

Populist Constitutionalism in Brazil and Peru: Historical and Contextual Issues

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ABSTRACT: Given populism's common practice in South America, the region provides a crucial case to identify populism as a prevalent strategy by different ideologies. The link between populism and constitutionalism is paramount because populist governments typically use constituent power and constitutional identity to reach political goals. This study aimed to provide a comparative constitutional analysis of the recent development of populism in Brazil and Peru. The first was the rhetoric and practices of Jair Bolsonaro's government in Brazil, whereas the second was Pedro Castillo's government in Peru regarding constitutional reforms and human rights issues. This comparison justified that Brazil and Peru are presidential republics where harsh political polarization shakes their societies. Bolsonaro and Castillo have anti-corruption discourses and support a new constituent process but present antagonistic economic views. This study was comparative in nature that used a qualitative approach, sourced from bibliographic and documentary research that included specialized literature on South American populism and constitutionalism and the government's plans and legislation. This study showed that both governments have difficulties executing their respective agendas on customs and constituent referendums due to governability problems and important features of the constitutional design, such as eternity clauses, judicial review, and constitutional rigidity. It concluded that the populist strategies of Bolsonaro and Castillo are different. Bolsonarism is antiliberal and promotes human rights regression, whereas Castillo's populism is conservative but democratic. In common, both face the coalitional presidentialism and constitutional protection mechanisms as constraints to putting their political goals entirely into practice.

KEYWORDS: Authoritarianism, Constitutionalism, Fundamental Rights, Populism.



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I. INTRODUCTION

Throughout history, South America has presented many populist regimes whose implementation varies due to political, social, and economic scenarios. Some similarities and parallels emerged with so-called South American populism. Theorizing the populist phenomena requires an understanding of these basic general characteristics. Except for some emancipatory practices, South American populism can be seen as a political strategy used by the ruling classes to retain their political hegemony rather than a successful challenge to the *status quo*. Simultaneously, populism emerged as a viable strategy for achieving inclusion and involvement in the state's political processes for the popular and working classes. Furthermore, as a classical theory on the limitation of powers, constitutionalism requires the government and its authority to be bounded by the separation of powers and fundamental rights set in the constitution. Populism and constitutionalism oppose one another since the first refers to the leader's concentration of power and majoritarianism. However, there is a strong link between populism and constitutionalism, resulting in so-called populist constitutionalism, which encompasses core constitutional principles and rules by populist regimes to achieve their goals. Its experiences may abuse constitutional mechanisms, like constitutional amendments. Consequently, they provoke democratic erosion issues.

In the last two decades of the 20th century, the constitutional orders of several countries in Latin America underwent fundamental changes. They grew more open to international human rights law and recognized the indigenous peoples' rights.¹ After declaring independence from Portugal, Brazil adopted a unitary state structure ruled by an emperor.² The Constitutional Charter of 1824, the first Brazilian Constitution, established a confessional monarchy and had a long-term duration until 1891, when the first Republican Constitution of Brazil substituted it. The following constitutions (1934, 1937, 1946, 1967, and 1988) maintained the Presidential Federal Republic under the rule of law, except the 1937 and

¹ Rodrigo Uprimny, "The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges" (2011) 89 Texas Law Review 1587 at 1588.

² Keith S Rosenn, "Federalism in Brazil" 43 Duquesne Law Review 23 at 577.

1967 Constitutions granted by dictatorial regimes.³ The current Constitution of 1988, negotiated during the democratic transition, had core elements that secure the citizens' participation and guarantee fundamental rights.⁴ This constitution is extensive because it has 250 articles, but it is rigid, in which this rigidity does not prevent successive amendments to the constitutional text.⁵ The Constitutional Amendment Nr. 16 of 1997 enables the presidential reelection for only one subsequent term. Since its enactment, the 1988 Constitution has already been amended 116 times.

Unlike Brazil, Peru has defined a republic government since the beginning of its constitutional path, after the country gained independence from Spain. The first Peruvian Constitution of 1823 was followed by a series of constitutions (1826, 1828, 1834, 1839, 1856, 1860, 1867, 1920, 1933, 1979, and 1993),⁶ shaped by governability crises, institutional weakness, and military coups.⁷ Between 1968 and 1980, Peru was governed by a military regime of nationalist and authoritarian character. The 1979 Constitution, whose context was the transition to democracy in Peru, was progressive and plural and identified with the rule of law and a broad catalog of fundamental rights.⁸

The 1993 Constitution came to implement the main interests of Alberto Fujimori's authoritarian regime. They were from consolidating the

³ Arno Dal Ri Jr & Luciene Dal Ri, "Reception of norms of international law in the Brazilian Constitutional Experience: Doctrinal Conceptions about Executive Power overlays Between the Empire and the Republic (1824- 1988)" (2020) 40:2 *Giornale di Storia Costituzionale / Journal of Constitutional History* at 11.

⁴ Jorge Zaverucha, "The 1988 Brazilian Constitution and Its Authoritarian Legacy: Formalizing Democracy While Gutting Its Essence" (1998) 15:1 *Journal of Third World Studies* 105–124 at 106.

⁵ Paulo Rosenblatt, "The Process of Legislative Drafting in a Civil Law Jurisdiction: A Case Study of Brazil" (2012) 1 *International Journal of Legislative Drafting and Law Reform* 157 at 157.

⁶ Domingo García Belaunde, "Bases para la historia constitucional del Perú" (2000) 98 *Boletín Mexicano de Derecho Comparado* 369 at 386.

⁷ Domingo García Belaunde & Francisco José Eguiguren Praeli, "La evolución político-constitucional del Perú 1976-2005" (2008) 6:2 *Estudios Constitucionales* 371.

⁸ *Ibid* at 375.

President's power through the possibility of his immediate reelection to putting into effect a neoliberal economic model based on privatizations and the lack of state intervention in economic activities. Consequently, promoting social and economic rights became a matter of secondary importance.⁹ Since its promulgation, the 1993 Constitution has been modified more than 20 times. The core constitutional amendments stand out as the prohibition of the immediate presidential reelection and the recognition of water as a universal right in 2000 and 2017, respectively. During the 2019-2020 political-constitutional crisis, various proposals for constitutional reforms were discussed by Congress. Some were successful, such as the reforms to abolish parliamentary immunity, prevent convicted persons from running for public office, and strengthen the education sector. Others are pending, like the proposals which aim to restore the bicameral system and the 1979 Constitution.¹⁰ In common, Brazil and Peru have strong presidential systems, in which the President has a significant concentration of power, including enacting normative acts. Furthermore, their constitutional history encompasses periods in which democracy and fundamental rights had merely formal validity because they could not be realized in social and political reality.

Some crucial similarities between Brazil and Peru are relevant to the Indonesian context. Their colonial past, social traumas due to authoritarian regimes, and the concentration of power in the executive branch. Moreover, constitutional reforms have traced critical moments in their constitutional history. The 1945 Constitution, claimed as Indonesia's temporary constitution, became a tool for maneuvering authoritarianism. While it was replaced by the 1949 Constitution and the 1950 Constitution replaced the latter, Sukarno finally restored the 1945 Constitution in 1959. The 1950 Constitution contained a clear democratic nature and better human rights protection. However, it should become a provisional document because of the planning to draft a new constitution by a Constituent Assembly elected by popular vote. In 1959, after dissolving the

⁹ *Ibid* at 388.

¹⁰ Galimberty Ponce Flores, "Peru" in *2020 International Review of Constitutional Reform* (Austin: University of Texas, 2021) at 227.

Constituent Assembly, Sukarno issued a political restoration to reuse the 1945 Constitution,¹¹ which became the basic document of the authoritarian regimes of Sukarno (1959-1966) and Suharto (1968-1998). Hence, the 1999-2002 reform to amend the 1945 Constitution was a milestone in Indonesia's transition to democracy. The main challenge of the reform was to elaborate a genuinely democratic constitution without menacing nationalist values.¹²

In reforming the constitution, the critical issues in Indonesia were strengthening the presidential system and establishing the Constitutional Court, which finally played a substantive role in the reformation. Although the Court has no power to control the constitutionality of constitutional amendments, it can interpret constitutional provisions through judicial review.¹³ In turn, the Brazilian Supreme Federal Court and Peruvian Constitutional Court have the power to exercise control of constitutionality over amendments to the constitution. While there were no constitutional amendments in Indonesia from 2002 to 2022,¹⁴ the reform through constitutional amendments in Brazil and Peru was much more frequent.

The paper aimed to provide a comparative study of the recent development of populism in South America: the political strategies of Jair Bolsonaro's government in Brazil and Pedro Castillo's government in Peru regarding constitutional reforms and human rights issues. It sought to answer two main questions. First, how do these populist governments address human rights issues? Second, are they successfully implementing their agenda under the national constitutional structure? Both regimes have populist antagonist rhetoric in common despite the opposite ideological orientations.¹⁵ However, the proximity of the human rights agenda is

¹¹ Jayus Jayus & Muhammad Bahrul Ulum, "Presidential Power's Limitation to Emergency Provisions in Indonesia" (2020) 8:2 *Jurnal Cita Hukum* 343–362 at 348–349.

¹² Denny Indrayana, "Indonesian Constitutional Reform 1999-2002", *Kompas* (2008).

¹³ Rosa Ristawati & Radian Salman, "Indonesia" in *2020 International Review of Constitutional Reform* (Austin: University of Texas, 2021) at 148.

