Constitutionally Anti-constitutional

The Contradiction of Peruvian Parliamentarism

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After presidential and parliamentary elections were held in Peru on April 12, a presidential runoff will take place on June 7. The runoff will be between Keiko Fujimori – a right-wing candidate and daughter of former dictator Alberto Fujimori – and Roberto Sánchez – a left-wing candidate vindicating former President Pedro Castillo, who was impeached and imprisoned after a failed attempt to dissolve parliament in 2022. The outcome will determine who is going to become Peru's tenth president in ten years. The presidency, however, has seemingly lost its political import.

Even though Peru is formally a presidential system, Parliament has effectively ruled the country during the last decade. It has impeached four presidents since 2020, and substantially altered the 1993 Fujimori Constitution by reintroducing bicameralism. The new bicameral system is endowed with a very powerful Senate that will start functioning on July 28. I argue that, in essence, this Senate is *constitutionally anti-constitutional*. For its constitutional competences undermine the most basic principle of liberal constitutionalism, namely establishing checks and balances on the exercise of state power.

The Rise of Parliament

During the 50 years between 1965 and 2015, Peruvian politics was largely defined by presidentialism. As head of state, the president usually played a decisive role in determining the country's political course. Yet this tendency began to change drastically in 2016. Although Keiko Fujimori lost the presidential runoff to Pedro Pablo Kuczynski, her party *Fuerza Popular* won an absolute majority in Parliament. It has arguably ruled the country ever since.

While Article 113 of the Constitution allows Parliament to impeach the president on grounds of "permanent moral incapacity", Article 134 entitles the president to dissolve Parliament if it denies the motion of confidence to two Councils of Ministers. This dynamic played out fully between 2017 and 2020. After two impeachment motions and a vote-buying scandal, Pedro Pablo Kuczynski resigned in March 2018. His Vice-President Martín Vizcarra took charge. Faced with systematic parliamentary obstruction, Vizcarra dissolved Parliament in September 2019 with large popular support. The newly elected Parliament, however, returned the favour: It impeached Vizcarra in November 2020 on grounds of "permanent moral incapacity". Public opinion treated this as a parliamentary coup, and massive protests erupted. Manuel Merino, the parliamentarian who succeeded Vizcarra, resigned on his fifth day. Parliamentarian Francisco Sagasti then led a transition government until the 2021 elections.

The pattern entrenched itself. Pedro Castillo, who won those elections against Keiko Fujimori, survived two impeachment motions. Yet on 7 December 2022, instead of defending himself against a third one, he attempted to dissolve Parliament. In turn, Parliament called for an "immediate vote" and impeached him – although it actually lacked the 104 votes required for such an immediate process. His Vice-President Dina Boluarte took charge and, between January 2023 and September 2025, faced seven impeachment motions on grounds of "permanent moral incapacity". All failed, thanks to a mainly right-wing coalition aptly described as a "mafia pact" with which she cooperated. When her approval ratings and Parliament's fell below 5%, Parliament finally unseated her in October 2025 – six months before the elections. Parliamentarian José Jerí, who had been accused of rape, took over, but he too was impeached in February 2026 over corruption scan-

dals. Parliamentarian José María Balcázar then became Peru's ninth president in ten years. Like Boluarte and Jerí, he cooperated with Parliament's mafia pact. However, when he tried to oppose Parliament over the purchase of F-16 fighter jets through the U.S. Foreign Military Sales Program for over 3.5 billion dollars, the threat of an impeachment motion was raised, though it did not prosper. In fact, the Air Force and the Ministry of Economy had already signed the purchase contract and paid. The presidency, once again, proved effectively irrelevant.

Neither a Parliamentary Dictatorship nor Autocratic Legalism

At least since Boluarte's impeachment, the idea of a "parliamentary dictatorship" has gained traction in the public debate. Indeed, Parliament not only dominates the Executive, but has systematically captured the state. It has imposed itself on the National Board of Justice (NBJ), which is in charge of appointing judges and prosecutors, by impeaching two of its members. In this way, Parliament became capable of exerting control over the Judiciary. Furthermore, after the NBJ dismissed Delia Espinoza as General Prosecutor and appointed Tomás Gálvez instead, Parliament has managed to seize control of the Public Ministry as well. Moreover, Parliament's mafia pact has elected the heads of the Constitutional Court, the Ombudsman's Office, the Office of the Comptroller General of the Republic and the Superintendency of Banks, Insurance and Private Pension Fund Administrators. As if all of this weren't enough, since Keiko Fujimori's 2021 electoral fraud claim, Parliament has also tried to subdue the institutions overseeing electoral processes, such as the National Jury of Elections. Now, due to the irregularities of the last election, Tomás Gálvez has requested the detainment of Piero Corvetto, head of the National Office of Electoral Processes. Astonishingly, Corvetto resigned and, even though he is not legally entitled to do that during an ongoing electoral process, the NBJ accepted his resignation. The NBJ has also initiated a disciplinary process against him for "serious misconduct".

