



## Tracing the Past, Shaping the Future: Latin American Constitutionalism and Its Discontents

### Interview With Professor César Landa

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# Tracing the Past, Shaping the Future: Latin American Constitutionalism and Its Discontents

## Interview With Professor César Landa

**Abstract.** Professor César Landa, a renowned constitutional law scholar and distinguished public servant in Peru, is one of the unique figures who successfully bridges the worlds of academia and political practice. In addition to his academic position as a professor of constitutional law, he has held several key state offices, including President of the Peruvian Constitutional Court, ad hoc judge of the Inter-American Court of Human Rights, Deputy Minister of Justice, and Minister of Foreign Affairs. Drawing on this unique combination of experience, Professor Landa offers a rich and informed perspective on the democratic challenges facing Peru and Latin America more broadly. At a time when democratic erosion and the crisis of representative institutions have become global phenomena, his reflections on institutional fragility, constitutional resilience, and the potential for democratic renewal have both scholarly and practical significance. This interview aims to contribute to the broader conversation on constitutionalism in the region and to bring Professor Landa's deep insights into the academic literature.

**Keywords:** Democracy; Constitutionalism; Peru; Latin America; democratic resilience

**Resumen:** El profesor César Landa, reconocido jurista constitucionalista y servidor público en el Perú, es una de las figuras que ha logrado tender puentes exitosos entre

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el ámbito académico y la práctica política. Además de su labor docente como profesor de Derecho Constitucional, ha ocupado diversos cargos clave en el Estado, entre los que destacan la presidencia del Tribunal Constitucional del Perú, juez ad hoc de la Corte Interamericana de Derechos Humanos, viceministro de Justicia y ministro de Relaciones Exteriores. Gracias a esta combinación singular de experiencias, el profesor Landa ofrece una perspectiva rica y fundamentada sobre los desafíos democráticos que enfrenta el Perú y, en un sentido más amplio, América Latina. En un contexto en el que la erosión democrática y la crisis de las instituciones representativas se han convertido en fenómenos globales, sus reflexiones acerca de la fragilidad institucional, la resiliencia constitucional y el potencial de renovación democrática revisten un notable interés tanto académico como práctico. La presente entrevista busca contribuir al debate más amplio sobre el constitucionalismo en la región y acercar las profundas reflexiones del profesor Landa a la literatura académica.

**Palabras claves:** Democracia; Constitucionalismo; Perú; América Latina; resiliencia democrática

César Landa (born 1958) is a distinguished legal scholar, holding a Doctorate in Law from Alcalá de Henares University (Spain). He pursued postdoctoral studies at the University of Bayreuth and the Max-Planck Institute in Heidelberg (Germany). Currently, he serves as a Professor at the Pontifical Catholic University of Peru. Along with his impressive academic career, he held prestigious positions, including Dean of the Law Faculty, President of the Constitutional Court, Deputy Minister of Justice and Minister of Foreign Affairs in Peru. This interview offers valuable insights into the interplay of law, politics, democratic struggles, and constitutional resilience in Peru and across Latin America, making it especially relevant for scholars of Latin American and critical development studies.

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Professor Landa, I would like to express my sincere gratitude for accepting my request to conduct this interview. I am truly grateful for this opportunity. With your permission, I would like to ask you some questions, specifically about constitutionalism in Peru and, more broadly, in Latin America. However, before we move on to the more specific questions, I would like to ask you a personal one. As you know, constitutional law is an interdisciplinary field that might be challenging to work on because it is closely related to politics. On the other hand, it is not a field commonly chosen by lawyers, especially those with financial expectations. Could you please share the factors that led you to choose this particular area of law?

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Dear Muhammet, thank you for the interview and for allowing me to discuss issues related to democracy and constitutionalism. We all make our choices based on various reasons and circumstances. The conditions we find ourselves in definitely influence our decisions. For me, both personal reasons and circumstances led me to focus on law, specifically constitutional law. I have always been deeply interested in the social sciences, including history, geography, literature, and politics. I wanted to study politics during high school and while preparing for university. However, at the time, political science was not considered a promising career option in Peruvian universities. Fields like law, medicine, and engineering were much more popular, possibly because they offered better job security after graduation or perhaps for other reasons. Another factor that influenced my choice is my family's strong legal background. Several lawyers and judges in my family and close circle have also played a crucial role in my decision to pursue a career in law. So, given these circumstances, I decided to study law at the Pontifical Catholic University of Peru. During my studies, I realised I had a particular interest in public law, administrative law, constitutional law, and the history of law. On the other hand, first, I had the chance to intern and work as a practitioner at private law firms. Then, I had the unique opportunity to observe parliamentary work firsthand as a practitioner in the parliament, which gave me valuable insights into how state institutions and parliaments function.

When I finished my bachelor's degree in law, I began working at the state level in an office, the Planning National Institute, which advised the presidential office. For example, at the General Office, I gained valuable insights into the structure and organisation of the state. I had the chance to bridge the gap between the theoretical knowledge I gained in law school and its practical application. I particularly remember working on the issue of decentralisation, as Peru is a country with diverse regions, cultures, social groups, and ethnicities. It is challenging for a central government to effectively navigate all these matters. While working in these offices, I had the opportunity to contribute to the draft of a new act that the parliament needed to pass to decentralise the state and establish autonomous regional governments in political, economic, and administrative matters.