¹⁴ *Ibid* at 151.

¹⁵ "The several categories of ideology – from communism to fascism – can adopt a populist inclination. In all cases, however, there will be present a dimension of

merely apparent since Castillo's populism is democratic and compromised, whereas Bolsonaro's populism is illiberal and reactionary.

This work focuses on the South American context, in particular on the recent experiences of populism in Brazil and Peru. First, this paper presents the theoretical discussions on the definitions and different dimensions of populism and subsequently provides a historical overview of the main phases of South American populism. Second, it briefly stresses the connection between constitutionalism and populism on how the instrumentalization of the constitution matters for populist purposes. Third, it examines the main features of Bolsonaro's and Castillo's populist strategies and the ongoing outcomes. In conclusion, this paper concludes that the recent experiences in Brazil and Peru prove that populism is a long-life phenomenon in South America, which faces setbacks despite its ambiguities and excesses due to the complexities of the national political-constitutional system.

II. METHODS

The study was comparative in nature that used a qualitative approach. This method was based on primary data, comprising national constitutions and ordinary legislation. It also referred to secondary data called bibliographical research of the different dimensions of populism in South America. In addition, it used the documental research of government plans and tactics of Jair Bolsonaro and Pedro Castillo. While news materials available on the internet were also paramount, these sources were primarily aimed at identifying the political strategies of Jair Bolsonaro and Pedro Castillo.

disruption with the current state of affairs, which can be more or less profound, under the specific conjunctures.” Free translation of the original text in Spanish: “Ideologías de la más diversa índole – desde el comunismo hasta el fascismo – pueden adoptar un sesgo populista. En todos los casos estará presente, sin embargo, una dimensión de ruptura con el estado de cosas actual que puede ser más o menos profunda, según las coyunturas específicas”. See Ernesto Laclau, “La deriva populista y la centroizquierda latinoamericana” (2006) 205 *NUSO* 56 at 57.

III. POPULISMS IN SOUTH AMERICA

Populism is a central phenomenon in Latin American political and social history.¹⁶ Since the beginning of the 20th century, the region has developed the most diverse and essential contemporary examples of populist regimes, regardless of the empirical singularities of each national experience—considering cultural, historical, and political tradition elements. It is possible to establish some common features between the South American populisms.¹⁷

A. Definitions and Varieties of Populism

The concept of populism is the subject of controversies and disputes in specialized literature. There are divergences over the characteristics, attributes, and areas of knowledge that shall prevail in the conceptual formulation of populism. As a result, different definitions of populism explain diversified empirical cases, which imply the fragmentation of the debate on the theorization of the populist phenomenon.¹⁸

Latin American populism is defined from a structuralist approach under the influence of the prevalent development and dependency theories between the 1960s and 1980s. Its definition is based on Latin American societies' distinctive socio-economic and political processes and structures. They are personalistic political leadership, plebiscites and referendums, the interventionist and distributive economic policies, the heterogeneous social basis, and the specific historical transition from traditional to modern society.¹⁹

Nevertheless, this long-established definition started to be challenged by the emergence of populist regimes in South America in the 1990s, which

¹⁶ Osmar Gonzales, “Los orígenes del populismo latinoamericano. Una mirada diferente” (2007) 24:66 Cuad CENDES 75 at 76.

¹⁷ These common features are also identified among Latin American populisms, but the analysis will concentrate on South American populisms due to the limited scope of the research.

¹⁸ Kurt Weyland, “Clarifying a Contested Concept: Populism in the Study of Latin American Politics” (2001) 34:1 Comparative Politics at 1.

¹⁹ *Ibid* at 5.

differed from classical populism, notably regarding their socio-economic characteristics. Consequently, new conceptualization proposals were elaborated, focusing on the political strategies and discourse-ideological elements associated with Latin American populism. These new conceptual efforts considered socio-economic attributes merely incidental outside the political domain. In other words, they advocated a political definition of populism that should succeed in covering the most diverse variations of populism in the region.

A political definition of populism is therefore preferable. It conceptualizes populism as a specific way of competing for and exercising political power. It situates populism in the sphere of domination, not distribution. Populism first and foremost shapes patterns of political rule, not the allocation of socio-economic benefits or losses. This political redefinition best captures the basic goal of populist leaders, to win and exercise power while using economic and social policy as an instrument for this purpose. [...] In espousing antielite rhetoric and challenging the status quo, populism rests on the distinction of friend versus foe that constitutes politics. [...] Originating in real or imagined conflict, populism is thoroughly political. Therefore, populism is best defined in political terms.²⁰

Under this political definition of populism, massive popular support is the basis of the populist political strategy. The charismatic leader represents in his/her person the politically excluded people and protects them from the menaces and crises produced by common enemies, for example, the mainstream and corrupt politics and the elitist institutions.²¹ The popular support manifests through large street protests, plebiscites, and elections. This support can exhibit the direct relation between the charismatic leader and his/her followers without an institutionalized intermediary, such as political parties, the press, and any other organization.²²

²⁰ Kurt Weyland, *supra* note 18 at 11.

²¹ Zoltán Szente, “Populism and populist constitutionalism” in *Populist Challenges to Constitutional Interpretation in Europe and Beyond* (London and New York: Routledge, 2021) 4 at 7-8.

²² Kurt Weyland, *supra* note 18 at 14.

Under this perspective, social media is nowadays the major instrument for implementing populist practices because it allows immediate communication between leaders and supporters, primarily through "lives" without any interference by the traditional media. This asset is used mainly by right-wing authoritarian populist leaders that have emerged in the last years. It is the case of Donald Trump and Jair Bolsonaro. Both make intense use of social media, including to disseminate fake news.²³ Indeed, in Brazil, there is an affinity between Bolsonaro's followers and the use of social media. For information purposes, they tend to use more social media than traditional mass media, above all the media corporations with an editorial line contrary to the government's views and interests.²⁴

B. Historical Periods of Populism in South America

Massive popular support is an intrinsic part of every populist regime—right-wing or left-wing, exclusionary or inclusive, authoritarian or democratic. It is a critical factor in its triumph. However, the implementation of populism as a political strategy is not homogenous or uniform among South American countries. Consequently, South American populism has many variations. Political and social transition episodes determine them. For instance, it is the crisis of traditional political elites and the appearance of new political actors and variables of economic force or instability.

In general, South American populisms have in common some characteristics. They instigate socio-political polarization based on the conversion of political opponents into enemies of the people; the populist leader directly represents the people's will.²⁵ They seek to concentrate

²³ Ana Julia Bonzanini Bernardi & Andressa Liegi Vieira Costa, "Populismo e fake news na era da pós-verdade: comparações entre Estados Unidos, Hungria e Brasil" (2020) 28 *Cadernos de Campo Rev* 385.

²⁴ Max Stabile & Marisa Bülow, "O velho não morreu, o novo já está aqui: informação e participação digital na era do bolsonarismo" in *Governo Bolsonaro: retrocesso democrático e degradação política* (Belo Horizonte: Autêntica, 2021) 481.

²⁵ People will be understood as a homogenous collective mass or a mass of individuals or the poor and excluded social groups, according to the ideological orientation linked to the populist strategy.

power in the executive branch and promote social-political inclusion of marginalized social groups, although in some cases selectively and partially.

1. The initial and classical populisms

The first populist governments in South America originated due to two main circumstances. The first was the national economic growth derived from agricultural exports, and the second was the emergence of the urban and rural proletariat. The initial cases occurred in Peru, Argentina, Uruguay, and Chile at the beginning of the 20th century.²⁶ In common, they stand for the political opposition to the dominant oligarchies and the political closer approximation to the working class, intending to broaden the social basis of the state. These early populist regimes did not succeed in challenging the *status quo* to overthrow the oligarchical hegemony, but they innovated the political domination relations prevailing at that time.

In this way, the initial populism changed the characteristics of the political fighting arena; from this moment, one could not ignore the participation of the popular classes. By modifying the forms of political struggle, the oligarchical elites transformed and simultaneously opened up possibilities for new power competitors to emerge. They modernized their respective societies, expanded the spaces of citizen participatory processes, succeeded in this task surfaced different actors that did not accept their traditionally passive roles anymore.²⁷

The central features of these initial populist regimes were developed in the well-known experiences of classical populism in the decade of 1930s. The prominent examples are Getúlio Vargas and Juan Domingo Perón's administrations in Brazil and Argentina. Both arose after the 1929 financial crisis linked to the decline of agricultural exports. Consequently,

²⁶ Osmar Gonzales, *supra* note 16 at 88.

²⁷ Free translation of the original text in Spanish: “De esta manera, los populismos iniciales modificaron las características de la arena de lucha política; desde ese momento ya no se podría obviar la participación de las clases populares. Las élites oligárquicas, al alterar las formas de la lucha política, se transformaron ellas mismas y simultáneamente abrieron las posibilidades de aparición de nuevos contendientes por el poder; al modernizar sus respectivas sociedades ampliaron los espacios de formación ciudadana, y al suceder esto se configuraron sujetos diferentes que no aceptaban su rol pasivo tradicional”. See *Ibid* at 92.

the crisis of the oligarchical system²⁸ and the adoption of import substitution industrialization become an alternative to boost the state's economic development.

