About the Author

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The CCD and the Constitution of 1993

In his speech at a CADE meeting of business executives on 6 December 1992, Alberto Fujimori (1992b) defended the autogolpe by stating that the old parliament, 'that spent what it did not have', would never have made the constitutional reforms that were necessary to bring Peru towards a real democracy. The main task of the Constitutional Congress CCD, elected on 22 November 1992, was to draft a new constitution that would be subjected to a plebiscite. The Acción Popular, APRA and Vargas Llosa’s Libertad party refused to participate in the election of the CCD, along with various smaller leftist groups which might not have been able to take part anyway because of restrictive rules for party registration.

The international community, represented mostly by the OAS observers, considered the election relatively clean. With 38 per cent of the votes, Fujimori’s two parties Cambio 90 and Nueva Mayoria won forty-four of the eighty seats in the CCD and were thereby able to draft a constitution relatively freely. Fujimori’s supporters were able to claim that despite the harsh austerity programme people trusted the government. According to Luis Cueva Sánchez, one of the few ‘traditional intellectuals’ who commented positively on Fujimori at the time, it was the first time that the people of Peru voted ‘with their brain rather than with their belly’.

For the Peruvian Right and the business elite, the ‘social market’ conception in the constitution of 1979 was seen as an obstacle to progress. Putting qualifiers in the definition of the market was considered a depurification that could provide justification for harmful social or political interference within the sphere of the economic. For Carlos Boloña, the attribute ‘social’ had been used in experiments such as social market, social democracy, social property and social security with ‘results that have invariably been
regrettable'. Bolónia exemplified this by vigorously stating that the ‘era of social security’ was over.

The plebiscite took place on 31 October 1993, and the constitution was accepted by a narrow margin. Many of the rules that in the earlier constitution had implied a responsibility on the part of the state to guarantee material benefits to the citizens were removed. The new one had significantly fewer statements on services and material assistance that the state should provide for its citizens. For example, the state no longer ‘guaranteed’ the universal right to social security; now it only ‘recognized’ it.

The neutrality and autonomy of the economic sphere vis-à-vis the political organs of the state was in various ways enshrined in the constitution of 1993, which made it a clear example of the constitutional politics of economism, one of the central elements of which is the attempt to make an economistic social order persist through the creation of constitutional constraints. The new constitution had various such constraints, designed to ‘bind the future’ so that neo-liberal policies could not be easily reversed.

Among other issues, the new Peruvian constitution aimed at making renationalizations of privatized enterprises more difficult than previously. In Article 125 of the constitution of 1979, an expropriation had been possible in case of ‘public necessity and utility or social interest’. When Alan García (1987a) announced his proposal to nationalize the private banking and insurance companies on 28 July 1987, he justified it constitutionally by declaring that ‘we defend private property that is in harmony with the social interest as stated in the Constitution’.

Article 70 of the constitution of 1993 was created to limit the possibilities for such acts. According to the article, the expropriation of private property would be possible only in case of ‘national security or public necessity’.

Quitting the ‘social interest’ and ‘public utility’ justifications meant that private ownership became much more difficult to reverse. Also, while the previous constitution allowed the state to compensate for the confiscated property gradually over time, the new constitution specified in the same article that such payments would need to be made in advance, in cash (Rubio 1999a: Vol. 3, 373–4). As David Robertson (1997: 164) has stated, the right to property is often so qualified that it is ‘close to meaningless except in a tightly specified political context’. In the context under analysis here, the change in the wording of the constitution can be interpreted as having
an impact that, for its part, limits the possibilities for future nationalizations, though it by no means makes them impossible.

The constitutional guarantees given to private property were increased also through Article 72. It defined ‘national security’ as the only reason for temporarily restricting or prohibiting the possession, acquisition, exploitation and transfer of particular goods. In Article 127 of the previous constitution, the justification for such restrictions and prohibitions was defined in more ample terms as ‘national interest’ and there was no mention of the temporary nature of the measure. These increased constitutional guarantees given to private property can be contrasted with the diminished labour rights. According to Article 28 of the constitution of 1993, the state ‘regulates the right to strike so that it will be exercised in harmony with the social interest’.  

The new constitution formally recognized what it calls economic pluralism. This means that various kinds of enterprises can exist simultaneously, for example, public and private, national and foreign, co-operative and communal. The difficulty of establishing public enterprises was, however, further emphasized by Article 60, which says that the state could realize entrepreneurial activities only in case of ‘high public interest or manifest national convenience’, and authorized by a specific law. Article 60 also stipulated that there must be no differential treatment to public and private enterprises, which in practice meant that state enterprises were not to be given preferential treatment (see Rubio 1994: 87).