Although I held various positions within public administration, academia was always a passion I could never ignore. That is why I decided to pursue a PhD in Spain. The education I received during my doctorate was so fascinating that I decided to leave public administration and fully immerse myself in academic life. After completing my PhD, I returned to my country as a young professor and began my career at the

Pontificia Universidad Católica del Perú. Of course, nearly 40 years have passed since then, and during that time, I've had the privilege of serving in many vital roles at the state level. I had the opportunity to work as a public servant, Deputy Minister of Justice, Judge ad hoc of the Inter-American Human Rights Court, President of the Peruvian Constitutional Court, and eventually as Minister of Foreign Affairs.

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The fact that you have worked both in academia and as a practitioner in public administration is something that many people idealise. I mean academics, particularly legal scholars, are often criticised for not supporting their theoretical work with practical experience and failing to blend theory with practice. There can sometimes be significant gaps between theoretical knowledge and its application, and academics who are not involved in practical matters can overlook or miss this reality. However, despite choosing an academic career, you always remained in public administration.

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Yes, that is true. There is always a connection between the two. During my time in public service, I successfully bridged the gap between academia and the public sector. Many of our judge colleagues also teach at least one course at the Peruvian universities. It does not have to be much, but teaching even one course allows you to observe whether theory and practice align or diverge and how theoretical knowledge is applied in real-life situations rather than just conducting desk-based research. This experience is invaluable; sharing these insights with students is highly rewarding. It is somewhat similar to the American approach to teaching: law in action. Sharing these experiences with students is extremely valuable because these young people will not just become academics or practising lawyers; they will also be judges, prosecutors, advisors, lawmakers, or assistants to government officials and Congress members. Therefore, it would not be rational to fill the future decision-makers with only theoretical knowledge while isolating them from practical experience.

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Before moving on to my questions specifically about Peru, I believe it would be helpful to have a brief overview of Peru's democratic standards and, relatedly, its constitutional history. As you know, there are international organisations that assess the quality of democracy in various countries. In your opinion, is Peru a (i) democracy, (ii) a semi-democracy (hybrid regime), or (iii) an authoritarian regime? As you are aware, Steven Levitsky introduced a widely discussed and accepted regime classification, arguing that many countries, particularly in Latin America, operate under 'Competitive Authoritarian Regimes.' Of course, these classifications are not always clear-cut, and various shades of grey or intermediate forms of these regimes

often exist. Could you please summarise the history of constitutionalism in Peru? I also wonder how you would assess Peru's democratic standing in this context.

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Before evaluating a country's progress in terms of democracy and constitutionalism, it is useful to briefly consider where that progress started, how it has evolved, and where it currently stands. So, in response to your question—about the current state of Peru's democratic standards—I think it would be helpful to first touch on Peru's constitutional history. In 1821, after successfully gaining independence from Spanish colonisation, Peru introduced its first constitution in 1823 as a natural consequence of its newfound sovereignty. This constitution recognised the sovereignty of the people. It made it clear that both the president and members of parliament would be elected and could also be removed by the people through elections. I mean, it was a constitution with liberal and democratic features. However, like many that followed, it had a short lifespan. The model proposed did not quite match the reality of the time. Scholars refer to this in the literature as a "constitutional norm-reality mismatch." At that time, Peru was experiencing civil and international wars, which naturally led to instability in governance. In regions marked by war, the military naturally tends to hold power. The military, which had freed Peru from Spanish colonial rule and secured its independence, sought to maintain its influence by staging coups and asserting control over the government.

It would not be an exaggeration to say that the first half of the 19th century in Peru was marked by military coups and the constitutions drafted by those who led them. During that time, Peru and Bolivia were also united as part of a confederation (1836-1839). Being surrounded by powerful countries like Peru and Bolivia, Chile and Argentina felt threatened and ultimately emerged victorious in the war that broke out. Peru went through several new constitutions in 1839 and 1856 during this period. I want to open a parenthesis for the 1860 Constitution, which stands out compared to its predecessors. This constitution remained in effect until 1920—an impressive 60-year run. Its blend of both social and conservative elements made it somewhat paradoxical. However, despite this, the period following 1860 saw the replacement of the previously unstable constitutional, political, and economic environment with one of stability that lasted for more than half a century.

The 60-year period of stability came to an end in 1920. Although President Augusto Leguía won the elections, he did not have a majority in parliament. To overcome this obstacle, he resorted to a self-coup and dissolved the legislature, which he saw as a barrier to implementing his projects. Leguía made significant reforms in the new Constitution of 1920, establishing the rights of peasants and workers and recognising

the rights of indigenous people. He also fought against monopolies. However, these social reforms do not change the fact that Leguía was an authoritarian leader. His regime, which filled prisons with political opponents and shut down media outlets critical of him, can be described as "social but authoritarian." He even attempted to change the constitutional norm that limited a president to two consecutive terms. After his final attempt, he was removed by a traditional military coup.

After Leguía was removed from office through a coup, a series of movements and political parties emerged. For instance, the American Popular Revolutionary Alliance (APRA) was founded in 1924, and the Socialist and Communist parties were founded in 1929. Another significant development of this period was the rise of rebels who took to the mountains, leading to uprisings and the deaths of many people. However, despite this bloody period, social and economic reforms continued. Examples of these reforms include acknowledging the mandatory welfare state, establishing national hospitals and educational institutions, and granting women the right to vote. In 1968, another military intervention brought about significant changes. The influence of the 1959 Cuban Revolution on these changes in Peru is, of course, undeniable.