Yet is all of this accurately described as a parliamentary dictatorship? The figure of the dictator is usually associated with a single person disposing of absolute executive power. Moreover, in Latin American history, dictatorships have often been the result of a military coup led by a strong "*caudillo*". In this sense, the concept of a parliamentary dictatorship is misleading. For it risks personalizing a structural development, i.e. the democratic erosion that has resulted from Parliament's takeover of the state apparatus.

Similarly, the analytical framework of autocratic legalism does not seem to do justice to the Peruvian conjuncture. It is indeed true that Parliament – while preserving the appearance of democracy and the rule of law – has used sophisticated legal methods to remove liberal safeguards from within the constitutional order. Nevertheless, in Peru, no single actor controls the Executive. On the contrary, Parliament's mafia pact consists mainly of a coalition of parties that, despite losing the presidential election, have managed to capture the state. Moreover, by focussing too much on formal strategies of legal change, an autocratic legalist framework might disregard the "parallel powers" that materially undergird Parliament's rule – such as criminal organizations, national consortia, transnational corporations and illegal economies.

Against this background, I have argued elsewhere that, by systematically undermining the rule of law and the division of powers, Parliament is not only establishing the grounds for an authoritarian state. Rather, its onslaught against Peru's constitutional order might be more accurately described as a tendency toward lawlessness. This is particularly clear in the way Parliament fosters impunity – either through amnesty lawsand highly controversial impunity-and-amnesty bills, or by selectively shielding state actors, such as high-ranking police officers or former presidents like Merino, Boluarte and Jerí. Parliament also bypasses constitutional norms, such as in Castillo's impeachment, or selectively intervenes in ongoing legal procedures by means of the Constitutional Court. Indeed, the Court unconstitutionally dismissed Keiko Fujimori's corruption case and, on top

of that, argued that this ruling is not a binding precedent for similar cases involving left-wing politicians. These tendencies toward lawlessness would amount, in essence, to an unsettling sign of "fascisation", whereby the law loses its buffering role against politics. In any case, these are tendencies which the Senate now threatens to aggravate.

The Contradictory Constitution of Parliamentarism

As already mentioned, Parliament has massively altered the 1993 Fujimori Constitution in these last years. One of the most substantial changes was the reintroduction of bicameralism, which implied modifying more than 50 constitutional articles. Now, it is clear that the Senate will play a decisive role in Peruvian politics. According to Article 7 of its Standing Rules, although the Senate does not have a right of initiative to propose laws, it enjoys a veto power over the proposals of the House of Representatives. Remarkably, it can also modify these proposals and enact them as laws without any further revision by the lower house. This means the Senate will be able to actively determine the content of the law. According to Article 10, the Senate will also control a series of institutions that, constitutionally, are supposed to be autonomous: Besides having the power to choose and dismiss the members of the Constitutional Court as well as the Ombudsman, the Comptroller General and the Superintendent of Banks, the Senate can choose three directors of the Central Reserve Bank and ratify – or veto – its president. Unsurprisingly, the Senate is also entitled to dismiss members of the NBJ and, together with the House of Representatives, to impeach the president on grounds of "permanent moral incapacity".

The main thrust of my argument is that this Senate is *simultaneously constitutional and anti-constitutional*. It is constitutional insofar as Parliament has managed to craft such an almighty Senate by means of constitutional reform. At the same time, the Senate contradicts the principle of establishing checks and balances on the exercise of state power and, with it, the most basic tenets of liberal constitutionalism. In this sense, the Senate is fundamentally anti-constitutional. What is truly remarkable here is that, even though Peru still formally upholds presidentialism, in reality it has become more of a parliamentary system – at least with regard to the effective power relations within the state. This is no minor issue. If the historical purpose of parliamentarism was to defend a constitutional order from the threat of an almighty Executive, then Peruvian parliamentarism embodies a *living contradiction*. It is an alleged cure that has become worse than the disease.

Yet there is more. If the left-wing candidate Roberto Sánchez wins the runoff, he will most likely confront a dilemma: either bow to Parliament or face impeachment. From experience, we know that the former does not exclude the latter. What happens, however, if Keiko Fujimori wins? With *Fuerza Popular* having more than one-third of the Senate's seats, there would not be enough votes to impeach her. And if she once again bands together with Rafael López Aliaga's right-wing party, the resulting coalition would need to co-opt only one more vote in order to enjoy an absolute majority in the Senate. The threat, then, is that the living contradiction of parliamentarism paves the way for the return of a president who rules beyond the law. Under the aegis of the Senate, such a regressive dialectic might seal the fate of what is left of our democracy.

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