The new constitution modified the parts of the previous constitution that had constructed a legal boundary between the treatment given to national and foreign investors, and to the benefit of the former. In Article 63 there is simply a part that allows the state to adopt analogous measures if another country or countries adopt protectionist or discriminatory measures that harm the national interests of Peru. Since the new constitution, foreign investors have actually received a series of legal incentives that national investors can enjoy only if they associate themselves with foreign partners (see Gonzales de Olarte 1998: 92).

In a similar vein, the constitutional boundary between private and public enterprises to protect the latter has been eradicated. As regards contracts that involve foreigners, the constitution involves another example of the transnational politics of economism when it stipulates in Article 63 that contracts that are ‘of financial character’ can be exempted from national jurisdiction.
The Central Bank’s autonomy was increased and the importance of ‘monetary stability’ was highlighted by making it the bank’s only aim in Article 84. In the Constitution of 1979, monetary stability had been only one of the various ‘functions’ of the Central Bank. When analysing the politics of economism within the public sphere in Peru, we need to take into account the fact that rules that grant formal independence to organs such as the Central Bank do not necessarily constitute real autonomy to the same extent as similar rules in, say, some European countries (see Maxfield 1994; Bolón 1999: 80–2). After the new constitution was promulgated, a new law in January 1993 gave the Central Bank more legal autonomy and defined the objective of the bank as the preservation of the value of national currency through control of its monetary emission.

The distance between, on the one hand, the interaction of the executive branch with the Central Bank and, on the other hand, the rules that regulate the interaction, is often quite long in Peru. As noted in Chapter 4, both Alan García and Alberto Fujimori dismissed Central Bank directors without concern for rules that legally guaranteed the continuity of their posts. Therefore, the constitutional politics of economism cannot be ‘read’ from the changes in legal rules as clearly as in more legalistic countries. The lack of an independent judiciary means that there are few real possibilities for constitutional control through judicial review. Especially during Fujimori’s presidency, the so-called ‘obscure forms of power’, often symbolized by the figure of the presidential adviser and de facto head of the National Intelligence Service, Vladimiro Montesinos, were important in disciplining the courts.

An example of the precariousness of the rule of law, analysed in more detail below, was the dismissal of three members of the Constitutional Court by the parliament after they had ruled against a law that unconstitutionally allowed Fujimori to run for a third consecutive term. It was one of the many reminders that, in Peru, it has not been easy for courts to challenge decisions made by the executive branch or the legislative branch which, in practice, has been under the control of the executive. Various extra-judicial executions and harassment of political opponents by the government also point to the general hollowness of the rule of law.

One justification for reforms that try to depoliticize an important part of the public sphere is, in the words of Milton Friedman (1962: 224), to keep it from being ‘the football of political manipulation’. In the presence
of powerful pressure groups – such as unaccountable military officers or business leaders – formal depoliticization tends to mean that those powers can influence the formally depoliticized institutions more effectively and shield them from democratic claims. Peru is by no means unique in being a place where ‘obscure powers’ occur, and we could argue that a formal depoliticization implicit in the neo-liberal projects may have similar effects all over the world-system. In the particular case of Fujimori’s Peru, these forms of informal power have, however, been particularly influential (Teivainen 1999b: 39–58). Their influence has meant that even if the constitutionalization of certain issues through the constitutional politics of economism has been an important part of the Fujimori government’s strategy, the strategy has also had various anti-constitutionalist elements.

**Constitutional Politics and Contending Rights**

Among the most controversial features of the Peruvian constitution of 1993, was Article 112 permitting immediate re-election of the president. In Latin America constitutions have traditionally prohibited immediate presidential re-election because of the idea that in a highly presidentialist system a head of state can misuse public funds for his (or her) election campaign.15 There have been various exceptions to the prohibition, one of the most notorious ones being the Dominican Republic, where Joaquin Balaguer was allowed various immediate re-elections. In most Peruvian constitutions since 1833, immediate re-election was strictly prohibited (Paniagua 1997: 119–22). In the Peruvian constitution of 1933, it was even specified that a person who would propose the reform or derogation of the prohibition of the immediate re-election clause would be permanently prohibited an entry to any public office.16 The clause can be considered a relatively extreme form of an attempt at constitutional pre-commitment.17

From the perspective of the politics of economism, the provisions in the constitution of 1993 that defined the new social order in economistic terms are in principle more important than the ones related to re-election. In practice, the political context of the early 1990s was such that presidential re-election can be considered an important part of the constitutionalist strategy to create guarantees against sudden changes. The issue of presidential re-election in Fujimori’s Peru illustrates the multidimensionality of constitutionalism. Through its analysis we can open up the concept of
constitutionalism so that both the constitutional politics of economism and what might be called a human rights (or democratic) constitutionalism may be taken into account.