There is no need to delve into details, but in summary, a democratically elected regime emerged in 1968. Shortly after, a nationalist coup launched a campaign to nationalise natural resources, particularly oil. The state took control of natural resources and foreign enterprises. This was followed by a comprehensive agrarian reform, in which land ownership was distributed to the peasants. The idea was that if they worked the land, it should belong to them. This socio-economic transformation was followed by the 1979 constitution, which had a very modern outlook. It paved the way for Peru to integrate into international conventions regulating human rights. The Constitutional Court was established, and the idea of decentralisation began to gain support over the concept of centralised power being solely in the hands of the national government. Undoubtedly, the end of Franco's regime in Spain and the subsequent drafting of a democratic constitution also played a significant role in Peru's positive transformation.

But then, in other regions of southern Peru, especially in the mountainous areas like Ayacucho, the situation escalated as criminal activity surged by the terrorist movement "Shining Path". The civilian police forces were unable to maintain control. Another major issue was inflation—hyperinflation—driving up the cost of living as the welfare state's economy proved inefficient. When social-democratic President Alan García (APRA) refused to pay international debts, the economic crisis took on a global dimension. This led to inflation levels comparable to those seen in Argentina and Weimar Germany. Amidst this chaotic atmosphere, two prominent figures emerged as presidential candidates: the Nobel Prize-winning liberal Mario

Vargas Llosa and Alberto Fujimori, a populist of Japanese descent. Fujimori was the son of immigrants who left Japan for exile in Peru at the onset of World War II, and given his populist leanings, it is perhaps unsurprising that he resonated with the public. Despite being relatively unknown, Fujimori managed to win the presidential election.

With this lengthy historical background, I want to emphasise that democracy is a building process. Peru is an independent country that has held somewhat free and fair elections. However, democracy requires stability, sustainability and consistency, which Peru sadly lacks. While Peru has occasionally managed to conduct free, fair, and competitive elections, this should be a sustainable trend. Transitioning to democracy is not enough; you may also need to ensure the consolidation of democracy, which can be an even more challenging process than the transition itself.

This way, democracy becomes more resilient and less fragile. Additionally, Peru faces some structural problems, including poverty, corruption, instability, and discrimination. Democracy is not just a political phenomenon; it is a comprehensive system that encompasses not only political but also economic and social elements. In an environment where corruption is widespread, having free, fair, and competitive elections does not make that system democratic. Given the current conditions, I cannot definitively call Peru a democracy or an authoritarian regime. This country is stuck in between, having yet to consolidate its democracy. However, this situation is not unique to Peru. Many countries are struggling to consolidate their democracies, and these countries are often referred to as being flawed democracies or as being hybrid regimes. I mean partly democratic and partly authoritarian. Therefore, we have a long way to go to achieve a stable and consolidated democracy. Nevertheless, I maintain my hope and genuinely believe this will happen someday.

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In 1992, Fujimori resorted to what is referred to as an 'autogolpe' or 'self-coup,' and this incident has been widely debated in the literature. How does a self-coup differ from a regular coup, such as a military intervention?

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First, I should mention that Fujimori was a leader who won the election without being affiliated with a party. Immediately after he won the election, he sought to implement neoliberal structural reforms nationwide, drawing inspiration from the Chicago Boys and Thatcherite policies. However, he faced obstacles. These structural reforms, which implied economic and social transformation, violated the 1979 Constitution, as that constitution emphasised social aspects and did not allow for the



economic and social reforms Fujimori aimed to implement. The Constitutional Court was blocking the steps Fujimori took. During that time, the Constitutional Court annulled five laws that Fujimori attempted to pass. He was also not strong in the bicameral parliament, being in a minority position. Thus, he faced two major obstacles to push through his proposed reforms: the parliament and the Constitutional Court. For this reason, Fujimori resorted to a rather unorthodox method—self-coup—by closing both the parliament and the court. The distinguishing factor that separates auto-golpe (self-coup) from a regular coup is that a typical coup is executed from the outside. An institution without political authority—usually the military—intervenes to overthrow the political power. In Fujimori's case, it was an inside job, a coup by a legitimate political entity that had come to power through elections. This is why this intervention is referred to as an auto-golpe or self-coup.

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Speaking of coups, I noticed that while you summarised Peru's constitutional history, you mentioned dozens of constitutions from both recent and distant times. As I understand it, each time a new constitution is established, it is often followed by a coup against the civil authority. I guess it would not be inaccurate to conclude that it is a tradition for those who plot the coup to bring their constitution along with them.

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Yes, I think it would not be incorrect to say that Peru's constitutional history is one of new constitutions followed by coups. This question reminds me of a dialogue in the preface of a book titled "Modern Constitutions," written by a British author, Wheare. In the preface, a Frenchman asks a British Lord (If I remember correctly, his name was Lord Lawrence), "Despite your deep-rooted history, culture, and civilisation, why don't you have a written constitution like other European countries?" Lord Lawrence responds, "Yes, we do not have a constitution because most countries need a constitution to resolve conflicts."

