trust of the community within which it operates. A social licence should thus be seen as a dynamic concept that is reassessed, renewed and renegotiated throughout the life of a project. In contrast to a legal licence, which is carefully worded so as to guard against ambiguity, a social licence is unwritten, and unlike a legal licence, it cannot be enforced in the courts.

The idea of a SLO is not without its critics, especially within the business community. One business commentator argues that 'the ambiguity inherent in an unwritten social contract with an undefined social group is a business risk minefield' (Burse, 2015, 3). There are problems with how 'community' should be defined and the processes through which the terms of the social contract are agreed. While working to higher social and environmental standards than required by law may be seen as commendable, there is a risk that institutionalizing SLO may erode legal institutions. Thus, Bursey argues (2015, 3) 'We should not discard the formal process on the belief that direct civil action by public interest groups somehow represents a more democratically sound approach'. In this view, social campaigns should not be used to undermine formal legal processes; instead these processes should be refined and improved'.

Because the SLO is informal and rests on understandings that are usually tacit rather than explicit some imprecision surrounds the idea. Some see it as a spectrum, with differing degrees of acceptance rather than a binary measurement (with the SLO either granted or withheld) (Black, 2013; Hall and Jeanneret, 2015). It is easier to know when a SLO has been lost or withdrawn than it is to identify those instances where it remains in place (Owen and Kemp, 2013). Examples of a lost SLO include the cases of BP in the Gulf of Mexico following the Deepwater Horizon blowout, Shell in Nigeria and dam construction in Burma (Morrison, 2014). Dare *et al.* (2014) suggest that instead of conceptualizing a single SLO granted by a 'community' it makes sense to think of several licences granted by different actors, and at different levels of society. In this view, a resource extraction project may enjoy a social licence from some actors and stakeholder groups, but not others.

The SLO and neoliberal environmental governance

The concept of a SLO needs to be understood in the context of neoliberal environmental governance. Neoliberalism may be defined as the political view that the collective good is best realized when individual people and market players, such as businesses, are free to pursue their interests with minimal 'interference' from the state. The role of the state should be confined to providing the enabling conditions for trade, economic development and private sector investment. García's plan and policies for the modernization of the Amazon fit within a neoliberal logic; the state would open the Amazon as a profitable space for capital by freeing up access to public mineral and forest resources.

Neoliberalism has also set the parameters for environmental policy. Instead of 'burdensome' regulation from the state and the passing of new environmental legislation, neoliberalism stresses voluntary policy responses, such as private sector-led initiatives and market-led responses (Humphreys, 2006). Most

environmental policy responses of the last 25 years are grounded in neoliberal ideas, although there are exceptions. For instance, the legality verification policies being pursued by the European Union, Australia, the US and those tropical forested states to have entered into voluntary partnership agreements with the EU emphasize the primacy of national laws and their implementation (Cashore and Stone, 2012). The EU Timber Regulation aims to ensure that all timber imported into the European Union must be legally harvested in the country of origin.

Legality verification thus runs against the grain of neoliberalism by assigning a central role to the state. Many other forest policy responses seek to bypass the state. For example, forest certification operates through the favoured mechanism of neoliberalism – the market – and stresses voluntary business participation in schemes where rules are determined not by governments but by non-governmental actors such as businesses or environmental non-governmental organizations (NGOs). The Forest Stewardship Council (FSC) was established only after an international public body, namely the International Tropical Timber Organization, had failed to introduce a timber labelling scheme (Humphreys, 1996) and once it was clear that the 1992 United Nations Conference on Environmental and Development would not agree any legally-binding outputs on forests.

Like forest certification schemes, CSR eschews the state and fits comfortably into a neoliberal schema by relying on voluntary initiatives from business corporations (sometimes in conjunction with other stakeholders) such as codes of conduct and schemes agreed collectively, such as the Equator Principles (For the Equator Principles, see <http://www.equator-principles.com/>). CSR schemes are based on the assumption that businesses themselves know best how to raise their own social and environmental performances, with government legislation and regulation both unnecessary and likely to be counterproductive (Humphreys, 2009).

The four policy tools: legality verification, certification schemes, CSR and the SLO all represent different efforts to achieve compliance with socially acceptable norms and standards. But there are some important differences between them. For example, for forest certification, CSR and the SLO the emphasis is on norms and standards that do not necessarily have standing in national legislation, whereas legality verification stresses compliance only with the law. Like legality verification, forest certification schemes identify specific procedures that must be followed if timber is to be harvested and traded in compliance with agreed norms and standards. The difference between them is that whereas for legality verification the norms and standards are those of the state (or the EU), forest certification applies norms and standards that often go beyond those of national law (for example on indigenous land rights). The actors who legitimize the four tools also vary. Those consumers who buy certified products in effect endorse the norms and standards of the certification scheme. At least in theory, a similar logic applies with CSR; consumers use their purchasing decisions to endorse businesses whose CSR policies they approve of. However, in the case of the SLO approach the actors granting or withholding approval are usually local communities.

CSR and SLO each reflects a framework of norms and standards with which an actor must comply to achieve wider social acceptance. Some companies have adopted an SLO approach as an extension of their CSR strategy (Wilburn and Wilburn,

2011; Hall and Jeanneret, 2015). However, there are some important conceptual differences between the SLO approach and CSR. CSR is a self-defined approach to environmental governance, with the norms and standards being those that the corporation decides for itself. However, a SLO is not something that a business can grant itself. While a CSR policy can be internally-approved and audited, a SLO can only be granted (or withheld) by a community and affected stakeholders (Joyce and Thomson, 2000). A CSR strategy usually takes the form of a declaration of the principles and values that will guide corporate governance, whereas acquiring and maintaining a SLO is an operational activity that involves constant interaction with affected social groups. CSR and SLO are thus strategies that interact to an important degree while remaining conceptually distinct (Bice, 2014).

Legitimacy and the SLO

The concept of legitimacy is integral to the literature on non-state forms of governance. For example, Bernstein and Cashore (2007) have sought to identify the mechanisms that link actors and instruments to norms and standards based on the concept of legitimacy. While the law can confer legitimacy on an environmental policy initiative, legality and legitimacy are not the same. Legality is a quality based on conformity with the law and legal standards. Legitimacy, which may be seen as the foundation of authority in society, is a broader concept than legality. A practice may be considered legitimate when it conforms to certain commonly-accepted standards, norms and values, not all of which are necessarily defined in national or international law (Partzsch, 2011; Marx, 2013; de la Plaza Esteban et al., 2014). Suchman (1995, 574) defines legitimacy as ‘a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially-constructed system of norms, values, beliefs and definitions’. We now review some theoretical approaches to legitimacy in the social sciences in general, and the SLO and forest policy literatures in particular.

Legitimacy can justify the exercise of power. To Bodansky (2008, 705), a ‘legitimate institution is one that has a right to govern – for example, based on tradition, expertise, legality or public accountability, rather than relying on the mere exercise of power’. Beetham (1991) focuses on the rules by which power is exercised, defining three rules of legitimate power. First, legitimate power is exercised when it is acquired and exercised according to certain established rules. These rules may be legally established, for example in legal judgements or court rulings, or they may be based on custom and practice. The exercise of power is illegitimate when it is acquired or exercised in contravention of established rules. Second, ‘legal validity is insufficient to secure legitimacy since the rules through which power is acquired and exercised themselves stand in need of justification’ (Beetham, 1991, 17). Hence the second rule is that power should be considered legitimate only to the extent to which it is justified in terms of beliefs that are shared by both dominant and subordinate groups. When the beliefs invoked to justify power are considered authoritative only by those who wield power then the exercise of power cannot be considered legitimate. In other words, power must serve the general interests, not

just the interests of elite groups. The third rule of legitimate power is that subordinate groups must demonstrably express consent. Mere acquiescence to the powerful by the subordinate is not evidence of legitimate power. By demonstrating consent, subordinate groups introduce a moral dimension to power relations by granting social approval to the exercise of power by those who wield it.