Apart from some differences, Varguism and Peronism have essential similarities. They were consolidated within a context where, firstly, the state presented as the key actor in promoting national industrialization. Secondly, certain social groups, such as the business sector, the middle class, and the urban workers, achieved political protagonism. Furthermore, they employed a state nationalist discourse to neutralize the conflicts of interest among the different social forces. To reach this goal, the populist leaders resorted to manipulation and, if necessary, repression. Hence, in South American classical populism, the state played the role of an arbiter of social conflicts in trying to conciliate the social reforms and the economic elites' interests, which explains its contradictory character.²⁹

The prevailing interpretation of the image of Vargas and Perón is that they were manipulative leaders. Vargas was an articulator of heterogeneous forces and enforced his political project utilizing manipulating the masses and elites. In turn, Perón succeeded in building a more homogeneous social basis, but, likewise, through manipulation, resulting in the antagonistic rhetoric being a simulation. The view of an inert mass is correlative with a type of relationship between the mass and the leader: a relationship characterized by simulation and illusion. As the mass cannot produce anything for itself, it depends on the manipulatable action of its leader. The essence of this manipulation is to make the mass believe that the leader's values and victories are those of the masses.³⁰

This interpretation of classical populism as a movement not organized, not ideologically coherent, and based on manipulation and false antagonism—which entails the passivity of the masses—is criticized. It does not examine populism considering its political complexity, namely as a political strategy.

²⁸ Francisco Corrêa Weffort, *O populismo na política brasileira*, 5th ed (Rio de Janeiro: Paz e Terra, 2003).

²⁹ Osmar Gonzales, *supra* note 16. at 93-95.

³⁰ Alejandro José Groppo, *The two princes: Juan D. Perón and Getulio Vargas: a comparative study of latin american populism* (Villa María: Edivim, 2009). at 23.

Simultaneously, it represented a power structure for the dominant groups and the prominent political expression of popular emergence within the urban and industrial development.

To Peronism, this critical trend claims it had effectively challenged the preeminent socio-political system and produced a true antagonism by establishing a national political identity among rural workers. In contrast, popular sectors were incorporated into the political process under the Vargas regime, but always under elite tutelage, without autonomy.³¹ Vargas would not have introduced any real antagonism to the political scene but only managed conflicts between the heterogeneous social groups³² inside a complex federal structure characterized by sharp regionalisms. Indeed, the political strategies of Vargas and Perón were subject to the politically and socially differentiated national contexts in which they were inserted.³³

2. The neo-populism

In the 1980s and 1990s, a new wave of populism emerged in South America, which differed considerably from classical populism. In particular, it favored the adoption of neoliberal reforms in contrast to the developmental economic policy and the expansion of social rights of classical populism. Examples of neo-populism are the administrations of Carlos Menem and Alberto Fujimori in Argentina and Peru, respectively.³⁴

In terms of political strategy, neo-populism is an expression of South American populism more developed than classical populism. As explained before, the direct relationship between the leader and his/her followers is the cornerstone of populism. The evolution of mass media has decisively contributed to disseminating the charismatic leader's message faster and

³¹ *Ibid* at 76.

³² Vargas's position as an arbiter translates what Weffort calls a "compromise state," which configures one of the significant limits to Brazilian classical populism. The success of the regime depended on the political capacity of the Chief of Executive to accommodate the dominant groups' pressures and the popular sectors' interests, which were highly conflicting with each other. See *ibid* at 78-79.

³³ *Ibid* at 65-66.

³⁴ Kurt Weyland, *supra* note 18. at 4.

less costly to his/her electorate. The television of the neo-populism era substituted the radio of the classical populism era.³⁵ It was replaced by the "lives" and "posts" of social media that are typical elements of populist movements and regimes of the 21st century. Thus, the communication between leaders and followers has become immediate, instantaneous, autonomous, and less institutionalized. In short, according to the populist dynamics, it has become more effective because the relationship between leader and electorate has managed to establish itself without the need for any organized intermediation, such as via political parties or the mainstream media.

Classic populism was characterized by state centrality, whereas neo-populism is connected to neoliberal economic politics. It is a bizarre development of South American populism because neo-populism combines the populist political strategy—grounded in the antagonism between the people and the establishment—with neoliberal economic reforms.³⁶

The structuralist approach argues that populism and neoliberalism are incompatible concepts to this view. Populism is a political strategy associated with specific economic politics and social support basis. Since neoliberalism is, by definition, unpopular, it shall not be the economic politics related to the populist strategy. Neoliberalism hinders the realization of a significant feature of classical populism due to its exclusion in nature. It is called the political inclusion of the formalized working class. Thus, whereas the policies pursued by classical populism were inclusionary, neoliberalism is depicted as exclusionary. Classical populists broadened the public sphere, whereas the neoliberal leaders are said to shrink it through different privatization, de-politicization, and demobilization.³⁷

On the other hand, from the political definition of populism, it is possible to analyze populism and neoliberalism as akin concepts. Based on the political definition, populism can emerge in different socio-economic configurations. In common, populism and neoliberalism presuppose low

³⁵ *Ibid* at 16.

³⁶ *Ibid* at 17.

³⁷ Kurt Weyland, "Neopopulism and Neoliberalism in Latin America: How much Affinity?" (2003) 24:6 *Third World Quarterly* 1095. at 1103.

levels of institutionalization. Thus, the undifferentiated mass of 'the people' following the leader³⁸ is similar to the mass of individuals in free market transactions. Neo-populism hampers the representation of actors that can interfere in market interests, like the labor unions. Neoliberal reforms can benefit neo-populist leaders: the privatization of public entities and companies favors essential business sectors, and labor market flexibilization weakens the unions and, consequently, the popular mobilization through protests and strikes.³⁹ It is a win-win game for the market and populist leaders when representing the dominant political class.

Fujimori e Fernando Collor in Brazil utilized populist rhetoric and practices—such as the direct relation with the disorganized mass of individuals, charismatic political leadership, and antielite discourse—to implement neoliberal economic measures. Another element of neo-populism was the social inclusion of traditionally marginalized groups, notably the informal workers (in opposition to classical populism that prioritized the social and political recognition of the formalized working class).⁴⁰ In Peru, Fujimori's administration conferred the informal workers with social benefits and political participation rights to the detriment of organized formal workers.⁴¹

At first, the strategies and goals of neo-populism and neoliberalism matched. On the one hand, neoliberalism needed the power concentration with the populist leader and a strong state to remove any opposition to the economic reforms. On the other hand, the promotion of such reforms allowed the populist leaders to strengthen their social basis of support since, via reforms, they were implementing concrete measures to fight the severe economic crisis, which the previous governments did not solve. The neoliberal economic policies solved the problem of hyperinflation.

³⁸ *Ibid* at 1098.

³⁹ *Ibid* at 1100.

⁴⁰ *Ibid* at 1102-1104.

⁴¹ At the same time, within the employment structure, the informal sector had grown at the expense of the formal, creating greater competition for work, exacerbating inequality and undermining class solidarity. John Crabtree, "Populisms Old and New: The Peruvian Case" (2000) 19:2 *Bulletin of Latin American Research* 163 at 172.

However, in the long run, they could not tackle structural issues of socio-economic inequality, like poverty and unemployment, which caused the loss of popular support to neo-populist regimes.⁴²

Neoliberalism has contributed to the resurgence of populism in South America in the 1980s and 1990s. The neoliberal reforms consisted of trade liberalization, state reform, privatization, and labor market flexibilization. They have undermined organized social movements, unions, and public service. It results in the conditions for the protagonism of populist leaders and an unorganized mass of individuals. Nonetheless, another wave of populism has surfaced connected to neoliberalism rather than its most radical criticism. The case of populism is related to 21st century socialism in countries like Venezuela, Bolivia, and Ecuador.

3. The revolutionary populism

The radical populism of Hugo Chávez, Evo Morales, and Rafael Correa regimes has received fundamental criticism of liberal democracy's contradictions.⁴³ To build a revolutionary socialist democracy, the three regimes shared some similarities: they were based on the antagonism between the people and the traditional elites; they enhanced the socio-political inclusion of traditionally excluded sectors, although in varying degrees; and they promoted social justice economic policies. Chávez, Morales, and Correa regimes had also faced the same criticisms: the high concentration of power in the executive and the restriction of civil liberties, mainly against the government's opponents.⁴⁴ Despite all these affinities, there is a significant difference between the three cases of radical populism, consolidated in the first decade of the 21st century, especially regarding the level of political participation of social movements.

⁴² Kurt Weyland, *supra* note 37. at 1107.

⁴³ Paul Blokker, "Populism as a constitutional project" (2019) 17:2 *International Journal of Constitutional Law* 536–553.

⁴⁴ Carlos de la Torre, "In the Name of the People: Democratization, Popular Organizations, and Populism in Venezuela" (2013) 95 *ERLACS Caribe* 27 at 28.

The relationship between Rafael Correa's government and the social movements is very different from the experiences of Hugo Chávez and Evo Morales's regimes. The Ecuadorian government did not create mechanisms of popular political inclusion. The political participation of the population was restricted to the exercise of the right to vote in elections. Based on the idea that his figure represented the people's interests as a whole and not of specific social groups, Correa became involved in clashes with various social movements, including the indigenous movement. Correa responded to these conflicts through civil rights restrictions, such as the freedom of assembly and association.⁴⁵

By contrast, Hugo Chávez did create organizations to mobilize the population, mainly excluding social groups politically. They were the so-called "Círculos Bolivarianos" (Bolivarian Circles), whose primary goal was to defend the Revolution through different activities, such as the massive rallies supporting Chávez⁴⁶ and the elaboration of social projects in their respective areas. Critics claim that these organizations were deprived of

⁴⁵ *Ibid* at 35-39.