When we examine France, we observe that it developed numerous new constitutions following the Revolution, particularly in its early stages. This phenomenon is more evident in heterogeneous, divided, and fragile societies. When a conflict arises, the political elites believe it can be resolved through a new constitution. However, when this constitution does not reflect reality, other groups intervene to amend it. They have often tried to apply the same method repeatedly, aiming for different results, and of course, they have mostly been unsuccessful. In Peru, those who come to power, whether through force or otherwise, have considered it their duty to create a new

constitution. They believe the new constitution can address the problems created by the previous regime or those that the previous regime was unable to resolve.

Another aspect of this issue is whether liberal, conservative, civilian, or military, they all come to power with the belief that a new constitution is needed. That is why they often prioritise creating their own. This is essentially a fiction, a misconception, or we can call it a myth. There is even a perception that whoever creates the constitution rules as if they were a king. In the Middle Ages, the king owned the order. But we are no longer living in the Middle Ages. The Constitution does not hold such mystical power. The notion that whoever creates the constitution automatically establishes the order is a flawed perception, and history has demonstrated that these assumptions are indeed incorrect.

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Before we return to the issue of constitutions being seen as a panacea, I'd like to touch upon another point. When examining the constitutions created by Latin American countries, particularly in the 19th and 20th centuries, we observe that they significantly limited the terms of the presidency. Indeed, this is one of the most outstanding contributions of Latin American Constitutionalism. I assume Simon Bolivar's advice against overly trusting a single individual and allowing that person to hold power consecutively likely played a crucial role in this restriction. So what happened in Latin America, which was once a pioneer in limiting presidential terms? Leaders in the late 20th and early 21st centuries began to loosen this rule and even abolish it altogether, as seen in Venezuela.

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The ordinary people see their leader as a saviour. At a certain point, the leader starts to genuinely believe in their role as a saviour. The first condition for the saviour to successfully fulfil their mission of rescuing the people is to remain in power. Therefore, it is clear that a leader who loses power will also lose their status as a saviour in the eyes of the people. Of course, this situation is not unique to this continent. It is closely related to the global rise of populism. Societies struggling with social, political, and economic crises, inequalities and discrimination tend to favour populist leaders. This phenomenon is evident worldwide. Unsurprisingly, large groups of people who feel socially marginalised and experience a sense of alienation and isolation turn their faces to these leaders who promise to integrate them back into society. This marginalisation is not just social; economically disadvantaged groups who bear the burden of the nation yet are unable to enjoy its benefits also voice their grievances. The history of Latin America is marked by intense social, economic, and

political discrimination. Therefore, the popularity of populists like Hugo Chávez in Venezuela, Rafael Correa in Ecuador, Evo Morales in Bolivia, and Alberto Fujimori in Peru is not coincidental. It is also not unexpected that these saviours would seek to amend the constitutions to solidify their power or take steps in that direction, given these dynamics.

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The common characteristic of the leaders you mentioned is that they are from the Andean region of Latin America. This is quite interesting because much of the literature written about this continent primarily focuses on countries in this area. Therefore, I want to draw attention to this specific region. In this region, Venezuela, in particular, is a striking example. Over the past 40 years, Venezuela has evolved from democracy to competitive authoritarianism (during the Chávez era) and then to a fully authoritarian regime under his successor, Maduro. It is quite interesting because Venezuela is one of the rare countries that has exhibited all shades of democratic and autocratic features in the spectrum, including its grey areas, over the last four decades. How did Venezuela reach this point? What were the mistakes or turning points that led it to its current state?

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Venezuela was a rich country. We're talking about a country with abundant underground resources, such as oil. However, there was a sort of caste system in Venezuela. Having rich resources is not enough; if you can somehow distribute these resources to society, you can claim to have achieved a welfare state. Venezuela was a rich country, but it was not a welfare country. Due to discrimination, the gap between the rich and the poor was quite apparent. The upper class could benefit from this wealth, while only a few in the middle class did, and the lower class, which comprised most of the population, could not access these opportunities. The state provided education and healthcare support, but this support was not given to everyone. Water and electricity existed, but not everyone had access to them. Life was more comfortable and accessible for the upper class, and to a minor extent, for the middle class. It is also challenging to explain the situation in Latin America solely in terms of inequality, as this term is insufficient to describe the unjust system. I think we need a conceptual clarification here. The accurate concept here, I believe, is not just inequality but rather discrimination against local, native, Indian, and indigenous people. This is a disease and not something unique to Venezuela. For decades, the political elites in Venezuela avoided addressing this disease. Then, a man named Hugo Chávez shouted to society that discrimination was a disease that must be treated. He touched upon an issue that everyone knew but had not addressed for decades. He did not hesitate to question the existing system. Naturally, this caught

the attention of the public. Those who believed the system needed to change brought Chávez to power. They trusted this man, who identified himself and his party as social, nationalist and democratic, and he became their leader. Traditional parties that had existed for nearly half a century were sidelined for the first time.