Suchman (1995) argues that legitimacy concerns the social approval of an action, and distinguishes between pragmatic, moral and cognitive legitimacy to identify the attributes that may cause an action to be perceived as legitimate. Pragmatic legitimacy relates to whether the action undertaken by one agent meets the interests of the constituency or audience that is being affected. When this is the case, the constituency or audience is likely to accept the action as legitimate. Pragmatic legitimacy is thus determined by the target's self-interest. This applies to SLO as communities are more likely to grant a SLO to mining projects if the business provides benefits to the local community, such as employment opportunities (Prno, 2013). In such a case part of the process of agreeing a SLO may see communities seeking to shift the amount and type of responsibility that a business owes to the community by, for example, arguing for an increased share of the benefits from business operations (such as investment in community amenities). Moral legitimacy, in contrast, is about whether the acting agent does 'the right thing', and thus whether actions comply with widely-accepted standards and values, even though they may not directly relate to self-interest. Cognitive legitimacy incorporates two elements that distinguishes it from the other two types, namely comprehensibility and unavoidability. It refers to whether the actions of the actor who has power 'makes sense' to the actors who are affected (comprehensibility), and whether there is a sense that these actions are so well established and routinized that there is no realistic alternative way of doing things (unavoidability) (Suchman, 1995). Cognitive legitimacy thus arises when particular actions are easily understood and accepted by affected actors, with alternatives viewed, in effect, as unthinkable.

Scharpf differentiates between the input and output dimensions of legitimacy (Scharpf, 1997). Output legitimacy relates to the effectiveness or problem solving capacity of governance actions; actions are considered legitimate when they solve problems. Input legitimacy, on the other hand, relates to conformity to procedural demands, such as input from relevant stakeholders, participation, transparency and accountability (Bäckstrand, 2006; Cadman, 2011). Input legitimacy thus relates to the social acceptability of the processes by which decisions are made (the means), whereas output legitimacy relates to the social acceptability of the consequences of the actions (the ends).

The concept of legitimacy, and how it is earned, is central to forest certification schemes. Cashore *et al.* (2004) adopt Suchman's distinction between pragmatic, moral and cognitive legitimacy to explain the formation and operationalization of the FSC. FSC's survival depends on gaining pragmatic support from both environmental groups and industry, both of which have recognized that they can realize mutual gains through cooperating together. Moral legitimacy is granted to the FSC and its competitor schemes by the key stakeholders that approve the ethical basis for the rules, principles and decision-making processes under which the scheme operates. The need to keep

legitimizing coalitions together can help shape the strategic options for certification schemes, which must take care not to alienate the core actors who grant them moral legitimacy (Cashore *et al.*, 2004). Cognitive legitimacy would appear to be necessary if certification schemes are to survive as durable policy mechanisms that actors consider 'commonplace' and 'normal'.

Scarff's (1997) categories of input and output legitimacy have also been applied to certification schemes. Input legitimacy rests on the inclusiveness of certification scheme decision-making, while output legitimacy rests on whether the schemes deliver sustainable- or well-managed forests. Some sacrifice of input legitimacy may be needed to avoid protracted decision-making processes, yet such sacrifices could risk losing the future cooperation of key stakeholders (McDermott, 2012). It can also be argued that the input legitimacy of forest certification schemes can be compromised when decision-making is remote and distant from local stakeholders. McDermott (2012) distinguishes between certification processes that are based on relationships and long-term cooperation on the one hand, with those that are more socially disembedded and 'rationalist' with decisions made from a distance on the other hand. It is easier to nurture trust with relational systems than with rationalist ones.

The concept of trust is an important one in the literature on legitimacy and can be seen as central to all decision-making procedures, including those that relate to a SLO (Dare *et al.*, 2014). Trust may be defined as the reliance of one actor on the truth, honesty and integrity of another. Drawing from Poppo and Schepker (2010), Moffat and Zhang (2014) distinguish between integrity-based trust, which is created when the trustor believes that the trustee adheres to certain principles, and competence-based trust, which is based on the trustor's view of the skills and knowledge of the trustee in relation to the work of the latter. The trustor (such as the host community of a mining or forestry concession) is vulnerable to the actions of the trustee (in this case the business that is engaged in resource extraction). Should the trustee take advantage of the vulnerabilities of the trustor (for example by lack of transparency, deceit or failure to disclose relevant information fairly and fully) then there may be negative consequences for the relationship. When either integrity-based trust or competence-based trust is violated, the quality of the relationship between trustor and trustee is likely to deteriorate (Moffat and Zhang, 2014). This can result in a loss of legitimacy and withdrawal of the SLO by the trustor community or communities. The strongest form of trust is institutionalized trust, where the relationship between trustor and trustee is characterized by regular interactions and where the community feels a strong sense of ownership in the work of the trustee so that the SLO is at its strongest (Black, 2013; Meehan, 2016).

Trust can be maintained when the trustee demonstrates honesty and integrity in the relationship so that, other things being equal, the social licence is maintained. Procedural fairness, namely the treatment of a community by a business corporation in a way that is perceived as fair and respectful with relationships characterized by good quality contact, can help to generate trust between actors. Moffat and Zhang (2014) argue that procedural fairness (which broadly corresponds with what Scharpf calls input legitimacy) is more important than the social impacts of mining projects in maintaining trust in a SLO. In

other words, when decisions are made in a way that communities believe to be based on procedural fairness, communities are more inclined to accept them, even when the impacts of the decisions are not necessarily welcomed by the communities.

A principle of international law that is particularly relevant to input legitimacy (or procedural fairness) is free, prior and informed consent (FPIC). This principle, which is overlooked in the SLO literature (Baker, 2012; Bice, 2014), holds that indigenous peoples should participate in decision-making on development activities that affect their territories, resources and rights. Consent should be free (that is, freely given or withheld), prior (before implementation) and informed (by a full understanding of how any development activities will affect lands and communities). The principle is prominent in International Labour Organization (ILO) Convention 169, which Peru signed in 1995, and the United Nations Declaration on the Rights of Indigenous Peoples of 2007, which Peru voted in favour of. While this declaration applies primarily to indigenous peoples it is increasingly invoked in defence of the rights of other communities in forest regions. FPIC is primarily a duty of the state (Prno and Slocombe, 2012, 349), although the principle is more broadly applied to other actors, such as businesses and development agencies. The principle of FPIC appears to have evolved differently for mining operations compared with forestry. Mahanty and McDermott (2013) have found that the actors who have shaped the application of FPIC for mining operations have been international finance, industry and government, whereas for forestry, and in particular forest certification, environmental NGOs, indigenous groups and human rights activists have been prominent. The result is that in mining operations FPIC has come to be framed as 'consultation' whereas in forestry it is defined in terms of 'consent'.

Extending the SLO debate to the state

The state is a central actor in the SLO debate. It can grant, or withhold, access to businesses to operate in resource extraction projects. The state establishes the legal environment within which businesses and other actors operate through legislation and regulation, and it has a central role in economic development policy through the raising and spending of taxes. Yet, the SLO concept has only rarely been applied to the state and government policies (Bernstein, 2011). This is surprising given that governments are usually concerned about how well their policies are perceived and received by those that are affected by them. Efforts by the state to secure public approval may be interpreted theoretically as, in effect, actions to gain a SLO.