Having changed the constitution, Fujimori was able to get re-elected relatively easily in 1995. His supporters were also able to get a majority in the new, unicameral parliament. The debates on re-election seemed to be over, for the moment, until in August 1996 the situation changed. In a surprise session the parliament produced Law 26657, somewhat cynically called the ‘law of the authentic interpretation of the constitution’. According to the law, Article 112 of the constitution of 1993 should be interpreted so that Fujimori had started his first presidential period under the new constitution in 1995. Therefore he would be able to make a bid in 2000 for his first re-election.

One immediate reason for the timing of the law was the fact that a famous Peruvian drug baron, Demetrio Chávez Peña Herrera (also known as Vaticano), had just said in court that he had been paying USD 50,000 a month to Fujimori’s most important adviser, Vladimiro Montesinos, in exchange for the chance to smuggle drugs free from state interference. Chávez Peña Herrera’s statements received widespread attention, some of which was conveniently diluted by suddenly initiated debates on parliament’s law of authentic interpretation. Another reason was that it was convenient for Fujimori to attack the constitutional ban on a second re-election well before the campaign for the April 2000 elections began.

Most of Peru’s constitutional experts were against Law 26657. The Lima Bar Association (Colegio de Abogados de Lima) filed a complaint claiming that it was unconstitutional. The complaint became a crucial issue for the recently established Constitutional Tribunal, one of the very few forces within the Peruvian state that could provide checks and balances on the concentration of power in the executive sector. In a complicated situation, three of the seven members of the Constitutional Tribunal declared that they would not apply the law in the future (see Rubio 1999b: 111–13; Delgado Silva 1997: 308–11). The Fujimorista majority in the Congress responded to the declaration by removing the three judges from office.

The dismissed judges, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo, took their case to the Inter-American Commission on Human Rights, arguing that they had been stripped of their functions unjustly and illegally. During the first half of 1999, their case went through
the Commission and since the Peruvian state did not accept the Commission's recommendations, the Inter-American Court of Human Rights took the case. The Commission can only issue recommendations, but the Court's rulings are in principle binding.

On 8 October 1998, after the Inter-American Commission on Human Rights began hearings on five alleged human rights violations in Peru, Justice Minister Alfredo Quispe Correa announced that Peru might withdraw from the Inter-American Court of Human Rights. His justification for this announcement was that Peru cannot be the object of constant aggression from an organization that is 'highly politicized'. According to Quispe: '[n]o international organization should condition the sovereignty of a country [... ] I do not think that the Court has the competence to discuss the philosophy of a sovereign state.'

After Quispe's declaration, the Inter-American human rights system was repeatedly represented as an external adversary and even as an enemy by the government of Fujimori. Government officials repeatedly called the members of the Inter-American Court of Human Rights 'leftists' and said they were 'under pressure from terrorists'. At the same time, they defined the Court as a new form of imperialist domination. In July 1999, when the case of the dismissed judges of Peru's Constitutional Tribunal was entering the Court, the government formally informed the Organization of American States that it would partially withdraw Peru from the compulsory jurisdiction of the Inter-American Court of Human Rights.

The announcement was made soon after the Court had ordered the Peruvian state to retry four Chileans who had been given long sentences as terrorists by a 'faceless' military court. Fujimori has often shown his misgivings about constitutional rights and the rule of law in the context of political violence. According to him, 'in true Marxist–Leninist fashion, Abimael Guzmán and the leaders co-opted the Constitution to destabilize the state' and '[t]he terrorist groups acted swiftly, convinced they could take advantage of the Western legal tradition'.

The Inter-American system of human rights can be assumed to represent many of the constitutional rights of western legal tradition. Like most of the existing international human rights regimes, its normative basis, the American Convention on Human Rights, also includes protection of property rights. The formulation of the property rights clause is similar to the Peruvian constitution of 1979 in that 'no one shall be deprived of his
property except on payment of just compensation, for reasons of public utility and social interest. In this sense the American Convention is less protective of property rights than the Peruvian constitution of 1993 (see Robertson 1997: 13).