Chávez adopted a social and nationalist constitution by referendum in 1999, rather than the traditional constitution. Chávez needed constitutional changes to implement the reforms he idealised. However, in 2002, the opposition attempted a coup against Chávez, but he managed to survive the coup attempt. Second, in 2004, he gained public support by approving the opposition's request for a recall referendum. The opposition lost this referendum by a clear margin of 60% to 40%. Third, Chávez amended the constitution through a popular referendum, removing the term limits on the presidency. After this, Chávez gradually consolidated his power within the state institutions. In the legislature and the judiciary, Chávez succeeded in weakening the essential elements of democracy, such as the separation of powers and the checks and balances mechanisms. This meant that no institution, including the highest norm—the constitution—could prevent the political control of powers, which eventually extended to the judiciary and electoral bodies. It is unavoidable for someone with such authority not to have authoritarian tendencies.

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Another advantage of Chávez was his military background, right? Without the support of the military, a leader is unlikely to remain in power for a long time on this continent. Can we claim that Chávez's military roots effectively neutralised veto powers?

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Of course, Chávez's background as a former commander was a significant advantage. But it is not just about having military roots. He also allocated a substantial portion of the state's resources, like oil revenue, to the military budget. This helps him to neutralise the threat of a coup effectively. Another factor that contributed to Chávez's success was that he was not only a populist but also a charismatic leader, unlike his predecessors. He knew how to influence the masses and lead them. However, he tried to impact the masses not just through lip service but through genuine actions. For example, a car's tank could be filled for just \$3 during his time. The public could see that Chávez was fighting to address the income inequality between the privileged elites and the masses and the discriminatory rhetoric and actions of his predecessors. Of course, things did not always go smoothly. As a natural result of nationalistic policies, the state owned the largest oil-producing company. However, with such a

significant amount of money involved, corruption was inevitable in a country like Venezuela. When you add this to the corruption arising from Chávez's struggle to establish a one-man regime, it becomes quite challenging to speak of democracy in that context.

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Now, I would like to change the direction of our debate and move on to the unique characteristics of Latin American constitutions. Some constitutions are more general and framework-oriented, while others are highly detailed and casuistic. There are criticisms that casuistic constitutions, in particular, promise much to citizens but deliver very little. Where would you place the Peruvian constitution within this spectrum? Additionally, some constitutions have unique features and are even pioneering in providing certain, relatively new rights. If I'm not mistaken, there are constitutions in Latin America that recognise the right to 'good living' (Sumak Kawsay) in Quechua terms. How would you assess the Peruvian constitution in light of these observations?

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I think in the last century, we've seen a wave of new or renewed social ideas. These leftist movements, opposing the neoliberal mindset, have brought not just political but also constitutional changes. They've also aimed to reshape the historical rights of indigenous peoples. For instance, we see similar rights included in Ecuador's constitution during Correa's term in 2008 and in Bolivia during Evo Morales's term in 2009. In Venezuela, the constitution drafted by Chávez in 1999 also introduced new rights, like cultural and environmental rights. This constitution also added some measures to prevent discrimination and inequality. These constitutions also added rights designed to facilitate citizens' access to state institutions.

Another important issue is public participation. We've observed that these constitutions include elements to increase citizen involvement in decision-making processes. Especially in the 21st century, with these new rights, a new approach has emerged. We can call it 'participation of the people.' Participation was mainly about citizens voting in elections every few years, but the idea has evolved to recognise that this is not enough. There is now a growing belief that citizens should play a more active role in policy-making, extending beyond just elections held every few years. So, the main idea is either to strengthen horizontal accountability mechanisms or, at the very least, to ensure meaningful citizen participation in decision-making. For example, Bolivia's constitution allows citizens to elect justices of the Supreme Court and the Constitutional Court. Another key point is the use of referendums. Major issues, such as the establishment of constituent assemblies and the approval of new constitutions by those assemblies, have often been decided through referendums. For

instance, the Recall of the President mechanism in Venezuela's constitution is also an effort to increase citizen participation to ensure accountability. So, they wanted to reinforce the concept of 'sovereignty of the people.'

However, we must also remember that there is another side to the coin—a separate agenda. And that is the rise of authoritarian tendencies. On the one hand, we have leaders introducing new rights, but on the other, they're not willing to give up the traditional, charismatic, and authoritarian style of governance. In fact, they sometimes use citizens, for example, through referendums, to further this agenda. These leaders position themselves as both the head of the state and the saviours of the society they govern. We do not see real progress in this regard. The same authoritarian and charismatic approach to governance persists despite the inclusion of new rights in the constitutions. The paradox here is that these leaders take all the required measures to ostensibly ensure citizen participation, but on the other hand, they refuse to relinquish their autocratic style of governance, which undermines genuine citizen participation and accountability mechanisms.

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There are highly insightful studies on the procedures, processes and conditions for constitution-making. Common points among these research include the absence of societal division/polarisation, listening to the demands and expectations of all interest groups in society while drafting the text, achieving consensus on the text, and providing these groups with opportunities for meaningful deliberation. To what extent are these conditions observed in the constitution-making process in Peru and other countries on the continent? If deliberation had not been possible during the constitution-making process on the continent, what would have been the main challenge(s) before that?