Earlier some important differences were noted between a legal licence granted by a public authority and the SLO, each of which articulates a different notion of legitimacy. Implicit in the idea of a SLO is that a legal licence to operate is not enough, and that even full compliance with the law need not satisfy the expectations of affected communities (Bridge, 2004; Prno, 2013). Something more that goes beyond the law of the state is thus necessary. But if the authority of the state is considered insufficient by those communities affected by resource extraction, this raises a fundamental question about the authority and legitimacy of the state and how well it represents the public?

According to democratic theory, the state is the sole sovereign and legal representative of its citizens. For example, according to Thomas Hobbes, individuals give their consent freely to the sovereign state to govern on their behalf. The state alone decides the rules of property ownership and use, and an individual may only claim rights to own or use property to the extent that the state permits it (Hobbes, 1989, 1651). But the idea of a SLO offers a theoretical alternative to the Hobbesian view of the state and suggests a deficit of state authority. The SLO literature focuses exclusively on private businesses, and an unexamined question in this literature is: does the state itself require a social licence to engage in resource extraction and modernizing development, or to grant permission to the private sector to do so?

That is the question addressed in the next section. We analyse the neoliberal resource use policies pursued by the Garcia administration in the Peruvian Amazon in an effort to boost the region's economy. We will analyse these policies through the lens of SLO, drawing in particular from the theoretical treatment of legitimacy introduced above.

The case study: Peru's modernization of Amazonian development

Peru is often perceived as a country on the Pacific Rim, but in fact 74% of the country (land mass 1 285 000 km²) is located east of the Andes in the Amazon. The country has a population of over 30 million and an annual per capita GDP of over US \$6000, but with 27.8% of the population still living in poverty (INEI, 2012). The Amazon basin of Peru has a number of larger cities including Pucallpa, Yurimaguas and Tarapoto in the north, and Puerto Maldonado in the south. The Amazon is characterized by poor road links to the industrialized western coast. Iquitos, the largest city of Peru's Amazon with over half a million inhabitants, is still inaccessible by road and can be accessed only by air and river. The region's economy is dominated by natural resource extraction; oil and gas as well as minerals and timber (APN, 2011). More than 90% of Peru's 679 000 km² of forest is located in the Amazon (Oliveira et al., 2007; ITTO, 2010; Quesada et al., 2011).

The Amazon basin of Peru is home to ~330 000 people of ethnic indigenous origin (~1% of the total Peruvian population and ~20% of the Amazonian population) (Mayor Aparicio and Bodmer, 2009). A much larger indigenous population inhabited the Amazonian until the incursion of Europeans in the seventeenth century. The Peruvian state regarded indigenous people as cheap labour; they received little legal protection or recognition of customary territorial rights or self-determination until the 1970s when indigenous territories were first recognized and Amazonian indigenous groups became politically organized.

The historical approach of Peruvian governments to natural resource exploitation and the rights of indigenous and Mestizo rural communities help to explain why social acceptability of government policies is often difficult to obtain. In 1832, Simón Bolívar cancelled the protection of inalienable communal territories in the Andes, which led to large-scale appropriation of communal lands and their consolidation into *latifundios* (large landed estates). These changes in land ownership contributed to the rural population becoming share-croppers, a workforce enslaved by debt bondage. Particularly, notorious is the sad fate

of indigenous groups in the northern frontier region during the rubber boom, when indigenous peoples were enslaved in rubber extraction. While the 1920 Constitution recognized for the first time the indigenous right to territory, it was only in 1974 that the *Law of Native Communities and Agricultural Promotion of the Selva and Seja de Selva Region* legally recognized Amazonian indigenous territories for the first time (Chirif, 1983; Gasché, 2012; Gasché and Vela Mendoza, 2011).

Until as recently as the 1980s the Peruvian state had only a limited reach in the Amazon. After the country gained independence in 1821 Catholic missions and other non-governmental actors dominated political life in the region for the nineteenth and part of the twentieth centuries (Peeler, 2003), and even today Amazonian regional governments seek local political support by opposing the central government in Lima. The longstanding neglect of the Amazon basin by successive Peruvian governments is important in understanding the historical mistrust towards the state in the region. For example, while the first García administration (1985–1990) worked with impoverished communities in the Andes (McClintock, 1989, 93) it paid limited attention to the poor of the Amazon. The administration's economic policies were also criticized for undermining indigenous collective rights (Yashar, 2005, 237).

Peru's shift to neoliberalism, which was the precursor to the Amazonia development policies pursued by the second García administration which led to the Bagua tragedy, dates to the first Fujimori Administration (1990–1995). Protection of indigenous territories had improved during the two previous decades when indigenous people engaged in struggles to achieve recognition and demarcation of customary territories and defended demarcated lands from invasion from colonists and agribusinesses (Chirif and García Hierro, 2007). But these achievements were undermined under the 1993 revised Constitution.

Seeking to legitimize Amazonian modernization policies

García was reelected as president in 2006, with most of his electoral support coming from Lima and the coast. However, he was defeated by his electoral rival Ollanta Humala in the Amazon (Madrid, 2012, 139). Humala's *Union para el Peru* party had won 45 of the 120 seats in Peru's House of Representatives, whereas García's APRA party (Alianza Popular Revolucionaria Americana) won only 36. (Humala was subsequently elected president in 2011.) García thus lacked a democratic mandate for his proposed neoliberal modernization policy of Amazonian territory. His administration sought to obtain a legal licence for its policies through legal mechanisms, in particular legislative decrees. However, it failed to gain a social licence for the modernization of the Amazon.

The García administration sought to use key media outlets to promote and legitimize its policies. Particularly important here are three newspaper articles that attracted considerable comment. The articles, authored by García himself, appeared in national newspapers (*El Comercio*, 27 October 2007; 10 February 2008; and *La Republica*, 26 March 2008). In the first of these articles, García referred to those policies aimed at preserving tropical rainforest territories as national public goods or as indigenous or communal lands without the right to sell or mortgage as the *perro del hortelano* (dog in the manger) syndrome.

The *perro del hortelano* refers to a seventeenth century Spanish comic play from Lope de Vega, about a dog in a garden that does not eat from the fruits of that garden, nor allow anybody else to harvest any fruits. The articles inferred that the 'backward' attitudes of Amazonian people, their organizations and representatives, and the Peruvian and international NGOs that supported them, resembled Lope de Vega's *perro del hortelano*. It was, García suggested, this attitude that prevented external entrepreneurs from investing in Peru's tropical rainforest regions, and thus generating economic benefits for the Amazonian population and for national economic development.

Suchman's (1995) taxonomy of pragmatic, moral and cognitive legitimacy is of relevance here. The articles may be viewed as an attempt to build pragmatic legitimacy by suggesting that Amazonian development was economically desirable both from a national interest perspective and from the standpoint of Amazonian rural communities. In this view, García was seeking to build a coalition of interests by pointing out the economic benefits that would flow to the Amazon from development, as well as being economically desirable for the country. There was also an element of an appeal to cognitive legitimacy: García was suggesting that the *perro del hortelano* syndrome was incomprehensible and that it simply made sense to harness these resources for the good of all Peruvians rather than deny their benefits to all. García was thus trying to build approval for the policies from Amazonian stakeholders, perhaps anticipating that the policies would meet resistance. However, from the perspective of Amazonian peoples the articles were considered patronizing in proclaiming a top down vision of development that had been elaborated without consultation with local stakeholders. To them the proposals lacked moral legitimacy, in that they were not judged acceptable according to the standards and norms that are culturally grounded in the Amazon (Gasché and Vela Mendoza, 2011; Gasché, 2012). Amazonian people saw the proposal as an external design that lacked legitimacy and which was being foisted on the Amazonian periphery from the governing centre, a perception that was heightened by the administration's lack of electoral support in the region.