The Fujimori government repeatedly revealed that it was willing to suppress some of the rights guaranteed both by the Peruvian constitution and the American Convention on Human Rights, not only to fight terrorism but also to contain other opposition forces. In July 1999 the government announced that it would not obey any of the Court's future rulings, and it also disobeyed the ruling on the Chileans accused of terrorism. The constitutional aspect of the decision to disobey the Court can be analysed by considering the words of Martha Chávez, one of Fujimori's most fervent defenders in the Congress. According to Chávez, Peru had in the past recognized the Court's jurisdiction 'without indicating any time limits'.26 After noting that the government had 'now set the limits', she justified the decision by comparing it with a contract to rent a house: 'If you could not break the contract, what would you do when you rent your apartment for an undetermined period? You could never get your house back. When there is an undetermined period in a contract, it means that it is to be determined, and this is simply what Peru has done.'27

Chávez, a lawyer by education, did not mention that in contracts for 'undetermined periods' there are often rules that specify through what kinds of procedures the contract can be terminated. Similarly, according to the American Convention on Human Rights, signed and ratified by Peru without any reservations,28 a country that withdraws from the Inter-American Court of Human Rights must obey all the rulings of the Court on cases that have been presented to the Court until one year after the announcement of the withdrawal.29 It can be debated to what extent we can call the Convention a constitutional agreement,30 but it is in any case designed to provide constitution-like guarantees against rapid changes, even if these changes are demanded by governments that may represent the majority of their citizens. The influence of the Inter-American Court in Peru supports Andrew Linklater's theoretical argument that a '[r]ecognition that individuals and minorities as well as states are entitled to be subjects of international law' is an example of transferring constitutional principles from the domestic sphere to transnational and international realms (Linklater 1998: 170).

The fact that Fujimori's Peru was without a Constitutional Tribunal for
most of the 1990s suited the government well. An overseer of constitutional rights and wrongs would in principle mean, as was stated by the president of the Constitutional Tribunal during its inauguration, that there is 'no first power of the state' but different high powers that have different functions (Rubio 1999b: 116–17). The government has had a clear aversion to many such constitutional features that could be described as examples of human rights constitutionalism. The expressed withdrawal from the jurisdiction of the Inter-American Court of Human Rights further confirmed this aversion. When there is no institution that can effectively control compliance with constitutional rules, the rules lose much of their meaning. Stability, as defined by the government, becomes more important than rule of law.

When analysing the politics of constitutional constraints in a context such as Peru's, we need to identify to what extent constitutionalist strategies have been used to support neo-liberal reforms, as in Stephen Gill's analysis of new constitutionalism presented in Chapter 2, and to what extent constitutionalism has created limits to the execution of the reforms. In Peru, as we have noted, constitutionalist strategies have clearly been used both ways. The politics of economism has had a constitutional dimension, especially in the construction of the constitution of 1993. At the same time, Fujimori's government applied the neo-liberal programme through methods that repeatedly violated the constitutional rights of Peruvian citizens, both rights that were valid under earlier constitutions and rights created by the government's 'own' Constitution of 1993.

We can now add some specifications to Stephen Gill's framework of new constitutionalism. On the one hand, there have been many kinds of constitutional guarantees that partially lock in the economistic reforms that have taken place in Peru since 1988. Gill's analysis of new constitutionalism helps us understand and explain this kind of constitutional politics of economism. On the other hand, constitutionalism also has other dimensions, some of which can clash with a deepening politics of economism. In a relatively authoritarian context like Peru of the 1990s, the government could regard itself as an 'exaggerated' form of majority rule in the sense that the president considered himself to have a clear mandate of the majority and therefore other state institutions should be subjugated to his rule. This kind of attitude, clearly present in Fujimori's Peru, is in many ways anti-constitutionalist.
To analyse how constitutionalism is related to the politics of economism, the approach of new constitutionalism is therefore useful but insufficient. A methodological reason for this insufficiency is that analysing the potentially anti-economistic implications of some constitutional arrangements helps us understand better the multiplicity of factors that condition the reproduction of economism. While some constitutional changes such as stricter limits to state interference in property rights tend to strengthen the doctrine of economic neutrality, other constitutional changes may strengthen such rights that can be used against the same doctrine. The right to a referendum, analysed in the following chapter, was in principle one example of constitutionally guaranteed new democratic rights in the Peruvian constitution of 1993.