⁴⁶ "In Venezuela, the transition to a more equitable and democratic society required the displacement and the radical disruption with a corrupt and discredited elite, with no political communication channels with the vast majority of the population. In other words, any progress demanded a regime change. However, it was necessary to build a new collective actor of popular nature to achieve this. That is to say that, according to our terminology, there was no possibility of change without a populist disruption. We have already pointed out the conceptual features of the last one, all of which are present in Chavismo's case: an equivalencial mass mobilization; the constitution of a people; ideological symbols around which this collective identity represents itself (the Bolivarism); and, finally, the leader centrality as an unifying attribute". Free translation of the original text in Spanish: "En el caso venezolano, la transición hacia una sociedad más justa y democrática requería el desplazamiento y la ruptura radical con una elite corrupta y desprestigiada, sin canales de comunicación política con la vasta mayoría de la población. Es decir que cualquier avance demandaba un cambio de régimen. Pero para lograrlo, era necesario construir un nuevo actor colectivo de carácter popular. Es decir que, en nuestra terminología, no había posibilidad alguna de cambio sin una ruptura populista. Ya hemos señalado los rasgos definitorios de esta última, todos los cuales están presentes en el caso chavista: una movilización equivalencial de masas; la constitución de un pueblo; símbolos ideológicos alrededor de los cuales se plasme esta identidad colectiva (el bolivarismo); y, finalmente, la centralidad del líder como factor aglutinante". See Ernesto Laclau, *supra* note 15.at 60.

autonomy since they operated under Chávez's control. However, the socio-political participation promoted by the Bolivarian communes was effective—their active members, whose majority was composed of women, advanced social rights in Venezuela.⁴⁷

The radical populism in Bolivia emerged from the failure of the neoliberal reforms that prevailed between 1985 and 2003. After massive widespread protests, driven mainly by the defense of national natural resources, Evo Morales was elected in 2005 as Bolivia's first indigenous President. In 2009 a new constitution was approved after the convocation of a national referendum, which proclaimed Bolivia a Plurinational State grounded on the concepts of decoloniality and communitarian democracy. For this reason, the social movements acted autonomously to Morales's authority. The President even faced protests organized by social movements against his government on certain occasions. The Bolivian populist regime differed from Chávez and Correa's ones, among other mentioned factors, because it stood for the exercise of popular power directly by the action of social movements. On the contrary, Chávez and Correa practiced their political leadership as the true incarnation of the popular will.⁴⁸

4. The far right-wing populism

The effects of the international capitalism crisis of 2008 resulted in the erosion of liberal democracies in different countries around the world.⁴⁹ The Brexit and the 2016 Donald Trump victory and the expressive support for populist authoritarian parties in the 2017 elections in different European countries confirmed the surge of far-right movements and governments in several parts of the world.⁵⁰

The surge of support for Authoritarian-Populist parties in a series of 2017 elections renewed concern about this phenomenon and its potential for destabilizing long-established patterns of party competition. In June 2017, the

⁴⁷ Carlos de la Torre, *supra* note 44. at 31-33.

⁴⁸ *Ibid* at 42.

⁴⁹ Alysson Leandro Mascaro, *Crise e golpe* (São Paulo: Boitempo, 2018).

⁵⁰ Arjun Appadurai, "Democracy fatigue" in *The Great Regression* (Cambridge: Polity, 2017) 1.

National Front's Marine Le Pen challenged Emmanuel Macron in the second round of the French presidential elections after defeating the socialist party on the center-left and the republicans on the center-right in the first-round contest. A few months later, the xenophobic and racist Alternative for Germany challenged Angela Merkel's generous refugee policies, entering the Bundestag with 94 seats – the first time a far-right party had done so since 1948. The Austrian Freedom Party (FPÖ) came second in parliamentary elections, winning one in four votes a month later. In other countries, including Austria, Switzerland, New Zealand, Norway, Finland, the Czech Republic, Italy, and Poland, Authoritarian-Populist parties have won legislative and ministerial office.⁵¹

In fact, over the past decade, a wave of authoritarian populism has emerged at the international level. The combination of populism and authoritarianism poses a severe threat to constitutional democracies⁵² because it advocates the defense of the national group at the expense of civil rights and independent institutions. The support for authoritarian populism is explained by the "counter-revolutionary conservative backlash" thesis.⁵³ Part of the population, not identified with the prevailing liberal agenda—since the "silent revolution" of the 1960s and 1970s—and resentful about the performance of the traditional political representatives and institutions, started to support political parties and movements that speak up for the restoration of conservative values and the national sovereignty.

The Bolsonarism in Brazil reflects this international context, in conjunction with some peculiarities of the Brazilian political scenario. It brought an authoritarian and neoliberal populism to power, thereby proving that the relationship between neoliberalism and populism has persisted in South America. Before analyzing the current populist experiences in Brazil and

⁵¹ Pippa Norris & Ronald Inglehart, *Cultural backlash: Trump, Brexit, and authoritarian populism* (Cambridge/New York: Cambridge University Press, 2019) at 257.

⁵² Mattias Kumm, "How populist authoritarian nationalism threatens constitutionalism or: Why constitutional resilience is a key issue of our time," *Verfassungblog* (December 2018), online: <<https://verfassungsblog.de/how-populist-authoritarian-nationalism-threatens-constitutionalism-or-why-constitutional-resilience-is-a-key-issue-of-our-time>>.

⁵³ Pippa Norris & Ronald Inglehart, *supra* note 51.

Peru regarding constitutional reforms and human rights issues, it is necessary to identify the connection between constitutionalism and populism to understand the role of the Constitution in the populist strategy.

IV. CONSTITUTIONALISM AND POPULISM

As explained in the previous section, populism is a kind of rhetoric that claims the only political and legitimate constitutional authority lies upon the people under the backdrop of democracy. Subsequently, it is counter-elitist rhetoric—adapted to different political orientations—which challenges the liberal constitutional institutions since they hinder the full realization of popular sovereignty. The relationship between populism and constitutionalism is a crucial topic. Constituent power and constitutional identity are central issues for the populist agenda: based on the invocation of the "people," described as a unified and uncompromising mass.⁵⁴ It seeks to justify mis(uses) of constitutional law to reach its political goals. Populist constitutionalism manifests differently, including inclusionary or exclusionary, reformist or revolutionary, and national or transnational.⁵⁵

Regarding the connection between populism and constitutional democracies, the populist rhetoric explores the weaknesses and contradictions of the constitutional democracy's principles, namely the rule of law and the majority rule. This rhetoric claims contraposition between these two basic principles. It is because the majority should be protected against the tyranny of the minorities and not the opposite. Hence, there is also an antagonism between the majority and the non-elected institutions, whose function is to protect the Constitution, for instance, the Judiciary. In particular, the constitutional courts, which are counter-majoritarian organs.

⁵⁴ Théo Fournier, "From rhetoric to action, a constitutional analysis of populism" (2019) 20 *German Law Journal* 362.

⁵⁵ Paul Blokker, "Varieties of populist constitutionalism: the transnational dimension" (2019) 20:3 *German Law Journal* 332–350.

Populism is committed to opposing the constitutionality review by challenging the authority of constitutional courts.⁵⁶

Populist constitutionalism is a kind of intermediate category between these two concepts and refers to the constitutional approach, aspirations, or activities of populism.⁵⁷ Indeed, the Constitution occupies an important place in the discourses and programs of populist governments. The populist strategy considers that the institutions prevent the direct connection between the people and democracy due to their formalism and elitism. Consequently, it defends constitutionalism that critically exposes the flaws of representative liberal democracy. However, in some instances, this constitutional project proves itself illiberal because it aims to defend only the will of a united and cohesive majority rather than the plural, conflicting, and autonomous political participation by all members and sectors of society.⁵⁸

V. BOLSONARISM IN BRAZIL

Populism has been part of Brazilian political history, in which it has assumed different and even contradictory dimensions over time. Since the classical populism of Getúlio Vargas—emerged within the context of the oligarchic political crisis and the socio-economic transition that resulted from the Revolution of 1930—several Brazilian political leaders have adopted populist strategies through the representation of the masses under a political compromise with the elites. Exceptionally workers and popular sectors have exercised full and autonomous political participation.⁵⁹

The current political crisis in Brazil finds its origin in the June 2013 mass protests, which presented an anti-politics, anti-party, and anti-corruption perspective and are interpreted differently by the specialized literature. Some have classified the June 2013 protests as a genuine popular

⁵⁶ Alon Harel, "Courts in a Populist World," *Verfassungblog* (27 April 2017), online: <<https://verfassungsblog.de/courts-in-a-populist-world>>.

⁵⁷ Zoltán Szente, *supra* note 21 at 4.

⁵⁸ Paul Blokker, *supra* note 43.