Also of relevance to how the Amazonian modernization policies were perceived by the affected communities and others is how the García administration obtained its legal licence. Given expected controversy over the plans and anticipated opposition from a majority of the legislature, García sought to bypass normal legislative channels. Central to this process was the Peru-US Trade Promotion Agreement (TPA) (Jinnah, 2011). The TPA was signed by both countries in 2006, approved by the Peruvian Parliament that same year and ratified by the US Congress in 2007; it entered into legal effect in 2009. The TPA was opposed by many, including by Ollanta Humala and his *Union para el Peru* party. During deliberations in the US Congress, it was noted that the TPA might open the Amazon for timber and agricultural production that would accelerate deforestation in the region (Carlsen, 2009). To address these possible negative environmental outcomes, Chapter 18, Annex 18.3.4 of the TPA refers entirely to forest sector governance. It contains four clauses on Strengthening Forest Sector Governance and eleven clauses on Verification and Enforcement Measures. The first clause of the Annex declares its overall intent, stating that 'The Parties recognize that trade associated with illegal logging, and illegal trade in wildlife, including wildlife trafficking, undermine trade in products

from legally-harvested sources, reduce the economic value of natural resources, and weaken efforts to promote conservation and sustainable management of resources' (full text available at: https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf).

García dismissed political resistance against his plans to modernize the economy as an attack on modernity, criticizing his opponents as irrational and controlled by external interests (Burbach *et al.*, 2013, 110). Arguing that domestic opposition and political uncertainty might jeopardize implementation of the TPA, with ensuing negative economic consequences, García asked Peru's Lower House to grant him extraordinary powers. Law 29157, enacted in December 2007, granted García authority for 180 days to 'Legislate on matters related with the implementation of the Agreement to Promote Commerce between Peru and USA' (translated by the corresponding author from Spanish; *El Peruano*, 20 December 2007).

Armed with these powers, between 1 January and 4 July 2008 the president designed and approved 108 legislative decrees which, he argued, were necessary to successfully implement the TPA (<http://larepublica.pe/29-06-2008/los-102-decretos-de-alan-garcia>). Seventy-four of those decrees were announced during June 2008, and the remaining thirty-four on the last day allowed by Law 29157. According to some analysts (Eguiguren Preali, 2008; Chirif, 2010), no more than 20% of these legislative decrees could be linked to the implementation of the TPA. The reports on the Bagua incident also recognize this. The evidence, thus, indicates that the decrees, and Law 29157 that gave García powers to declare them, were a strategy to implement a neoliberal agenda while avoiding opposition from a hostile Parliament. None of the decrees were debated in the Peruvian legislature, as is the case for regular laws, nor were they subjected to public debate (Manaces Valverde and Gomez Calleja, 2010) at either the national level or with the Amazonian indigenous peoples who would be affected by them. According to our analysis (presented in Table 1), twenty-five of these decrees relate to environmental matters and affected the indigenous communities of the Amazonian lowlands. Yet, all the decrees were supposedly intended to address stipulations contained in Chapter 18 of the TPA.

The TPA was signed during the presidency of Alejandro Toledo (2001–2006) so any deficiencies in the agreement cannot be blamed on the García administration. However, it was García who turned to the TPA as an instrument to implement a wider neoliberal agenda and Amazonian modernization plans. We found no evidence of prior consultation on the TPA with the Amazonian rural communities and indigenous peoples' organizations that would be affected by its implementation. The negotiation and adoption of the TPA had violated the principles of what Scharpf (1997) refers to as input legitimacy and what Moffat and Zhang (2015) term procedural fairness, which they consider an important factor in generating the trust necessary for a SLO. The principle of input legitimacy was further violated when García used his executive powers to declare his 108 legal decrees. There was no attempt by the administration to secure FPIC from the communities, or their representative organizations, that would bear the social and environmental costs of the industrialization of the Amazon, nor was there any effort to engage such actors in a consultation process that all would regard as fair, inclusive and transparent.

Twelve of the legislative decrees were of particular concern to indigenous groups, their support organizations, human rights groups and Amazonian conservation advocates (shaded rows in Table 1). In August 2008, AIDSESP (*Asociación Interétnica de Desarrollo de la Selva Peruana*), an association representing Peru's indigenous federations, called for the derogation of decrees 1015 and 1073, both of which promoted the individualization and subsequent sale of collectively held lands. Indigenous organizations began organized protests against these decrees, including peaceful road blockades. In response, the Peruvian legislature revoked these decrees and established a multiparty committee to evaluate the demands of the indigenous groups. The committee recommended that an additional 10 decrees should also be revoked. Its report was finalized in December 2008 but approved by Parliament only on 7 May 2009.

Two other legislative decrees that attracted criticism are decrees 1090 and 1064. Together these decrees were identified in popular discourse and the media as the *Ley de la Selva* (Law of the Jungle) (In the various articles on the matter, *Ley de la Selva* sometimes refers to a single decree 1064 and sometimes to the collective of decrees that indigenous groups felt undermined their rights to territory, water, natural resources and collective decision-making), an ambiguous meaning of laws that primarily address the Peruvian Amazon while also suggesting increased lawlessness. Legislative decree 1090 effectively revised the existing Forestry and Fauna Law, while decree 1064 allowed for the change of the legal status of degraded lands. The two decrees would have made it possible to change the legal status of some 60%, or 45 million hectares, of Amazonian forests from forest lands (*tierrasforestales*) to agricultural land (*tierrasagricolas*). Private actors may acquire *tierrasagricolas* and convert them to oil palm plantations or other estate crops, something that is not possible for *tierrasforestales*, which only can be held in concession but which cannot be converted to other land use. It was predicted that the two decrees would encourage concession holders or prospective plantation investors to deforest or degrade tropical forest, and then change the status of the land to *tierrasagricolas* for plantations of timber or other estate crops (Carlsen, 2009).

The report from the aforementioned multiparty committee was approved by parliament, but was largely ignored by the García administration, which insisted that the decrees in question were necessary for the successful implementation of the Peru-US TPA (Manaces Valverde *et al.*, 2009). During a debate on the matter, Minister Mercedes Araoz, who occupied various ministerial posts under García's administration, defended the 12 decrees, without which the TPA would certainly not have been ratified by the US Congress. In particular she pointed at legislative decree 1090, the revised Forest Law, of which 'not a single dot nor comma would be modified' (Manaces Valverde *et al.*, 2009; Manaces Valverde and Gomez Calleja, 2010, 17).

