On Peru's Constitutional Crisis

Rodrigo Maruy

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Two hundred years after gaining independence, Peru finds itself in a state of political instability. Over the past six years, the country has had six different presidents — largely due to a persistent power struggle between the legislative and executive branches. Dina Boluarte, the current president, holds an approval rating of just 3% while facing three constitutional complaints: one for bribery, another for the murder of 44 civilians by state forces, and a third for breach of duty. The first two complaints have already been approved by the corresponding congressional subcommittee. Yet Congress, too, turns out to be a flawed and unpopular branch. With an approval rating of only 6%, it is continually altering the Constitution to advance the interests of its predominantly right-wing ruling parties. For this reason, discussions of parliamentary despotism have gained traction in the public sphere. Furthermore, given the violent suppression of protests by police and even military forces, the idea of a potential dictatorship under Boluarte's regime no longer seems far-fetched. It is crucial, however, not to lose sight of the deeper reasons for this predicament. Although it might be tempting to cast state actors as villains, doing so risks obscuring the historical and structural conditions which underlie the current political conjuncture. With this in mind, I argue that the ongoing turmoil in Peru reflects a *constitutional crisis*. Specifically, Peru faces a crisis that encompasses both the constitutional text, tainted by its authoritarian history, and the political constitution, understood as the actual form of government.

The Constitution's authoritarian history

The current *Constitución Política del Perú* dates back to 1993. After staging a self-coup in 1992, as a result of which Congress was dissolved and the Judiciary, Public Ministry and General Accountability Office were significantly restructured, former dictator Alberto Fujimori convened a constituent assembly. This decision was prompted by international pressure, which exhorted Fujimori to restore democracy. Within the elected assembly, Fujimori's party got an absolute majority with 44 of 80 seats. The resulting constitutional proposal was then ratified through a referendum in 1993 with 52% approval rate — although the legitimacy of this process as well as its results remain a controversial issue.

In public debate, the Constitution is frequently associated with the so-called "neoliberalization" of the Peruvian economy that took place throughout the 1990's. Indeed, after listing a catalogue of fundamental rights in Title I and defining the state's form and functions in Title II, the Constitution proceeds to determine in Title III an "Economic Regime" based on private initiative and "inviolable" property rights. This was arguably a reaction to the crises of public debt, capital flight and hyperinflation that the country had inherited from the 1980's. Nonetheless, it is rather unusual that the constitutional outlining of an economic regime is placed *prior to* the content of Title IV, which spells out the "Structure of the State". Insofar as placing carries symbolic weight in written constitutions, the fact that the economic regime precedes the structure of the state implies a certain priority of the former over the latter. This is no trivial matter: if a central aim of modern constitutions is the limitation of political power through a system of checks and balances, then prioritizing the economy in a constitutional text seems to undermine the significance of that aim.

More revealing, however, are the political decisions that were made under the aegis of the new Constitution. As a response to the terrorist movements that had been assaulting the country for nearly a decade, Fujimori's regime adopted authoritarian measures, including enforced disappearances, torture,

sexual violence and the use of death squads. To add insult to injury, Fujimori promulgated an amnesty law to pardon state officials convicted for human rights violations. In contrast to the former Constitution of 1979, the new constitutional text allowed for presidential reelection. Thus, Fujimori was reelected in 1995 and, once again, his party obtained an absolute majority in Congress. During Fujimori's second term, mass sterilization policies were implemented as a strategy to reduce poverty. Additionally, freedom of the press was undermined by Vladimiro Montesinos, head of the National Intelligence Service and the president's right hand. In 1997, the Constitutional Court repealed a law that would enable Fujimori to run for office a third time. Congress impeached three of its judges as retaliation. In 2000, Fujimori was "reelected". Faced with a major corruption scandal involving Montesinos, Fujimori called for new elections in September. He fled to Japan two months later. In 2005, he was arrested in Chile, and extradited to Peru in 2007. By 2009, Fujimori had been convicted for official abuse of power, corruption and human rights violations. He was then granted a highly questionable pardon in 2017 that eventually led to his release in 2023. Against this background, it is important to keep in memory that the current Constitution provided the legal framework within which Fujimori's authoritarian regime perpetrated the most brutal and systematic state crimes in contemporary Peruvian history.

Not a contingency, but a contradiction

It stands to reason that the cleavage between reality and the constitutional text was not a mere contingency, but a blatant contradiction. For instance, Article 1 stipulates that the "defense of the human person and the respect for her dignity are the supreme goal of society and the State". Yet it is estimated that 20,458 persons were killed by state forces in the armed conflict between 1980 and 2000. How many of those victims were executed under Fujimori's Constitution? For their part, Article 43 depicts the Republic of Peru as democratic and organized in accordance with the separation of powers, while Article 45 establishes popular sovereignty and binds the state to constitutional law. In principle, these provisions are supposed to prevent the formation of authoritarianism. The blatant contradiction with historical reality suggests that, in fact, the Constitution functioned as a "symbolic alibi", i.e. as a mechanism which allowed Fujimori's autocratic regime to procure legitimacy by presenting itself as a liberal democratic order (cf. Neves, p. 70-78). If the modern idea of a constitution is symbolically understood as a self-binding promise — a commitment by the political community to its members and by its authorities to exercise political power responsibly — then this promise was broken from the outset. Worse still, it was ideologically weaponized to mask and sustain a dictatorship. Such is the legacy of Fujimori's Constitution. Although Peru has since achieved a more stable and transparent institutional order, it is precisely this Constitution that the country continues to uphold.