⁵⁹ Francisco Corrêa Weffort, *supra* note 28.

movement that vindicated the fundamental rights and guarantees promised by the Federal Constitution of 1988. These claims were amplified in 2015 by the severe financial crisis caused by the government's misguided economic policy. Besides, the tension between the judicial and political branches was because of the institution of criminal proceedings to combat corruption. In this context, one notes the increasingly strategic use of institutional prerogatives by both branches, which generated an environment of constitutional stress or malaise.⁶⁰

Others analyze the June 2013 demonstrations as manipulated movements by the conservative elites and the media, culminating with the 2016 coup against President Dilma Rousseff.⁶¹ In this setting, the anti-corruption rhetoric was selectively instrumentalized and subsequently implemented in the "Car Wash" operation ("Operação Lava Jato," in Portuguese).⁶² Considered an example of the drastic politicization of the Judiciary, lawyers and legal experts widely criticize this anti-corruption operation because of its abuses and unlawful activities. Moreover, it was responsible for President Luiz Inácio Lula da Silva's arrest, whose unlawfulness was recently declared by the Federal Supreme Court based on the grounds of the former judge Sergio Moro's incompetence and suspicion.⁶³

Despite the divergent interpretations, the fact is that after the June 2013 protests, the social and political spheres became highly polarized. Consequently, consensus could not be achieved, and the political vacuum was then filled by strengthening authoritarian populism in Brazil, consolidated with the rise to power of Jair Bolsonaro in the 2018 presidential elections.⁶⁴

⁶⁰ Oscar Vilhena Vieira, *A batalha dos poderes* (São Paulo: Companhia das Letras, 2018).

⁶¹ Guilherme Simões Reis, "Necropsy on Brazilian Democracy" (2021) 11 *Anuario Latinoamericano – Ciencias Políticas y Relaciones Internacionales* 43.

⁶² Jessé Souza, *A radiografia do golpe* (Rio de Janeiro: Leya, 2016).

⁶³ Supremo Tribunal Federal, "STF confirma anulação de condenações do ex-presidente Lula na Lava Jato", *Supremo Tribunal Federal* (April 2021), online: <<http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=464261&ori=1>.

⁶⁴ Lilia Moritz Schwarcz, *Sobre o autoritarismo brasileiro* (São Paulo: Companhia das Letras, 2019).

Bolsonarism belongs to this recent wave of authoritarian populism. By rhetoric based on the "common-enemy" logic and the criticism against the traditional institutions and politics,⁶⁵ Bolsonaro puts into practice what he had promised and stated during the election campaign: the disrespect towards minorities, intellectuals, and the press, the incitement to political violence, and the corrosion of social rights through neoliberal economic policies,⁶⁶ Additionally, using the misuse of law and institutions,⁶⁷ the government has restricted civil rights, promoted attacks and attempts of interference in the Judiciary, and deployed fake news strategies to perpetuate itself in power.⁶⁸

The current Brazilian government follows authoritarian populist constitutionalism that produces a democratic erosion context, which the resilient, democratic institutions confront.⁶⁹ Since the early administration, but especially during the pandemic, Bolsonaro abuses the constitutional instruments, mechanisms, and competences. This abuse was made through exclusionary, nationalist, ultraconservative, and religious rhetoric,⁷⁰ undermining democracy in Brazil. Bolsonaro's populist rhetoric presents the Brazilian Supreme Federal Court (STF) as an elitist institution that does not effectively defend the people's interests and beliefs. Thus, his populist strategy towards the STF aims to limit the Court's powers and control them. For this purpose, during the COVID-19 pandemic, the

⁶⁵ Tribunal Superior Eleitoral, "O caminho da prosperidade. Proposta de plano de governo (2018)", *Tribunal Superior Eleitoral* (2018), online: <https://divulgacandcontas.tse.jus.br/candidaturas/oficial/2018/BR/BR/2022802018/280000614517/proposta_1534284632231.pdf>.

⁶⁶ Lilia Moritz Schwarcz, *supra* note 64.

⁶⁷ Zoltán Szente, *supra* note 21 at 9.

⁶⁸ Clèmerson Merlin Clève, "The National Security Law and the Defense of Democratic Institutions in Brazil," *Blog of the International Journal of Constitutional Law* (April 2021), online: <<http://www.iconnectblog.com/2021/04/the-national-security-law-and-the-defense-of-democratic-institutions-in-brazil/>>.

⁶⁹ Adriano de Oliveira Othon, "Indicators of Authoritarian Behavior of Political Leaders. The Bolsonaro Case (2019-2020)" (2021) 11 *Anuario Latinoamericano – Ciencias Políticas y Relaciones Internacionales* 83.

⁷⁰ Bolsonaro's main campaign and government slogan are "Brazil above everything. God above all". Free translation of the original text in Portuguese: "Brasil acima de tudo. Deus acima de todos". See Tribunal Superior Eleitoral, *supra* note 65.

President has utilized intimidations, threats, and appointment of loyalists as Justices. It led to an intense political crisis between the executive and Judiciary alongside the severe public health crisis that devastated the country.

The Brazilian Federal Supreme Court has responded to these attacks in institutional terms. It has opened inquiries, which involve Jair Bolsonaro to investigate the dissemination of fake news and personal attacks against the Court's Justices and the organization of anti-democratic acts. Concerning Bolsonaro's populist policies related to the pandemic, characterized by denialism and the opposition to basic preventive measures, the Federal Supreme Court has taken a series of decisions under its functions and powers of judicial review.

Bolsonaro was elected in 2018 by defending a reactionary agenda contrary to minority rights. It included criminalizing abortion, banning discussions on gender and sexuality in schools, reducing the age of criminal majority, and applying for the flexibilization of gun ownership. Nevertheless, since the beginning of his administration, Bolsonaro has faced difficulties implementing the constitutional reforms necessary to advance this agenda due to the lack of political support by most members of the National Congress.⁷¹

The 1988 Brazilian Constitution is rigid. The three-fifths approved an amendment proposal of the votes of the Houses of the National Congress members. No proposal must be discussed when it aims to abolish the so-called eternal clauses of article 60(4) of the Constitution, namely the federative structure of state; the direct, secret, universal and periodic vote; the separation of powers principle; and the individual rights. Furthermore, in Brazil, the relationship between the executive and legislative powers is based on coalitional presidentialism. It is a political system where the executive's capacity to govern depends on forming a coalition government with the parliamentary majority. The highly fragmented Brazilian party

⁷¹ Ranier Bragon, "Bolsonaro's Conservative Projects Fail to Gain Steam in Congress," *Folha de São Paulo* (10 September 2019), online: <<https://www1.folha.uol.com.br/internacional/en/brazil/2019/09/bolsonaros-conservative-projects-fail-to-gain-steam-in-congress.shtml>>.

system demands an exceptional political ability by the President of the Republic to form and maintain the indispensable parliamentary support to govern.⁷²

Because of the disastrous performance of the federal government against the COVID-19 pandemic, various complaints were directed against Jair Bolsonaro: charges in judicial criminal procedures as well as within a parliamentary committee of inquiry in the Federal Senate; several impeachment requests to the Chamber of Deputies; and the accusation of genocide against indigenous peoples in the International Criminal Court. At first glance, one could argue for some close parallels between Bolsonarism and the neo-populism of Alberto Fujimori since both have an authoritarian nature and follow neoliberal economic policies. However, Bolsonarism adopts a neoliberal perspective averse to any possibility of social inclusion of vulnerable and marginalized groups in society. His government did not succeed in promoting economic growth and stability, just as in implementing any effective measure against high inflation, unemployment, and hunger,⁷³ which has returned after years of social development. At present, there are around 20 million people facing hunger in Brazil.⁷⁴

Bolsonaro has been using his constitutional powers to practice his illiberal and exclusionary populism. Within this context, it is worth mentioning the veto power of legislation and the presidential power to enact decrees and provisional measures among the presidential constitutional powers. According to article 62 of the Brazilian Constitution of 1988, the President may adopt provisional measures, in relevant and urgent cases, with an immediate force of law and subsequently submit them to the National Congress. Article 66(1) determines that the President shall veto a law project when he considers it unconstitutional or contrary to the public

⁷² José Álvaro Moisés & Francisco Weffort, *Crise da democracia representativa e neopopulismo no Brasil* (Rio de Janeiro: Konrad Adenauer Stiftung, 2020).

⁷³ Ricardo Kertzman, “Custo Bolsonaro: dólar, inflação, juros, desemprego e fome nas alturas”, *Isto É* (7 October 2021), online: <<https://istoe.com.br/custo-bolsonaro-dolar-inflacao-juros-desemprego-e-fome-nas-alturas/>>.

⁷⁴ Vicente Vilardaga & Fernando Lavieri, “A implacável volta da fome”, *Isto É* (22 October 2021), online: <<https://istoe.com.br/a-implacavel-volta-da-fome>>.

interest. Finally, article 84 sets forth the competence of the President to issue decrees and regulations for the true enforcement of laws.

During the COVID-19 sanitary crisis, Bolsonaro was opposed to establishing strong emergency social assistance programs⁷⁵ and showed no interest in the population's access to social protection programs despite the rough context of the pandemic.⁷⁶ In July 2020, President Bolsonaro vetoed the Law Project Nr. 2.508/2020, prioritizing the woman as head of household to receive the pandemic emergency aid destined for single-parent families. In March 2021, Bolsonaro vetoed the Law Project Nr. 3.477/2020 that provided financial support to central and subnational entities to ensure internet access to teachers and students from public schools during the pandemic. In September 2021, he vetoed the Law Project Nr. 823/2021, establishing emergency aid actions for family farming due to the adverse economic impact of Covid-19.