The Bagua tragedy and its aftermath

The strongest evidence that the García administration's Amazon modernization visions and policies had failed to achieve legitimacy and a social licence for modernizing development in the Amazon is the Bagua tragedy. Following the design and

Table 1 Environmental legislative decrees enacted under President García's special legislative powers

LD number	Content	Date
994	Promotes private investment in irrigation projects	3/13/2008
995	Re-instates the Agricultural and Livestock Bank	3/13/2008
1002	Adopts provisions concerning promotion of investment for generation of electricity with the use of renewable energies	5/2/2008
1007	Promotes the irrigation of uncultivated lands with desalinated water	5/3/2008
1015	Unifies procedures for rural and native communities from the mountains and the forest with those from the coast, to boost agricultural production and competitiveness	5/20/2008
1020	Establishes the regulatory framework to promote the organization of Agrarian producers and the consolidation of rural property to expand the access to agrarian credit	6/10/2008
1027	Amends the Fisheries General Law – Legislative Decree 25977	6/22/2008
1032	Declares of national interest the investment and administrative facilitation of aquiculture activity	6/24/2008
1042	Modifies and complements the final provisions to Law 28271, which regulated the environmental liabilities of the mining activity	6/26/2008
1048	Regulation of mining activities for deposits of mineral concentrate storage	6/26/2008
1055	Amends the Law 28611, General Law on the Environment	6/27/2008
1058	Promotes the investment in the activity of generation of electricity with water resources and other renewable resources	6/28/2008
1060	Regulates the National System of Agrarian Innovation	6/28/2008
1064	Establishes the systematized regulatory framework for agricultural land use	6/28/2008
1065	Amends Law 27314, General Law on Solid Residues	6/28/2008
1073	Amends b) of article 10 of Law No. 26505, law on private investment in the development of economic activities on the national territory, and on the lands of LD 1015	6/28/2008
1078	Modifies the law 27446 of national environmental impact assessment system	6/28/2008
1079	Establishes measures to protect the property of protected natural areas	6/28/2008
1080	Modifies the law 27262 – General Seed Law	6/28/2008
1081	Creates the national system of water resources	6/28/2008
1083	Promotes the efficient use and conservation of water resources	6/28/2008
1085	Creates the agency for the supervision of forest resources and wildlife	6/28/2008
1089	Establishes the special temporary regime of formalization and titling of rural lands	6/28/2008
1090	Approves the forestry and wild fauna law	6/28/2008

Note: The 12 decrees that are shaded are those against which indigenous groups protested and which were subsequently revoked by Parliament (Manaces Valverde and Gomez Calleja, 2010).

approval of the package of legislative decrees, several state agencies, but especially INRENA, the national agency in charge of natural resource policies, duly implemented these policies (Huaco, 2009). The first significant protests against the policies began when some 65 ethnic groups started a national strike on 9 August 2008 demanding the withdrawal of 38 legislative decrees enacted by García. *Protesta Indígena Perú (2011)* documented three cases of indigenous people occupying installations of oil companies at this time. Peru's Congress and AIDESEP signed an agreement to discuss the legislative decrees criticized by Amazonia people, but these discussions stalled less than 1 month later.

Following these steps, in an interview in December 2008 Peru's Minister of the Environment denied that there was widespread resistance against the Amazonian development policies. Later, when the parliamentary commission appointed to investigate the legislative decrees finalized its reports, the then prime minister refused to present these publicly, as had been promised, until after the enactment of the Peru-US TPA in February 2009. Only after indigenous organizations threatened new protests and occupation of state installations was a formal

dialogue forum (*mesa de diálogo*) established. However, only the organization *Confederación de Nacionalidades del Perú* (CONAP) was invited, and not AIDESEP. CONAP is an organization that represents indigenous organizations that are closer to the national government and are usually less critical of policies that negatively affect indigenous groups, with more radical groups not included.

This led to concerns from within AIDESEP that the *mesa de diálogo* was procedurally unfair and biased in favour of the government. AIDESEP then sought alternative ways to protest. On 9 April 2009, AIDESEP and many of its constituent indigenous federations initiated new strikes in the Amazonian towns of Yurimaguas, Iquitos, Puerto Maldonado, and Pucallpa, and the Andean town of Quillabamba, and began the road blockade of Bagua, located at one of the key roads from Peru's coast to the eastern interior. Groups in other locations joined this strike and towards the end of April state installations were occupied; and commercial roads and river traffic were blocked in various parts of Amazonia. In May, the government declared a state of emergency in the Amazonian departments of Cusco, Ucayali, Loreto and Amazonas. Various lead figures of AIDESEP were publicly

criticized by the state and the first violent confrontations occurred on 11 May 2009.

On 5 June 2009 at 5:00 am, police forces started breaking up the roadblock in Bagua, using helicopters, ground troops, tear-gas, rubber bullets and live ammunition. According to the police, the protesters started shooting first, but this is denied by all other reports. The result of this confrontation was 33 dead, 24 of whom were police, and 170 injured, half from bullet wounds. In the aftermath of the conflict the *defensoriadel pueblo* (ombudsman) identified 226 social conflicts against the García administration (Petras and Veltmeyer, 2011, 1999). Protests included street blockades in parts of Lima. Indigenous groups pledged to continue the protests until the legislative decrees permitting direct investment in the region were revoked (Rice, 2012, 91).

The Bagua tragedy received global publicity and had important consequences in Peru. After the tragedy, and with the help of international mediation, several *mesas de concertación*, or coordination forums, were established to resolve the tensions in the Amazon (Manaces Valverde and Gomez Calleja, 2010). The Peruvian Parliament appointed a committee to investigate the case. Six official reports were produced by members of this commission (e.g. Manaces Valverde et al., 2009; Manaces Valverde and Gomez Calleja, 2010; see Arroyo, 2010 for a review of all reports). Four of the reports concluded that the legal decrees were unconstitutional and that García had exceeded the powers that Parliament had granted him in 2007 by not following a due consultation process when defining and implementing the decrees. A process of consultation as called for by ILO Convention 169, which Peru signed in 1995, was also expected (Arroyo, 2010). Five of the six reports assigned responsibility for the Bagua incident to the Minister of Interior, Mercedes Cabanillas, who resigned after the incident, as did Prime Minister Yehude Simon. Only one of the six reports blamed García, who did not resign. The reports all recommended adoption of a Prior Consultation Law to regulate the consultation process stipulated in Convention 169. That law was approved by Parliament in August 2011.

Since the Bagua tragedy, there have been mixed results for those who opposed the neoliberal modernization of the Amazon. Many of the oil and mining projects that were initiated during the García administration are still in place. In 2013, for instance, some 75% of the Peruvian Amazon territory remained under oil exploration concessions, which was one of the main concerns of the indigenous protesters. However, the protests led to some policy reversals by the García administration. Some of the decrees that were disputed were revoked (Manaces Valverde and Gomez Calleja, 2010), and a new 2011 Forestry Law replaced Legal Decree 1090. The official presentation of the new Forestry Law stated that the law was the result of public consultations that involved government, legislature, regional and local governments, indigenous organizations and civil society organizations. There was also participation from the *defensoriadel pueblo* (MinAgri, 2011). However, four regulations to implement the law were approved only in mid-2015, according to some sources because it took time to subject them to consultation with indigenous representatives and other stakeholders (<http://semanaeconomica.com/article/economia/153306-organizaciones-indigenas-iniciaron-dialogo-con-el-estado-para-finalizar-consulta-previa/> (accessed 28 April 2016)). The law has received mixed responses from various groups that expect

to be affected by it and the associated regulations, including indigenous groups and forest companies (e.g. Cashore et al., 2016).

The Amazonian modernization policies of the García administration lacked legitimacy, which is the underlying reason why it failed to gain a SLO. The administration sought to demonstrate a pragmatic legitimacy for modernization, and also tried to convince the wider public that such modernization made sense cognitively. However, the proposed programme ran counter to the cultural norms of those Amazonian indigenous peoples who resist unilateral decisions over their ancestral lands from the government or any outside agency. The modernization programme also ran counter to Beetham's (1991) three rules of legitimate power. First, power was not exercised according to established and legally recognized rules. As noted, the procedures that the García administration used to pass the legislative decrees have been widely criticized (Varese, 2009). The official reports on the Bagua tragedy (Arroyo, 2010) agreed that the most controversial decrees were unconstitutional and that García had overstepped his authority by designing and enacting them. His administration's Amazonian programme thus not only lacked a social licence; it was illegitimate within its own system of authority, with at least some of his policies lacking constitutional and legal standing. Second, the proposed neoliberal modernization of the Amazon was not successfully justified in terms of beliefs shared by dominant and subordinate groups. While the administration sought to do this by constructing a narrative that economic benefits would flow to the Amazon, this narrative was rejected by the people who would be affected. The values and beliefs underlying the decrees that García passed were primarily those favoured by dominant groups in Lima and the coast. The programme thus lacked output legitimacy (Scharpf, 1997) in the eyes of what Beetham calls 'subordinate groups', in this case Amazonian indigenous peoples. These peoples did not give their consent to these decrees. In fact they were not even asked to do so, and used various methods to express strong dissent. Using Beetham's three rules, therefore, the attempted neoliberal modernization of the Amazon by the García administration should be considered an illegitimate exercise of state power.