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Of course, the features you mentioned—essential for making a constitution—are idealised. Consulting all interest groups in society, gathering their views, and reaching a common ground through mutual concessions are highly valuable principles. Democracies that adhere to these conditions are known as deliberative democracies. However, achieving this level of democracy is not as easy as it seems. What is needed is an embrace of pluralistic democracy understanding rather than a majoritarian one. The majoritarian view is, "I have the majority's support, so I can do whatever I want." In contrast, the pluralistic view, regardless of the percentage of votes, ensures that the interests of minorities are also considered and not overlooked. This is a significant issue in Latin America. I mean, there is an over-reliance on the majoritarian

democracy model on this continent. We saw this during Fujimori's era in Peru. The government wanted to establish a constituent assembly, but some democratic parties refused to participate because they were excluded from the process, and the government was not open to dialogue. When the majority shuts itself off from dialogue, participation by the minority in these processes is meaningless. In short, the prevailing mentality on the continent is that the majority has the right to make decisions over the minority, which is mistaken for democracy. However, this is not the case in European Continental Democracy, where there is no imposition of the majority over the minority.

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In my home country (Türkiye), the constitution is often given more significance than it perhaps deserves. When things go wrong, it is the Constitution that is frequently blamed as the scapegoat. However, constitutions are not a panacea; they cannot remedy every problem. They outline general principles, but the perception that a constitution can address all the maladies is partly shaped by political influence. Economic crises are even blamed on the constitution because, according to the prevailing view, it is not possible to progress with a constitution created by military coup leaders a few decades ago. Another continent where coups are commonly associated is, of course, Latin America.

Do you think a similar approach exists in Latin America? Do you believe constitutions are given more significance than they deserve on this continent?

Relatedly, can a constitution drafted by coup plotters be a good constitution? In other words, can coup leaders produce a modern constitution which is able to protect the fundamental rights of the citizens and limit the executive? Is it possible to create a modern constitution with liberal democratic elements through a coup, and are there examples of this in Latin America?

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Constitutions lay out the basic principles. They define both the fundamental rights and responsibilities of citizens and aim to limit the power of the government. These two aspects are essential for any constitution. However, we should not see constitutions as a magic key that solves all problems. Not every issue can be fixed and addressed by a constitution. Some problems are political, economic or sociological in nature. We cannot expect a law or a constitution to solve problems that do not stem from legal or constitutional issues. That is the first part of your question. Now, addressing the second part—whether military governments can produce a good constitution—is a tough question. In liberal democratic regimes, there is a specific goal they aim to achieve, and certain methods and measures are taken to reach that

goal. These two are not independent of each other; there is an inseparable connection between them. However, some conservative scholars in Peru hold the dangerous Machiavellian view that if the goal is important enough, the methods used to achieve it do not really matter. Unfortunately, these people forget that the procedure comes before the substance. There were those in history who defended this problematic view, even advocating for military regimes or now for the Peruvian government accused of having killed 50 protesters when President Castillo was dismissed in December 2022. The chances of a military regime transitioning to a democracy are very low. Efforts to achieve good constitutions under military regimes, if not always, usually end in disappointment.

Therefore, we can conclude that this approach is not the correct one. There are also empirical studies that support this argument. An authoritarian regime, like Venezuela, disregarding constitutional rules in the name of serving the people—even if the goal or supposed goal is “good”—is unacceptable. This would be a very dangerous approach. However, many legal scholars in Peru, Argentina, and Mexico have adopted and supported this dangerous stance. They justified military regimes by claiming that they restored order and provided justice. These people hold the dangerous belief that as long as justice is achieved, it does not matter who or how it is delivered. They argue that it does not matter who writes the Constitution. Returning to Peru’s Fujimori era, it is quite a coincidence that we are discussing his term as we received news just yesterday that Fujimori passed away. Many so-called intellectuals, academics, and legal scholars once supported Fujimori’s regime, claiming it brought the country order. But they seem to forget that Fujimori was responsible for massacres and the killing of innocent people, and was the cause of widespread poverty in the country. These individuals even lobbied for his release from prison through a presidential pardon. At this point, the Inter-American Court intervened, condemning such efforts and reminding the state of its responsibility and accountability.

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I want to return to the Constitution’s missions. As you pointed out, constitutions address two theoretical issues: ensuring and protecting citizens’ rights and controlling excess power. So, can we say that protecting citizens’ rights is impossible when power is not restricted? In other words, can we just conclude that these two aspects should be cumulatively fulfilled and argue that the first is at risk without the second?

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Indeed, Authority always seeks more control and order. It does not want disorder. On the other hand, society desires more freedom. When freedoms are under threat, people want to protest. This idea forms the basis of the liberal state concept. While we may think that the welfare of society takes precedence over individual welfare and that the government has the right to take measures required by this belief, this rule cannot be applied without limits. For this reason, during the pandemic, states justifiably implemented certain restrictive measures for the welfare and health of society. However, a balance needs to be struck here. This balance is quite delicate. Decision-makers must use their powers not arbitrarily but within the authority granted to them by the Constitution and laws. The principle of proportionality is, therefore, very important. We must recognise that decision-makers are not God. They are human, with both virtues and flaws. In each case, we need to check whether the decision-makers respected this delicate balance in their decisions.

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My next question is about judicial independence. Given your significant roles in the judiciary and politics—as President of the Constitutional Court, Deputy Minister of Justice, and Minister of Foreign Affairs—I believe you are the most suitable profile to ask this question.

How would you assess judicial independence in Peru? Is there political or military-based interference in the judiciary?

Do judges have the freedom to decide according to their conscience?

Are there effective mechanisms in the Peruvian constitution to prevent interference with the judiciary?