The *Bolsa Família* Program, the historic milestone of the fight against poverty in Brazil and force since 2004, was replaced by a new project, the *Auxílio Brasil* Program, that offers a social benefit higher than the one provided by *Bolsa Família*. However, the new program raises the value of the per capita monthly family income, which the individuals must prove to participate in the program. Besides, the *Auxílio Brasil* Program shall remain in force until December 2022, when Bolsonaro's current term as President ends.⁷⁷

So far, Bolsonaro has enacted some regulations. The first is the Provisional Measure Nr. 928 of March 2020, which severely impaired the fundamental right of access to public information. The second is the Provisional

⁷⁵ Eduardo Piovesan & Pierri Triboli, “Congresso derruba vetos sobre auxílio emergencial e internet para alunos de escolas públicas”, *Câmara dos Deputados* (June 2021), online: <<https://www.camara.leg.br/noticias/767115-congresso-derruba-vetos-sobre-auxilio-emergencial-e-internet-para-alunos-de-escolas-publicas/>>.

⁷⁶ UOL, “Bolsonaro diz que vai vetar auxílio extra de R\$600 se Câmara aprovar”, *UOL* (11 June 2020), online: <<https://economia.uol.com.br/noticias/redacao/2020/06/11/bolsonaro-prega-cautela-com-auxilio-para-nao-virar-paraiso-da-agiotagem.htm>>.

⁷⁷ Marcelo Tuvuca, “Bolsa Família x Auxílio Brasil: como separar programa social do eleitoral”, *CNN Brasil* (17 November 2021), online: <<https://www.cnnbrasil.com.br/politica/bolsa-familia-x-auxilio-brasil-como-separar-programa-social-do-eleitoral/>>.

Measure Nr. 936 of April 2020, which authorized salary reduction and suspension of employment contracts. The third is the Implementing Decree Nr. 10.344 of May 2020, which defined barbers and hair salons, and fitness studios as essential activities during the pandemic. In addition, in March 2021, he filed a lawsuit (Direct Action of Unconstitutionality Nr. 6.764) against restrictive measures to combat the Covid-19 pandemic laid down by state decrees because such measures violated the principle of economic freedom.

VI. CASTILLO'S POPULISM IN PERU

At the beginning of the 20th century, Peru experienced one of the first populisms in the region, notably the government of Guillermo E. Billinghurst, which broke the oligarchical domain by way of considerable support from the popular urban sectors. Despite its short duration, this regime managed to expand the social bases of the state through the effective political participation of underrepresented groups for the first time in Peruvian history.⁷⁸

In the 1930s, the classical populism of the political movement American Popular Revolutionary Alliance (APRA) emerged. Later, a political openness period began in the aftermath of the military government (1968-1975), which also resorted to populist tactics. However, the populist phenomenon has persisted, manifesting itself differently, especially in Alan García's government between 1985 and 1990 and, subsequently, in Alberto Fujimori's neo-populist government between 1990 and 2000. The populist tradition is, in large part, a reflection of this weak institutional development, emerging because of the need to engage tacit support of the population without conceding political power. Historically, it has proved exceptionally difficult in Peru to approximate an institutionalized political consensus, a situation that reflects the profound social, regional, and ethnic divides that have long been so characteristic of this society.⁷⁹

⁷⁸ Osmar Gonzales, *supra* note 16 at 84-85, 97.

⁷⁹ John Crabtree, *supra* note 41 at 166.

Based on classical populism, Alan García defended an interventionist and expansionist economic policy. However, he could not resist the acute financial crisis that undermined the legitimacy of his government.⁸⁰ Fujimori's administration addressed the hyperinflation problem and returned to satisfactory economic growth rates by implementing neoliberal policies. Moreover, he achieved popularity through the disarticulation of *Sendero Luminoso* and his anti-criminality and corruption agenda. However, Fujimori's government was marked by abuses and unlawful acts. The 1992 Coup led to the breach of the democratic order. The adoption of the 1993 Constitution confirmed the exacerbated concentration of power in the executive at the expense of the legislative and Judiciary, which had their rights and prerogatives drastically diminished.⁸¹ In 2009 Alberto Fujimori was sentenced to 25 years in prison for severe human rights violations perpetrated during his government against the guerrillas in the 1990s.⁸² In short, Fujimori's regime can be described as an authoritarian neoliberal civil government at the service of the ruling elites, which culminated in the weakening of Peru's institutions.

The political events in Peru in the first two decades of the 21st century show that "Fujimorism may no longer be a reckoning force, but populism and a rejection of the political elite are still strong influences within the country."⁸³ After 2006 Fujimorism reemerged with Keiko Fujimori's election to the Congress. Although the Fujimorist majority had the seats in Congress, she lost two presidential elections in 2011 and 2016. Accusations of corruption targeted several former presidents between 2001 and 2016,⁸⁴

⁸⁰ *Ibid* at 171.

⁸¹ *Ibid* at 173.

⁸² On 17 March 2022 Peru Constitutional Court decided to restore a pardon granted by former president Pedro Pablo Kuczynski in 2017 and release former president Alberto Fujimori. The pardon was based on humanitarian grounds due to Fujimori's advanced age. Carlos Bejar-Garcia, "Populism and Peru: How a dangerous ideology caused the country's recent instability?", *Harvard International Review* (29 March 2021), online: <<https://hir.harvard.edu/populism-and-peru-how-a-dangerous-ideology-caused-the-countrys-recent-instability>>.

⁸³ *Ibid*.

⁸⁴ In some cases, there were accusations of lawfare's practices, namely political persecution and biased judgments. See Rodolfo Borges et al, "Processos contra ex-presidentes na América Latina, um desafio para a credibilidade da Justiça", *El País*

which caused the return of popular support for the populist rhetoric contrary to the traditional corrupt politics. In 2016 Pedro Pablo Kuczynski was elected President but impeached soon after in March 2018 because of corruption charges. His vice president, Martín Vizcarra, took on the presidency. In 2019, he called for new parliamentary elections, whereby a Congress allied with Vizcarra's anti-corruption populism replaced the Fujimorist majority. Nonetheless, in November 2020, this same Congress impeached president Vizcarra, resulting in massive and violent protests and consequently in the resignation of interim President Manuel Merino, whom Francisco Sagasti substituted until the April 2021 presidential elections.⁸⁵

Traditionally South American populist leaders originate from the middle class or the oligarchical sectors of society.⁸⁶ Pedro Castillo is, therefore, an exception: a rural schoolteacher, a *Campesino*. He won the 2021 presidential elections against Keiko Fujimori, who faced her third defeat since 2006.⁸⁷ Castillo appeared as an outsider, an anti-establishment candidate, and supported rural social movements and unions. It is indeed a revolutionary fact in Peruvian political history.⁸⁸

Three key factors that influence elections are the popular sentiment against traditional politics, the high number of COVID-19 deaths, and the effects of the economic crisis. Besides, the situation of the mining sector was another central issue for the elections.⁸⁹ Mining has traditionally been the most pivotal sector of Peru's economy. The expansion of the sector is,

(23 April 2021), online: <<https://brasil.elpais.com/internacional/2021-04-23/processos-contra-ex-presidentes-na-america-latina-um-desafio-para-a-credibilidade-da-justica.html>>.

⁸⁵ Carlos Bejar-Garcia, *supra* note 82; Galimberty Ponce Flores, *supra* note 10 at 227.

⁸⁶ Osmar Gonzales, *supra* note 16 at 99.

⁸⁷ Keiko Fujimori obtained the majority of the votes cast in Lima but still could not win the elections. Her rejection is explained by the connection made between her candidacy and the authoritarian regime of her father, and traditional Peruvian politics.

⁸⁸ Alonso Gurmendi, "Understanding Pedro Castillo: A Guide for the Global North," *Opinio Juris* (16 June 2021), online: <<http://opiniojuris.org/2021/06/16/understanding-pedro-castillo-a-guide-for-the-global-north/>>.

⁸⁹ Verónica Hurtado & Maxwell A. Cameron, "The Mining in the 2021 Peruvian Election" (2021) 52:4 *Lasa Forum* 45.

however, linked to social conflicts. Local communities from areas near the mining sites denounce the activity's harmful social and environmental effects. Also, they demand the economic redistribution of benefits and effective participatory rights in mining policies.

Both presidential candidates—Pedro Castillo and Keiko Fujimori—presented different campaign strategies toward the voters of mining regions. Castillo advocated higher taxes for the mining industry, which could guarantee robust state development policies for mining communities. Moreover, he stressed the importance of communities' consultation processes on mining activities in their home areas. Castillo's campaign proposal was to alter the revenues distribution of the mining sector so that 70% would be allocated to the state to finance social and development programs. The electorate welcomed such a proposal, emphasizing the state's role, mainly by marginalized sectors more severely affected by the socio-economic crisis resulting from the COVID-19 pandemic.

In turn, Fujimori proposed a radical change in the benefits redistribution system by creating a program of direct transfers of benefits to the families living close to mining areas. This proposal openly differed from her private investor-friendly economic agenda. Besides, it would not change the power dynamics of the state, mining companies, and local communities. In contrast, Castillo's proposal highlighted the role of communities and the state in decisions and policies related to mining activities. As a result, Castillo obtained more than 65 percent of the vote in mining areas in the second round. As Hurtado and Cameron state: "Given Castillo's narrow margin of victory, Fujimori's inability to sway voters in the mining corridor likely cost her the election."⁹⁰

The main legislation regulating mining activities in Peru is the 1992 General Mining Law.⁹¹ In order to implement Castillo's proposed legal changes would be necessary concerning the tax regime and benefits redistribution system. However, it would not challenge the entire mining

⁹⁰ *Ibid* at 45.