The García administration also failed to generate the trust that is considered necessary for a SLO. Here, we may return to the distinction drawn by McDermott (2012) between decision-making processes based on relationships and cooperation, and those where decisions are made from a distance. The García administration had no close relationships with Amazonian indigenous peoples and their support organizations and was perceived as a distant and socially disembedded actor seeking to impose a rationalist design that was not shared by the actors who would be most affected. García also alienated key stakeholders by criticizing opponents as 'irrational' and under the control of external interests. There was no trust between the administration and these actors before García announced his plans for the Amazon, and the centralized and authoritarian nature of his administration's decision-making precluded any possibility that such trust could be nurtured. The administration thus lacked integrity-based trust (Moffat and Zhang, 2014), in that it did not conduct itself according to principles recognized as fair by those who live in and derive their livelihoods from the Amazon.

Discussions and conclusion

We have argued that the Amazonian modernization policies pursued by the García administration can be interpreted and explained using SLO and legitimacy theory. In order to pursue an extractivist model of economic development for the Amazon the administration needed a legal licence. Because of political divisions within the Peruvian parliament at the time, García sought to rule by legal decree to implement the Peru-US TPA for 6 months. This strategy was condemned in the official reports on the Bagua incident; the legal decrees were declared unconstitutional, and García was criticized for having overstepped his authority. In this respect, the García administration's policies for the modernization of the Amazon not only lacked a SLO. They represented a misuse of political power with the administration lacking a legally-sound mandate to implement these policies.

From early on the administration sensed that there might be public disagreement with its policies, and efforts were made to convince both the wider public and the indigenous people who would be most affected by them, including AIDSEP and indigenous peoples' federations. These efforts were unsuccessful. Applying Beetham's three rules it is clear that the García administration lacked any form of social licence based on the legitimate exercise of power.

There can be no unambiguous response to the question of whether the proposed programme would have benefitted the Peruvian Amazonian and its peoples; that depends on whether one subscribes to the norms of modernizing economic development or those of the indigenous cultures of the region. We concur with the view that opening up the Amazonian territory likely would have resulted in a corporate frontier development (Browder and Godfrey, 1997), which would have resulted in major businesses acquiring large tracts of lands. Such a process would very likely have included lands that are not legally owned by indigenous communities, but over which they have customary claims to ownership or use for fishing, hunting, forest products collecting and small-scale logging for subsistence or local commercial purposes. A widely-publicized case of the negative impact of corporate land grabbing in the Peruvian Amazon is that of Tamshiyacu, a town near the city of Iquitos (Chirif, 2016), where Cacao del Perú Norte S.A.C has tried to increase production of cacao and oil palm, expanding rapidly the area of full grown forest that is being converted to plantations.

Political organization among indigenous groups in the Peruvian Amazon has been strengthened over the years through struggles over territory and for political influence. Indigenous peoples were sufficiently well organized to be able to mobilize and resist the García administration's modernization plans which, we have argued, were lacking legitimacy. The process of pursuing the policies through centralized legal decrees did not meet the conditions of input legitimacy or procedural fairness. The decrees were designed and approved by García and his staff without wider political or public consultation and did not adhere to FPIC requirements. As the conflict evolved there was some feedback through political channels and the media on the policies, but this feedback was ignored by the administration.

Applying Suchman's categorization of types of legitimacy reveals that the policies did not meet the conditions required for pragmatic legitimacy, at least in the eyes of those protesting. The policies would have favoured corporate investors, with few

benefits expected to flow to the resident population whose ownership over land, way of life and self-determination would have been negatively affected. The policies may also be seen as lacking moral legitimacy: they would have undermined local cultures, lifestyles and customs and ran counter to beliefs on traditional rights over territory and self-determination. The maintenance of these rights was valued more highly by the protestors than the economic gains and development model that were promised by the administration. Finally, the policies failed the test of cognitive legitimacy in that they were considered neither comprehensible nor unavoidable by the communities they would have affected.

We have argued for a conceptual broadening of the idea of SLO beyond its original application for private sector businesses operating in mining and forestry to include government policies, in particular those that would profoundly affect the ecosystems and lands on which populations depend for their livelihoods and which would alter management practices and result in benefit capturing of natural resource use. Our analysis thus adds a new dimension to the SLO debate by making clear that it is not just private businesses that need to secure social approval. Governments, too, need to reflect on how they can generate social acceptance for their policies, especially in a situation such as that analysed in this paper where the central government is both spatially and culturally distant from the region it seeks to govern.

It is helpful to consider briefly how the SLO concept can be applied in practice. There are various options. First, governments themselves could define processes to assess whether their policies might secure a SLO should they be implemented. This could take the form of agreed administrative procedures, perhaps similar to that for an environmental impact assessment (EIA). Such procedures could draw from scholarship on the social impact assessments that some developing countries now carry out, where local stakeholders participate and give evidence on the social consequences of government policies (Momtaz and Kabir, 2013). Second, the SLO is a tool that can be used by grassroots organizations, or by civil society groups that support grassroots organizations, to promote societal objectives such as rural development, nature conservation and social justice in government policies. It is also useful to expand the suite of case studies where the SLO concept can play a role to develop further theory and understanding on those conditions under which communities grant a SLO, and those when they do not. This paper has sought to contribute to that end.

We have argued that the concept of a SLO, which was first developed and applied to private businesses, can usefully be applied to the state. In doing so, however, some important differences between the two types of actor should be noted. The state is sovereign over its own territory and is the sole representative of its citizens. Through passing legislation the state establishes the legal framework within which businesses must operate. The state and the business each have very different constituencies. The state (or at least the democratic state) is, at least nominally, accountable to its own citizens. It also seeks recognition from the broader global community of states, for example through admittance to intergovernmental organizations. Businesses, in contrast, are accountable to their shareholders and, less directly, to their customers. Despite these important differences, in terms of securing legitimacy there is

an important parallel between the state and private business; in order to gain a SLO both must comply with norms and standards that are considered authoritative and fair by local communities and which adequately addresses their needs and interests.

Our study represents a first attempt to develop and apply the concept of a SLO to the state as an actor, and as such our conclusions should be accepted as provisional and tentative. Further research and application of the theoretical framework to other government policies is necessary, both in Peru and elsewhere. In particular, through using the notion of a SLO to explain the fate of the García administration's Amazonian development policies we argue that state legitimacy is, at least in part, derived from its relations with citizens or communities in different localities. In this view, the legitimacy of the state varies from place to place according to different localized contingencies. However, an alternative view should be acknowledged: that the state holds a broader legitimacy that is derived from sovereignty. For example, the issuing of presidential decrees and the use of police power to break the Bagua roadblock can each be seen as consistent with a Hobbesian view of the state exercising its sovereign authority in order to promote and maintain internal security.

Further research could focus on three areas. The first is the conditions under which states behave like private actors seeking approval and legitimacy from community actors, and those under which they behave hierarchically, exercising sovereign authority and economic or police power to impose policy. A second area of research could focus on the extent to which government development policies may require a SLO, in particular the conditions under which communities grant such a licence, and those under which they do not. Finally, and given the central role of the private sector in neoliberalism, future research could focus on the ways in which private actors can influence states to behave in ways that are more in line with the interests and values of private business.