Specifically, has there been any political interference in the judiciary in particularly high-profile and sensitive cases involving public figures? Have you ever witnessed such interventions yourself?

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Unfortunately, the answer to the first question is no. It is quite difficult to say that the judiciary in Peru is independent. We once had a better functioning system. I'm referring to a system where the deans of law faculties, the president of the Bar Association, and Supreme Court judges were integrated into the selection process. However, politics has sadly contaminated this organisation, named by the media "White collar of port". For example, about five years ago, there was an investigation into a lawyer connected to a drug-dealing organisation who made contact with judges. I'm referring to an illegal organisation that attempted to influence the Board responsible for selecting judges. This Board is normally a vital mechanism that

nominates, selects and appoints judges. In 2019, President Vizcarra ordered an investigation into this organisation, but Congress was divided on the issue. Different and contradicting opinions on this matter emerged, leading to a proposed referendum. This referendum aimed to enhance the fight against corruption by re-establishing the independence of the National Justice of the Judiciary. However, the Peruvian parliament is quite corrupt. They opposed this initiative because they did not want an independent judiciary.

Regarding your question about whether the Constitution provides sufficient protection, yes, it includes safeguards that allow judges and prosecutors to decide independently and solely based on their conscience. The problem is not with the Constitution itself. It is not that there are no protective norms in it—there are. Again, we encounter the conflict between constitutional norms and the political reality. We need responsible politicians who respect the Constitution and are bound by it, because dark forces constantly corrupt its institutions.

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As you are aware, a vast amount of literature discusses the crisis of representative democracy. Recently, populism itself has become a highly popular topic. Scholars pointing to the crisis of representative democracy argue that voters have lost trust in their representatives, leading to decreased participation in decision-making mechanisms (such as elections), evident from the declining voter turnout rates. Consequently, populist leaders are gaining power on a global scale. Do you agree with the idea that representative democracy is in crisis? Are populist leaders emerging as a response to this crisis, or are there other factors behind their increasing popular support?

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That is true. There are many indicators suggesting that representative democracy is in crisis. First of all, people no longer trust politicians. They may go to the polls because they feel they have no other choice, but that does not mean they trust the candidates they vote for. For example, according to the latest surveys in Peru, only 6% of the public supports the parliament. Meanwhile, 90% say they are directly opposed to it. These figures are significant. They indicate not only the existence of the crisis but also its severity. According to these surveys, less than 10% of the public currently supports President Boluarte, while 88% oppose him. Due to this dissatisfaction and resentment, people are demanding early elections. However, parliament is not keen on holding elections before 2026, as it does not align with their interests. They are hesitant to face elections out of fear of losing the power they

hold. Naturally, this situation—the crisis—has led to the emergence and strengthening of social movements. A group recently staged protests against both the parliament and the president. In these events, between December 2022 and March 2023, around 50 people lost their lives because the government labelled the demonstrators as terrorists. Therefore, they saw no issue in targeting these “terrorists.” Currently, these incidents are under investigation, but I would not call it a criminal investigation; rather, we could refer to it as a political investigation.

These crises definitely create a breeding ground for populists. New individuals and emerging groups are often seen as alternatives by the public. Sometimes, they come up with rational ideas; other times, they’re irrational, but they’re quite effective because they manage to gain public support. The weakness of political parties in Peru also has an impact on this. Fujimori was a populist leader who took advantage of the crisis to win the 1990 elections, even without a party affiliation. When Fujimori escaped the country in 2000, Alejandro Toledo, despite not being a politician, also won the election by leveraging that crisis. He built his political agenda and plans around opposing Fujimori, which helped him win. Later on, for instance, Keiko Fujimori, the daughter of Fujimori, ran for the presidential office in 2011, 2016, and 2021 but lost all three elections. This reveals an important point: the public actually holds a certain idea. This idea can come from rationality, emotions, instincts, or a combination of these factors. In Peru, people tend to vote for leaders they perceive as relatable, which is why they are less likely to vote for those from the upper class. There is a tendency to favour leaders from ethnic and rural backgrounds over those from the upper class.

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Regarding the crisis of representative democracy, I would like to briefly discuss the role of referendums. As you know, liberals are generally not very supportive of referendums. However, the number of referendums conducted globally is continuously increasing.

Where do you place these direct democracy tools in democracies and hybrid regimes?

Do you think liberals are justified in their opposition to referendums?

Can referendums play an effective role in resolving constitutional crises? Are there concrete examples from Peru and/or Latin America where constitutional referendums have either addressed crises that politicians failed in or where they have exacerbated existing crises?

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Referendums are undoubtedly one of the key democratic tools. They should be seen as an effective means for individuals to play a significant role in decision-making processes. Democracy should not be viewed as a system where citizens only get involved during elections and then step aside. According to the concept known as "people in governance," individuals are expected to continuously participate in decision-making and remain part of governance even after elections. This is a key aspect of participative and deliberative democracy. However, for this to become a reality, we cannot just rely on elections. Through referendums, people have the right to either approve or reject proposals put before them. Of course, this tool comes in different forms. Through the initiative process, citizens can play a proactive role by demanding that the government take action on certain issues. Even when they're not being proactive, citizens still have the right to reject the laws the government proposes.