Social demands for change

To flesh out the claim of an ongoing constitutional crisis, it is important to take into account that, in recent years, Fujimori's Constitution has not remained unchallenged. In October 2020, a referendum in Chile approved the drafting of a new constitution in order to replace the one that had been crafted by former dictator Augusto Pinochet. A month afterwards, the Peruvian people massively demonstrated against the impeachment of former president Martín Vizcarra and the ensuing capture of the Executive at the hands of Congress. The demand for a new Peruvian constitution began to gather popular momentum. Indeed, one factor which arguably contributed to the presidential election of Pedro Castillo in 2021 was his (ultimately hollow) promise to the people to convene a constituent assembly. After a failed attempt to dissolve Congress, Castillo was impeached and incarcerated in December 2022. Vice-president Dina Boluarte then became the head of state. As a consequence of these events, an outburst of protests unleashed nationwide, and the claim for a new constitution thrived once again in the streets. As of January 2023, 49 civilians — including 7 minors — had been murdered by police and military forces. In the aftermath, the demand for a new

constitution began to wither away. Although the claim to reconstitute the political order was reiterated by certain mass movements that same year, protests in 2024 have rather aimed for the repeal of specific laws concerning, for example, deforestation or the increasing lack of public safety due to organized crime.

A parliamentary onslaught on the Constitution

Meanwhile, Peru is experiencing severe constitutional change. In 2023, Congress (re)established a bicameral system, thus modifying 53 Articles of the Constitution. This was carried out even though bicameralism had been rejected by almost 90% of the population in a referendum in 2018. Now, Congress has put forward a subsequent constitutional reform that envisages to modify another 13 Articles. This proposal mainly aims to eliminate the *Junta Nacional de Justicia* (JNJ) — i.e. the institution which appoints, ratifies and dismisses judges as well as public prosecutors — in order to replace it with a so-called *Escuela Nacional de la Magistratura* (ENM). There is debate about the potential benefits or pitfalls that such a new institution might bring. Nevertheless, it is telling that Congress already tried to impeach the members of the JNJ in 2023 through an unsuccessful political trial, which was based on a high-handed accusation of "serious cause". According to the current reform proposal, the future Senate would also be entitled to impeach the directors of the ENM, likewise on the grounds of "serious cause". Furthermore, this proposal empowers the Senate to appoint and dismiss the directors of the *Oficina Nacional de Procesos Electorales* as well as of the *Registro Nacional de Identificación y Estado Civil* — i.e. two of the three main institutions that organize and regulate electoral processes. The proposal has already been approved by Congress in June, but it still has to be ratified twice. A first vote for ratification is to be expected in the following weeks or months. In the meantime, Congress has just ratified in a first vote yet another constitutional reform that modifies (and arguably politicizes) the way in which the director of the *Jurado Nacional de Elecciones* — i.e. the third main institution involved in electoral processes — is appointed.

By tampering with the Constitution and seeking to control the Judiciary and electoral processes, Congress undermines not only the division of powers but also the procedural logic of constitutional law, which is supposed to make its own alteration difficult and unlikely. Moreover, as seen by their current (dis)approval rating, both Congress and the Executive branch face serious legitimation problems. In the midst of this conjuncture, it wouldn't be surprising if the candidate who wins the next presidential election, scheduled for 2026, once again uses the populist strategy of promising to convene a constituent assembly.

A constitutional crisis in a dual sense

My argument is that the historical legacy of Fujimori's Constitution, combined with the current conjuncture, points to a state of constitutional crisis in a dual sense: a crisis of the constitution as both a written text and as the actual form of government. Importantly, this crisis manifests itself as a contradiction. On the one hand, the Constitution is tainted by its origins, having served as an ideological tool to legitimize an authoritarian regime. On the other hand, Congress's repeated efforts to weaponize and manipulate constitutional law continually jeopardize the political order. To contain or prevent the threat of parliamentary despotism, one is now compelled to defend the Constitution — even though it symbolically stands in continuity with its wretched history. This is the crux of the matter: Defending what remains of the rule of law in Peru paradoxically requires clinging to a written vestige of our dictatorial past. How can this contradiction be navigated when any claim for a new constitution risks either brutal state repression or the pervasive danger of falling into populism?

As a country whose macroeconomic stability relies on extractivism and the fluctuations of the global market, and where the law is deemed to be a mere instrument in service of economic interests and political power, Peru appears trapped in a state of crisis. One might thus succumb to the nihilistic temptation of thinking that, in such a context, a written constitution amounts to little more than a hollow document. Yet it is crucial to remember that any constitution, under-

stood both in its textual and institutional dimensions, is never a *fait accompli*, but remains a contingent and changeable outcome of collective human praxis. In this spirit, a crucial question remains: What would it mean — and what would it take — to collectively and democratically reconstitute Peru's political order? To address this challenge, as César Vallejo famously wrote, "there is still so much to be done!" (p. 146).

ABOUT THE AUTHOR

Rodrigo Maruy
Rodrigo Maruy is a postdoctoral researcher at the Chair of Law and Philosophy in the Center for Critical Computational Studies at Goethe University Frankfurt.

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