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References

APN (Agencia Peruana de Noticias). 2011 *Perú Tiene 332.975 Pobladores Amazónicos y la Mayor Cantidad de Familias Lingüísticas de América*. <http://www.americaeconomia.com/politica-sociedad/sociedad/peru-tiene-332975-pobladores-amazonicos-y-la-mayor-cantidad-de-familias-l> (accessed on 8 April, 2016).

- Arroyo, P. 2010 *Perú: Bagua un año Después*. Servindi, <http://www.servindi.org/actualidad/27358> (accessed on 15 April, 2016).
- Baker, S.H. 2012 Why the IFC's Free, Prior, and Informed Consent policy does not matter (yet) to indigenous communities affected by development projects. *Wisconsin Int. Law J.* **30**, 688–704.
- Bäckstrand, K. 2006 Multi-stakeholder partnerships for sustainable development: rethinking legitimacy, accountability and effectiveness. *Euro. Environ.* **16**(5), 290–306.
- Beetham, D. 1991 *The Legitimation of Power*. Palgrave Macmillan, 313pp.
- Bernstein, S. 2011 Legitimacy in intergovernmental and non-state global governance. *Rev. Int. Political Econ.* **18**, 17–51.
- Bernstein, S. and Cashore, B. 2007 Can non-state global governance be legitimate? An analytical framework. *Regulat. Govern.* **1**, 347–371.
- Bice, S. 2014 What gives you a social licence? An exploration of the social licence to operate in the Australian mining industry. *Resources* **3** (1), 62–80.
- Black, L. 2013 *The Social Licence to Operate: Your Management Framework for Complex Times*. Dō Sustainability, 95pp.
- Bodansky, D. 2008 Legitimacy. In *Oxford Handbook of International Environmental Law*. D. Bodansky, J. Brunnée and E. Hey (eds). Oxford University Press, pp. 705–723.
- Bridge, G. 2004 Contested terrain: mining and the environment. *Annu. Rev. Environ. Resour.* **29**, 205–259.
- Browder, J. and Godfrey, B. 1997 *Rainforest Cities*. Columbia University Press, 434pp.
- Burbach, R., Fox, M. and Fuentes, F. 2013 *Latin America's Turbulent Transitions: The Future of Twenty-First Socialism*. Zed, 196pp.
- Burse, D. 2015 Rethinking social licence to operate - a concept in search of definition and boundaries. *Environ. Energ. Bullet.* **7**(2), 1–10.
- Cadman, T. 2011 *Quality and Legitimacy of Global Governance: Case Lessons from Forestry*. Palgrave Macmillan, 273pp.
- Carlsen, L. 2009 *Trade Agreement Kills Amazon Indians*. *Foreign Policy in Focus*, http://www.fpif.org/articles/trade_agreement_kills_amazon_indians (accessed on 8 April, 2016).
- Cashore, B., Auld, G. and Newsom, D. 2004 *Governing Through Markets: Forest Certification and the Emergence of Non-State Authority*. Yale University Press, 273pp.
- Cashore, B. and Stone, M. 2012 Can legality verification rescue global forest governance? Analyzing the potential of public and private policy intersection to ameliorate forest challenges in Southeast Asia. *For. Pol. Econ.* **18**, 13–22.
- Cashore, B., Visseren Hamakers, I., Caro Torres, P., de Jong, W., Denvir, A., Humphreys, D. et al. 2016 *Can Legality Verification Enhance Local Rights to Forest Resources? Piloting the Policy Learning Protocol in the Peruvian Forest*. IUFRO, <http://www.iufro.org/science/divisions/division-9/90000/90500/90505/publications/> (accessed on 2 May, 2016).
- Chirif, A. (ed). 1983 *Saqueo Amazónico*. Centro de Estudios Teológicos de la Amazonía, Iquitos, 204pp.
- Chirif, A. 2010 *El Perro Glotón y su Misterioso Capital*. Servindi 23 de febrero de 2010. <http://www.servindi.org/actualidad/22625> (accessed on 5 November, 2013).
- Chirif, A. 2016 *Deforestación en Tamshiyacu: ¿En qué país Vivimos?* Servindi, <http://www.servindi.org/actualidad-noticias/23/04/2016/deforestacion-en-tamshiyacu-en-que-pais-vivimos> (accessed on 29 April, 2016).
- Chirif, A. and García Hierro, P. 2007 *Marcando Territorio. Progresos y Limitaciones de la Titulación de Territorios Indígenas en la Amazonía*. IWIGA, 340pp.