⁹¹ Supreme Decree Nr. 014-92-EM (*Ley General de Minería*) was approved by <[https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/89E200B65DCF6DE9052578C30077AC47/\\$FILE/DS_014-92-EM.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/89E200B65DCF6DE9052578C30077AC47/$FILE/DS_014-92-EM.pdf)>.

sector model as Fujimori's proposal intended. Regarding strengthening the communities' participatory rights, there is already legislation in force, namely the Prior Consultation Law⁹² and the Law for the National System of Environmental Evaluation⁹³, which foresees prior, free and informed indigenous peoples' and communities' participation in environmental impact processes. However, the effective implementation of these participatory rights remains to be secured by the government.

The Peruvian constitutional basis is set down according to the main principles of a democratic state governed by the rule of law. Article 1 of the Constitution stipulates that respect for human dignity is the highest purpose of the state and society. Also, the following provisions of Title 1 cover the core fundamental rights recognized by every democratic constitutional state. Among them, the universal right to water and the integration of ethnic communities deserve a special mention because they are rights not commonly enshrined in most world constitutions.

The Judiciary is independent, and the Constitution provides for legislative oversight of the executive. For example, it is enshrined through the right to ask key state authorities for any information (Article 96) and the right to initiate investigations on any matter of public concern (Article 97). These are essential mechanisms for opposition and legislative minorities to exercise scrutiny over the government's actions and omissions. Moreover, the Constitution anticipates checks and balances powers, such as the legislative veto override and the removal procedures of the Constitutional Court and the Head of State (Articles 99, 100, and 108), and the Constitutional Court's competence to control the constitutionality of legislation (Articles 202-204).

Castillo relies on key constitutional mechanisms, such as constitutional amendments and popular referendum, to implement his inclusionary but conservative populism. Like Brazil, in Peru, the relationship between the

⁹² Law Nr. 29785 (*Ley de Consulta Previa*) published in 2011 <<https://www.minem.gob.pe/minem/archivos/Ley%2029785%20Consulta%20Previa%20pdf.pdf>>.

⁹³ Law Nr. 27446 (*Ley del Sistema Nacional de Evaluación de Impacto Ambiental*) published in 2001 <<https://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>>.

executive and legislative powers is based on coalitional presidentialism, and the Constitution is also rigid, according to Article 206 of the Peruvian Constitution.⁹⁴ Article 32 of the Constitution states that a referendum can make some decisions. It encompasses deciding proposals of constitutional amendments, the approval of binding rules, municipal ordinances, and issues concerning the decentralization process. The constitution expressly prohibits certain matters from being submitted to a referendum, such as the abolition or reduction of fundamental rights, tax and budget rules, and the content of international treaties in force.

The current constitution is silent in the convention of a national constituent assembly. Castillo subsequently submitted a proposal for a constitutional amendment regarding elaborating a new constitution by a national constituent assembly, called by popular referendum. The project of the new Constitution should also be subjected to the popular vote. Castillo adopts a left-wing populism and has endorsed an anti-corruption rhetoric⁹⁵ and antagonism between rich and poor through his campaign's slogan, "No more poor people in a rich country."⁹⁶ Moreover, he defends a state-centered economic policy based on proposals for the mining sector's

⁹⁴ Any constitutional reform initiative must be adopted by Congress through an absolute majority of the legal number of its members and must be ratified by a referendum. The referendum may be exempted when the consent of Congress is obtained in two successive regular sessions, with a favorable vote of greater than two-thirds of the legal number of congress members in each case. A law concerning a constitutional reform shall not be objected to by the President of the Republic. The right to initiate a constitutional reform corresponds to the President with the approval of the Cabinet, congressmen, and a number of citizens equivalent to three-tenths of a percent (0.3%) of the voting population, with their signatures being verified by the corresponding electoral authority". See Constitute Project, "Comparative Constitutions Project, Peru's Constitution of 1993 with Amendments through 2021", *Constitute project* (2021), online: <https://www.constituteproject.org/constitution/Peru_2021.pdf?lang=en>; Italo Beltrão Sposito, "What does our recent past tell us about the future of Peruvian democracy?", *E-International Relations* (24 August 2021), online: <<https://www.e-ir.info/2021/08/24/what-does-our-recent-past-tell-us-about-the-future-of-peruvian-democracy>>.

⁹⁵ Perú Libre, "Pedro Castillo Presidente. Plan de Gobierno: Perú al Bicentenario sin corrupción", *Perú Libre* (7 April 2021), online: <<https://perulibre.pe/plan-bicentenario.pdf>>.

⁹⁶ *Ibid.*

nationalization and income redistribution measures. Also, Castillo argues for a conservative agenda regarding human rights.⁹⁷ During his campaign, Castillo spoke against abortion rights, the legalization of same-sex marriage, and counter-majoritarian institutions, namely the Constitutional Court. It could bring Castillo closer to right-wing populist leaders,⁹⁸ even if it is not the case.

While holding the presidency, Castillo committed with his coalition government to respect judicial independence and human rights, just as to guarantee the private investments in the nationalization of the mining sector. It indicates Castillo's clear political perception about the importance of making compromises to secure governability through parliamentary majority support.⁹⁹ Since the beginning of his administration, Castillo has faced a crisis between the legislative and executive bodies. His government meets a radical right-wing opposition that controls the Congress, supported by the media¹⁰⁰ and the military. For this reason, the support of the popular sectors is fundamental for the maintenance of his government. Recently Castillo decided to replace Guido Bellido with Mirtha Vásquez as his new cabinet chief. It is aligned with the center and the market¹⁰¹ but farther from Castillo's party *Perú Libre*.¹⁰²

⁹⁷ Gestión, “Pedro Castillo está en contra del enfoque de género en el currículo escolar”, *Gestión* (7 April 2021), online: <<https://gestion.pe/peru/politica/pedro-castillo-esta-en-contra-del-enfoque-de-genero-en-el-curriculo-escolar-noticia/>>.

⁹⁸ Alonso Gurmendi, *supra* note 88.

⁹⁹ *Ibid.*

¹⁰⁰ Elaine Tavares, “Peru: mais um ataque da direita contra o governo”, *IELA* (November 2021), online: <<https://iela.ufsc.br/noticia/peru-mais-um-ataque-da-direita-contra-o-governo>>.

¹⁰¹ Alejandra Puente, “Perú: Presidente Castillo en busca de la gobernabilidad”, *Diálogo Político* (October 2021), online: <<https://dialogopolitico.org/agenda/peru-presidente-castillo-en-busca-de-la-gobernabilidad/>>.

¹⁰² Elaine Tavares, *supra* note 100.

VII. CONCLUSION

In Brazil and Peru, populism is a persistent phenomenon in historical state formation. The populist strategy can be identified along with the history of both countries and today under regimes of different ideological orientations, notably the governments of Jair Bolsonaro and Pedro Castillo. Brazilian and Peruvian societies are highly polarized, implying a democratic erosion context. The constitution plays a crucial role for the two leaders. They seek to implement their respective agendas through constitutional amendments by using constitutional reforms or adopting a new constitution based on a popular referendum. However, certain features of the politics of constitutional design of both countries—for instance, the coalitional presidentialism and the constitutional rigidity—hinder the governments from fulfilling their goals and oblige them to participate in political negotiations and concessions. Castillo has shown himself open and willing to make compromises, possibly following the example of the mediating figures of South American classical populist leaders. In contrast, Bolsonaro is a reactionary populist who tends to rule by force and intimidation to cause social regression regarding human rights and the rule of law.

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The author declared that she has no competing interests.

REFERENCES

Adriano de Oliveira Othon, “Indicators of Authoritarian Behavior of Political Leaders. The Bolsonaro Case (2019-2020)” (2021) 11 *Anuario Latinoamericano – Ciencias Políticas y Relaciones Internacionales* 83.

Alejandro José Groppo, *The two princes: Juan D. Perón and Getulio Vargas: a comparative study of latin american populism* (Villa María: Eduvim, 2009).

Alejandra Puente, “Perú: Presidente Castillo en busca de la gobernabilidad”, *Diálogo Político* (October 2021), online: <<https://dialogopolitico.org/agenda/peru-presidente-castillo-en-busca-de-la-gobernabilidad/>>.

Alon Harel, "Courts in a Populist World," *Verfassungblog* (27 April 2017), online: <<https://verfassungblog.de/courts-in-a-populist-world>>.

Alonso Gurmendi, “Understanding Pedro Castillo: A Guide for the Global North,” *Opinio Juris* (16 June 2021), online: <<http://opiniojuris.org/2021/06/16/understanding-pedro-castillo-a-guide-for-the-global-north/>>.

Alysson Leandro Mascaro, *Crise e golpe* (São Paulo: Boitempo, 2018).

Ana Julia Bonzanini Bernardi & Andressa Liegi Vieira Costa, “Populismo e fake news na era da pós-verdade: comparações entre Estados Unidos, Hungria e Brasil” (2020) 28 *Cadernos de Campo Rev* 385.

Arjun Appadurai, “Democracy fatigue” in *The Great Regression* (Cambridge: Polity, 2017) 1.