Sometimes, governments propose measures that favour their constituencies. For example, in Peru, former President Martín Vizcarra initiated a referendum in 2018 because he believed the parliament was corrupt. He aimed to amend the electoral system that was fostering corruption within the parliament. Another goal of the referendum was to dismantle the National Board of Judiciary, a corrupt institution, and replace it with an independent judicial mechanism. Additionally, the referendum included a series of structural reforms designed to prevent political parties from using illicit methods, such as money laundering, to enrich themselves and to ensure that these parties would be more transparent and accountable. These reforms also proposed applying not only administrative but also criminal sanctions against corrupt actors. The Peruvian people accepted these proposals with a landslide victory, with around 80% approval. But there is another dimension to this issue. We must admit that authoritarian regimes can use direct democracy tools to consolidate their power. Considering both the positives and the negatives, it is difficult to say whether referendums are inherently "good" or "bad." That is why every specific case should be evaluated on its own merits.

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Constitutional scholars often like engaging in discussions about government systems. The presidential system, due to its fixed term for the elected president and the fact that the legislature lacks the power to remove the president through a vote of confidence or similar methods, tends to lead to more stable governments. However, empirical research in the literature suggests that countries with presidential systems are more likely to exhibit tendencies towards authoritarianism than parliamentary systems. Do you think the presidential system impedes Latin American countries

from achieving liberal democratic standards? I mean, why are the US and Latin American presidential systems so different?

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The party system in the U.S. is highly institutionalised, and it is not just the parties—every institution there has a solid, well-established structure. Unfortunately, we cannot really say the same for Latin America when it comes to institutionalisation and consolidation of solid institutions. When we look at the political parties and institutions in countries like Argentina, Colombia, or even Chile, it is hard to argue that they have solid, institutionalised systems. These parties lack strong, well-defined policies or ideologies. But this is not just a crisis specific to Latin America. It is a global issue. All around the world, there are complaints about the lack of well-organised and institutionalised political parties. And even the ones that are organised struggle with the problem of maintaining continuity.

Now, when comparing the presidential system with the parliamentary system, the latter, by its nature, tends to involve multiple political parties competing in elections. In multi-party systems, there are usually many parties that cannot govern alone and, therefore, need to form coalitions. And coalitions, by their very nature, require compromise and consensus—otherwise, the country cannot be governed. On the other hand, the presidential system tends to encourage a two-party system, even though it is not a strict requirement. If implemented correctly—like it largely is in the U.S.—the prominence of just a few parties in elections is not necessarily a problem in itself. However, in Latin America, the presidential system is highly personalised. You could even call it hyper-personalised or super-personalised. In such a personalised system, other institutions, such as parliament or any other state body, do not really get the chance to take the lead in decision-making or implementation. They reach a point where they cannot even fulfil their own duties. When foreign investors visit Peru, for example, they do not even need to go to the parliament. Convincing the president is all they need to do. In overly personalised systems, the words that come out of the president's mouth are incredibly valuable. The fate of the entire country is in the president's hands. They're like modern-day kings. It is essentially a monarchy, but labelling it a "presidential system" does not make it any different from the monarchies of the Middle Ages. Leaders like Chávez, Morales, and Correa took full advantage of this system because of the hyper or ultra powers it gave them. They threw thousands of dissidents into prison.

So, if you ask me what Latin America needs the most and urgently right now, my answer would be this: it needs to learn and embrace a culture of institutionalisation. It is also important to note that this cannot be achieved simply by drafting a new constitution. You cannot shape reality with a constitution. The norms written in a constitution are one thing, but if they are not applied, the reality that emerges is something completely different. That is why, earlier in this interview, I mentioned

the importance of aligning constitutional norms with constitutional reality. Nothing will change if a country has not been institutionalised; it does not matter how modern or liberal-democratic its constitution is. As a result, the gap between constitutional norms and reality will widen.

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Before I conclude, I would like to ask if you have any advice for young scholars like myself pursuing a career in constitutional law.

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Scholars working in constitutional law are all essentially fighting for the same values. These are values that help us be human and live with dignity. We're talking about respect for human rights and fundamental freedoms, preventing governments from arbitrarily exercising power, and ensuring that everyone, regardless of their identity or social status, is bound by the same constitution and laws. This is the struggle we're engaged in. We also emphasise that governments should not just serve the majority who voted for them, but should treat minority citizens equally as well. For this to happen, we believe that the checks and balances between institutions must function effectively, and powers should be distributed among institutions that can hold each other accountable, rather than being concentrated in the hands of one person, group, or party.

For those who work or want to work in this field, I'd offer this advice: The cultures and traditions of the regions you're studying may vary, but never lose sight of the fact that everyone is human and has the right to live with dignity. During your work, you may conclude that a "one-size-fits-all" approach is flawed and that systems, institutions, and mechanisms should instead reflect the unique characteristics of each region and culture. And that might even be the accurate conclusion. But no matter what, please do not forget that the values I mentioned earlier are universal—they transcend cultures and regions, and they are necessary for everyone. We are witnessing flagrant human rights violations worldwide, and sadly, we often fail to address them effectively. But please do not think that raising awareness is a worthless effort. Bringing attention to the tragedies that humanity faces is also a huge responsibility. Fulfilling this responsibility requires courage and a fighting spirit. With your energy, courage, and passion, you might end up contributing to the democratic progress of your country and global human dignity without even realising it.