- Dare, M., Schirmer, J. and Vanclay, F. 2014 Community engagement and social licence to operate. *Impact Assess. Project Apprais.* **32**(3), 188–197.
- de la Plaza Esteban, C., Visseren-Hamakers, I. and de Jong, W. 2014 The Legitimacy of certification standards in climate change governance. *Sustain. Develop.* **22**(6) 420–432.
- Eguiguren Praeli, F.J. 2008 *Análisis de la conformidad constitucional del uso de las facultades legislativas otorgadas por el congreso al poder ejecutivo mediante la ley n° 29157.* Oxfam America, <http://www.alainet.org/es/active/25742> (accessed on 28 June, 2012).
- Gasché, J. 2012 La ignorancia reina, la estupidez domina y la conchudez aprovecha. Engorde neo-liberal y dieta bosquesina. In *Articulando la Amazonia: Una mirada al mundo rural amazónico.* Programa de Cooperación Hispano Peruano (eds). Agencia Española de Cooperación Internacional para el Desarrollo, Lima, pp. 83–118.
- Gasché, J. and Vela Mendoza N. 2011 *Sociedad Bosquesina, Volume I & II.* Tarea, pp. 301 and 380.
- Gunningham, N., Kagan, R. and Thornton, D. 2004 Social licence and environmental protection: Why businesses go beyond compliance. *Law Inquiry* **29**(2), 307–341.
- Hall, N.L. and Jeanneret, T. 2015 Social licence to operate: an opportunity to enhance CSR for deeper communication and engagement. *Corp. Commun. Int. J.* **20**(2), 213–227.
- Hobbes, T. 1989 [1651]. *Leviathan.* Penguin, London, 736pp.
- Huaco, M. 2009 *Aportes Para una Cronología Creíble Sobre Bagua y que la Comisión Oficialista Ocultó.* Servindi, <http://servindi.org/actualidad/21112> (accessed on 8 April, 2016).
- Humphreys, D. 1996 *Forest Politics: The Evolution of International Cooperation.* Earthscan, 299pp.
- Humphreys, D. 2006 *Logjam: Deforestation and the Crisis of Global Governance.* Earthscan, 302pp.
- Humphreys, D. 2009 From Corporate Social Responsibility to the Democratic Regulation of Transnational Corporations. *Int. J. Environ. Cult. Econ. Social Sustain.* **5**(4), 207–217.
- INEI. 2012 *Informe Técnico: Evolución de la Pobreza 2007–2011.* Instituto Nacional de Estadística e Informática, Lima, Peru.
- ITTO. 2010 *Annual Review Statistics Database.* http://www.itto.int/annual_review_output/ (accessed on 2 November, 2013).
- Jinnah, S. 2011 Strategic linkages: the evolving role of trade agreements in global environmental governance. *J. Environ. Develop.* **20**(2) 191–215.
- Joyce, S. and Thomson, I. 2000 Earning a social licence to operate: Social acceptability and resource development in Latin America. *Canadian Mining Metallurg. Bullet.* **93**, 49–53.
- Madrid, R.L. 2012 *The Rise of Ethnic Politics in Latin America.* Cambridge University Press, 239pp.
- Mahanty, S. and McDermott, C.L. 2013 How does 'Free, Prior and Informed Consent' (FPIC) impact social equity? Lessons from mining and forestry and their implications for REDD. *Land Use Policy* **35**, 406–416.
- Manaces Valverde, J. and Gomez Calleja, C. 2010 *Informe en Minoría de la Comisión Especial Para Investigar y Analizar los Sucesos de Bagua.* https://docs.google.com/file/d/0B_Afa15_UyaRMtg5MjIyNDAZmVmZC00MGRkLWJlYjktNjc2OGQzZTcyYmU0/edit?ddrp=1&hl=en# (accessed on 8 April, 2016).
- Manaces Valverde, J., Mazezetti Soler, P., Pinilla Cisneros, S., Alvarez Lobo, R. and Bernales Alvarado, M. 2009 *Informe Final de la Comisión Especial para la Investigación y Análisis de los Sucesos de Bagua.* Ajumáish Junikchamu ati. Para que Nunca Vuelva a Suceder. <http://amazonwatch.org/documents/bagua-executive-report.pdf> (accessed on 20 April, 2016).
- Martin, P. and Shephard, M. 2011 What is meant by the social licence? In *Defending the Social Licence of Farming.* J. Williams and P. Martin (eds). CSIRO, pp. 3–11.
- Marx, A. 2013 Varieties of legitimacy: a configurational institutional design analysis of eco-labels. *Innovat. – Euro. J. Soc. Sci. Res.* **26**, 268–287.
- Mayor Aparicio, P. and Bodmer, R.E. 2009 *Pueblos Indígenas de la Amazonía Peruana.* Centro de Estudios Teológicos de la Amazonía, Iquitos, 339pp.
- McClintock, C. 1989 Peru's sendero luminoso rebellion: origins and trajectory. In *Power and Popular Protest: Latin American Social Movements.* S. Eckstein (ed). University of California Press, Berkeley, pp. 61–101.
- McDermott, C.L. 2012 Trust, legitimacy and power in forest certification: a case study of the FSC in British Columbia. *Geoforum* **43**, 634–644.
- Meehan, N. 2016 President's column: Social licence to operate. *J. Petrol. Technol.* <http://www.spe.org/jpt/article/10756-presidents-column-40/> (accessed on 12 April, 2016).
- MinAgri (Ministerio de Agricultura y Riego). 2011 *Ley Forestal y de Fauna Silvestre No 29763.* <http://www.actualidadambiental.pe/wp-content/uploads/2013/12/Ley-Forestal-y-de-Fauna-Silvestre-29763.pdf> (accessed on 28 April, 2016).
- Moffat, K., Lacey, J., Zhang, A. and Leipold, S. 2015 The social licence to operate: a critical review. *Forestry.* Advance access published 22 November 2015.
- Moffat, K. and Zhang, A. 2014 The paths to social licence to operate: An integrative model explaining community acceptance of mining. *Resour. Pol.* **39**, 61–70.
- Momtaz, S and Kabir, S.M.Z. 2013 *Evaluating Environmental and Social Impact Assessment in Developing Countries.* Elsevier, 199pp.
- Morrison, J. 2014 *Business and Society: Defining the 'Social Licence',* *Guardian*, 29 September, 2014. <http://www.theguardian.com/sustainable-business/2014/sep/29/social-licence-operate-shell-bp-business-leaders> (accessed on 12 April, 2016).
- Nelson, J.L. 2006 Guest editorial: social licence to operate. *Int. J. Mining Reclam. Develop.* **20**(3), 161–162.
- Oliveira, P.J.C., Asner, G.P., Knapp, D.E., Almeyda, A., Galván-Gildemeister, R., Keene, S., et al. 2007 Land-use allocation protects the Peruvian Amazon. *Science* **317**, 1233.
- Owen, J.R. and Kemp, D. 2013 Social licence and mining: a critical perspective. *Resour. Pol.* **38**, 28–35.
- Partzsch, L. 2011 The legitimacy of biofuel certification. *Agricult. Hum. Values* **28**, 413–425.
- Peeler, J.A. 2003 Social justice and the new indigenous politics. In *What Justice? Whose Justice: Fighting for Fairness in Latin America.* S.A. Eckstein and T.P. Wickham-Crowley (eds). University of California Press, pp. 257–284.
- Petras, J. and Veltmeyer, H. 2011 *Social Movements in Latin America: Neoliberalism and Popular Resistance.* Palgrave Macmillan, 274pp.
- Pike, R. 2012 *The Relevance of Social Licence to Operate for Mining Companies.* Schroder Fund Advisers LLC, 11pp.
- Poppo, L. and Schepker, D.J. 2010 Repairing public trust in organisations. *Corp. Reputat. Rev.* **13**, 124–141.
- Prno, J. 2013 An analysis of factors leading to the establishment of a social licence to operate in the mining industry. *Resour. Pol.* **38**, 577–590.
- Prno, J. and Slocombe, D.S. 2012 Exploring the origins of 'social licence to operate' in the mining sector: perspectives from governance and sustainability theories. *Resour. Pol.* **37**, 346–357.
- Protesta Indígena Perú. 2011 *Información Sobre la Lucha Indígena Amazónica en el Perú.* <http://indigenaprotesta-peru.blogspot.jp/> (accessed on 5 November, 2013).

- Quesada, C.A., Lloyd, J., Anderson, L.O., Fyllas, N.M., Schwarz, M. and Czimczik, C.I. 2011 Soils of Amazonia with particular reference to the RAINFOR sites. *Biogeosciences* **8**, 1415–1440.
- Rice, R. 2012 *The New Politics of Protest: Indigenous Mobilization in Latin America's Neoliberal Era*. University of Arizona Press, 160pp.
- Scharpf, F.W. 1997 Economic integration, democracy and the welfare state. *J. Euro. Pub. Pol.* **4**(1), 18–36.
- Suchman, M.C. 1995 Managing legitimacy: Strategic and institutional approaches. *Acad. Manage. Rev.* **20**, 571–610.
- Thomson, I. 2012 Corporate social responsibility – the social licence to operate a mine. *Int. Resour. J.*, November, 2012, http://www.internationalresourcejournal.com/mining/mining_november_12/the_social_licence_to_operate_a_mine.html (accessed on 12 April, 2016).
- Thomson, I. and Boutilier, R. 2011a The social licence to operate. In *Mining Engineering Handbook*. P. Darling (ed). Society of Mining Metallurgy and Exploration (SME), pp1779–1796.
- Thomson I. and Boutilier, R.G. 2011b *Modelling and Measuring the Social Licence to Operate: Fruits of a Dialogue between Theory and Practice*. <http://sociallicence.com/publications/Modelling%20and%20Measuring%20the%20SLO.pdf> (accessed on 19 December, 2015).
- Varese, S. 2009 *Cinco Siglos o Cuarenta Años: Poco ha Cambiado Para los Pueblos Indígenas Amazónicos en Lucha Por sus Autonomías*. <http://www.servindi.org/actualidad/opinion/17923> (accessed on 5 November, 2013).
- Vittor, L. 2008 *Perú: Ley de la Selva Para Vender la Amazonía*. <http://www.servindi.org/actualidad/3305> (accessed on 24 April, 2016).
- Wilburn, K.M. and Wilburn, R. 2011 Achieving social licence to operate using stakeholder theory. *J. Int. Bus. Ethics* **4**(2), 3–16.
- Yashar, D.J. 2005 *Contesting citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*. Cambridge University Press, 388pp.