Arno Dal Ri Jr & Luciene Dal Ri, “Reception of norms of international law in the Brazilian Constitutional Experience: Doctrinal Conceptions about Executive Power overlays Between the Empire and the Republic (1824- 1988)” (2020) 40:2 *Giornale di Storia Costituzionale / Journal of Constitutional History*.

Carlos Bejar-Garcia, “Populism and Peru: How a dangerous ideology caused the country’s recent instability?”, *Harvard International Review* (29 March 2021), online: <<https://hir.harvard.edu/populism-and-peru-how-a-dangerous-ideology-caused-the-countrys-recent-instability>>.

Carlos de la Torre, “In the Name of the People: Democratization, Popular Organizations, and Populism in Venezuela” (2013) 95 *ERLACS Caribe* 27.

Clèmerson Merlin Clève, "The National Security Law and the Defense of Democratic Institutions in Brazil," *Blog of the International Journal of Constitutional Law* (April 2021), online: <<http://www.iconnectblog>>.

com/2021/04/the-national-security-law-and-the-defense-of-democratic-institutions-in-brazil/>.

Constitute Project, “Comparative Constitutions Project, Peru’s Constitution of 1993 with Amendments through 2021”, *Constitute project* (2021), online: <https://www.constituteproject.org/constitution/Peru_2021.pdf?lang=en>.

Denny Indrayana, “Indonesian Constitutional Reform 1999-2002”, *Kompas* (2008).

Eduardo Piovesan & Pierri Triboli, “Congresso derruba vetos sobre auxílio emergencial e internet para alunos de escolas públicas”, *Câmara dos Deputados* (June 2021), online: <<https://www.camara.leg.br/noticias/767115-congresso-derruba-vetos-sobre-auxilio-emergencial-e-internet-para-alunos-de-escolas-publicas/>>.

Elaine Tavares, “Peru: mais um ataque da direita contra o governo”, *IELA* (November 2021), online: <<https://iela.ufsc.br/noticia/peru-mais-um-ataque-da-direita-contra-o-governo>>.

Ernesto Laclau, “La deriva populista y la centroizquierda latinoamericana” (2006) 205 *NUSO* 56.

Francisco Corrêa Weffort, *O populismo na política brasileira*, 5th ed (Rio de Janeiro: Paz e Terra, 2003).

Galimberty Ponce Flores, “Peru” in *The 2020 International Review of Constitutional Reform* (Austin: University of Texas, 2021).

Gestión, “Pedro Castillo está en contra del enfoque de género en el currículo escolar”, *Gestión* (7 April 2021), online: <<https://gestion.pe/peru/politica/pedro-castillo-esta-en-contra-del-enfoque-de-genero-en-el-curriculo-escolar-noticia/>>.

Guilherme Simões Reis, “Necropsy on Brazilian Democracy” (2021) 11 *Anuario Latinoamericano – Ciencias Políticas y Relaciones Internacionales* 43.

Italo Beltrão Sposito, “What does our recent past tell us about the future of Peruvian democracy?”, *E-International Relations* (24 August 2021), online: <<https://www.e-ir.info/2021/08/24/what-does-our-recent-past-tell-us-about-the-future-of-peruvian-democracy>>.

- Jayus, Jayus & Muhammad Bahrul Ulum, “Presidential Power’s Limitation to Emergency Provisions in Indonesia” (2020) 8:2 *Jurnal Cita Hukum* 343–362.
- Jessé Souza, *A radiografia do golpe* (Rio de Janeiro: Leya, 2016).
- John Crabtree, “Populisms Old and New: The Peruvian Case” (2000) 19:2 *Bulletin of Latin American Research* 163.
- José Álvaro Moisés & Francisco Weffort, *Crise da democracia representativa e neopopulismo no Brasil* (Rio de Janeiro: Konrad Adenauer Stiftung, 2020).
- “Clarifying a Contested Concept: Populism in the Study of Latin American Politics” (2001) 34:1 *Comparative Politics* 1.
- Kurt Weyland, “Neopopulism and Neoliberalism in Latin America: How much Affinity?” (2003) 24:6 *Third World Quarterly* 1095.
- Lilia Moritz Schwarcz, *Sobre o autoritarismo brasileiro* (São Paulo: Companhia das Letras, 2019).
- Marcelo Tuvuca, “Bolsa Família x Auxílio Brasil: como separar programa social do eleitoral”, *CNN Brasil* (17 November 2021), online: <<https://www.cnnbrasil.com.br/politica/bolsa-familia-x-auxilio-brasil-como-separar-programa-social-do-eleitoral/>>.
- Mattias Kumm, “How populist authoritarian nationalism threatens constitutionalism or: Why constitutional resilience is a key issue of our time,” *Verfassungblog* (December 2018), online: <<https://verfassungblog.de/how-populist-authoritarian-nationalism-threatens-constitutionalism-or-why-constitutional-resilience-is-a-key-issue-of-our-time>>.
- Max Stabile & Marisa Bülow, “O velho não morreu, o novo já está aqui: informação e participação digital na era do bolsonarismo” in *Governo Bolsonaro: retrocesso democrático e degradação política* (Belo Horizonte: Autêntica, 2021) 481.
- Oscar Vilhena Vieira, *A batalha dos poderes* (São Paulo: Companhia das Letras, 2018).
- Osmar Gonzales, “Los orígenes del populismo latinoamericano. Una mirada diferente” (2007) 24:66 *Cuadernos del CENDES* 75.
- Paul Blokker, “Populism as a constitutional project” (2019) 17:2 *International Journal of Constitutional Law* 536–553.

- Paul Blokker, “Varieties of populist constitutionalism: the transnational dimension” (2019) 20:3 *German Law Journal* 332–350.
- Perú Libre, “Pedro Castillo Presidente. Plan de Gobierno: Perú al Bicentenario sin corrupción”, *Perú Libre* (7 April 2021), online: <<https://perulibre.pe/plan-bicentenario.pdf>>.
- Pippa Norris & Ronald Inglehart, *Cultural backlash: Trump, Brexit, and authoritarian populism* (Cambridge/New York: Cambridge University Press, 2019).
- Ranier Bragon, “Bolsonaro’s Conservative Projects Fail to Gain Steam in Congress,” *Folha de São Paulo* (10 September 2019), online: <<https://www1.folha.uol.com.br/internacional/en/brazil/2019/09/bolsonaros-conservative-projects-fail-to-gain-steam-in-congress.shtml>>.
- Ricardo Kertzman, “Custo Bolsonaro: dólar, inflação, juros, desemprego e fome nas alturas””, *Isto É* (7 October 2021), online: <<https://istoe.com.br/custo-bolsonaro-dolar-inflacao-juros-desemprego-e-fome-nas-alturas/>>.
- Rodolfo Borges et al, “Processos contra ex-presidentes na América Latina, um desafio para a credibilidade da Justiça””, *El País* (23 April 2021), online: <<https://brasil.elpais.com/internacional/2021-04-23/processos-contra-ex-presidentes-na-america-latina-um-desafio-para-a-credibilidade-da-justica.html>>.
- Rodrigo Uprimny, “The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges” (2011) 89 *Texas Law Review* 1587.
- Rosa Ristawati & Radian Salman, “Indonesia” in *The 2020 International Review of Constitutional Reform* (Austin: University of Texas, 2021) 148.
- Rosenblatt, Paulo, “The Process of Legislative Drafting in a Civil Law Jurisdiction: A Case Study of Brazil” (2012) 1 *International Journal of Legislative Drafting and Law Reform* 157.
- Rosenn, Keith S, “Federalism in Brazil” 43 *Duquesne Law Review* 23.
- Supremo Tribunal Federal, “STF confirma anulação de condenações do ex-presidente Lula na Lava Jato”, *Supremo Tribunal Federal* (April 2021), online: <<http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=464261&ori=1>>.

- Théo Fournier, “From rhetoric to action, a constitutional analysis of populism” (2019) 20 *German Law Journal* 362.
- Tribunal Superior Eleitoral, “O caminho da prosperidade. Proposta de plano de governo (2018)”, *Tribunal Superior Eleitoral* (2018), online: <https://divulgacandcontas.tse.jus.br/candidaturas/oficial/2018/BR/BR/2022802018/280000614517/proposta_1534284632231.pdf>.
- UOL, “Bolsonaro diz que vai vetar auxílio extra de R\$600 se Câmara aprovar””, *UOL* (11 June 2020), online: <<https://economia.uol.com.br/noticias/redacao/2020/06/11/bolsonaro-prega-cautela-com-auxilio-para-nao-virar-paraiso-da-agiotagem.htm>>.
- Verónica Hurtado & Maxwell A Cameron, “The Mining in the 2021 Peruvian Election” (2021) 52:4 *Lasa Forum* 45.
- Vicente Vilar daga & Fernando Lavieri, “A implacável volta da fome”, *Isto É* (22 October 2021), online: <<https://istoe.com.br/a-implacavel-volta-da-fome>>.
- Zaverucha, Jorge, “The 1988 Brazilian Constitution and Its Authoritarian Legacy: Formalizing Democracy While Gutting Its Essence” (1998) 15:1 *Journal of Third World Studies* 105–124.
- Zoltán Szente, “Populism and populist constitutionalism” in *Populist Challenges to Constitutional Interpretation in Europe and Beyond* (London and New York: Routledge, 2021) 4.