A related normative reason for the insufficiency of the new constitutionalist framework is that taking the possibly emancipatory aspects of constitutionalism into account may be useful in the construction of more democratic futures. In Chapter 2 I have presented arguments to support the claim that some constitutional guarantees are in principle desirable, and the issue will also be briefly explored in the concluding remarks. The principles may, however, be useless unless some social forces work for them. Transnationally guaranteed constitutional rights have become an increasingly important element in the strategies of Peruvian social movements and other organizations that promote human rights and democratic reforms. A more detailed analysis of the extent to which this has happened is, however, here left for future analyses.

**Democratic Forms under Debate**

One of the strategies used by the government to justify the new social order enshrined in the constitution of 1993 was the claim that it implied a better conception of democracy than the previous governments had held. Fujimori repeatedly emphasized the substantive outcome of his government's policies as opposed to formal procedures. In the words of Francisco Sagasti and Max Hernández (1994: 32), he thereby substituted a 'rule of outcomes' for a 'rule of law'.

In the context of the institutional decline of the representative institutions and widespread political violence, Fujimori's expressed alternative had, prima facie, some credibility. Because a great part of the population
was living in poverty and disillusioned with politicians, an emphasis on the substantive results of the policies rather than on the democratic nature of the methods used was an attractive way of formulating a discourse. Using the terminology of Andreas Schedler (1997: 13), this invocation of material as opposed to procedural normative givens could be called moral anti-politics.

Fujimori could not, however, completely disregard democratic procedures. Compared with many earlier moments in world history, it has become politically costly to suppress openly all democratic claims. Instead, even authoritarian governments try to give various concessions to democratic demands in order to co-opt and attenuate them. Fujimori’s government was also eager to construct a more-democratic-than-thou argument, Not unlike the World Bank strategies, Fujimori’s government was willing to allow apparent democratization in some restricted spheres, and the manipulated mass media created an image of increasingly direct democracy. At the same time, along the lines of the constitutional politics of economism, the socially constructed economic sphere of decision-making was increasingly sealed off from democratic accountability and popular control.

Because there was a widespread perception that representative democracy had not functioned well, elements of ‘direct democracy’ could give some promise of a more democratic future. For example, in February 1991 there was a governmental initiative to ‘democratize governmental initiatives’. It was specifically stated that certain areas of decision-making, such as economic policy, defence and diplomacy, would not be included in the initiative. The plan was initially prepared under the supervision of the presidential adviser, Hernando de Soto, who soon renounced his advisory post because the government accepted his proposal in a watered-down version.

The concept of partyarchy (partidocracia) was repeatedly used by Fujimori (e.g. 1992a; 1992b) to describe the previous periods of ‘pseudo-democracy’. A new period of more authentic democracy was about to begin, and according to Fujimori this period would also be more suitable for the particular interests of Peru. Fujimori described models of representative democracy as products of neo-colonialism. He also stated that these models had implied that, until the autogolpe, a minority of corrupt politicians had been governing Peru.

Somewhat paradoxically, Fujimori’s discourse had some resemblance to
certain leftist criticisms of representative democracy, and especially with the criticism used by the radical military reformer Juan Velasco, who was Peru’s president in 1968–75. It also shared many elements with the discourse of various East Asian leaders for whom the democracy promotion by western countries often represents colonial interventionism. More than Asians, Latin American elites have traditionally considered themselves part of the western cultural sphere, supposedly sharing the values that emerged from the European Enlightenment. Fujimori’s partial coinciding with the ‘Asian values’ discourse of Mahathir Mohamad and other Asian leaders is sometimes attributed to his Japanese ancestral origins.

Fujimori has, through his appearance and discourse, represented to a certain extent a rupture inside Peru in the tradition of European-origin heads of state. His criticism of transnational western human rights norms bears some similarities to his statements about the end of white oligarchic rule in Peru (e.g. Expreso, 23 June 1997). We should not, however, exaggerate the importance of his ethnic background in this issue. The criticism of neo-colonial human rights intervention is also a pragmatic response to the multidimensional pressures of globalization that can be used even without any references to ethnic differences, as illustrated by the arguments of the Chilean Right during Pinochet’s detention in London in 1998–2000.

The discourse of Fujimori’s government on democratic rights was often ambiguous. On 5 May 1992 in Geneva, Fujimori’s Minister of Labour, Augusto Antonioli, stated that the government was studying the possibility of taking the right to vote away from the illiterate population ‘because they are manipulated and do not know for whom or for what to vote’ (Resumen Semanal, 11 June 1992). One of the most telling statements about the government’s attitude towards human rights and democracy was given in 1998 by the Economy Minister, Jorge Baca Campodónico. When asked about the negative image that the autogolpe had produced in the global community, he responded: ‘Even if in Peru we are lagging behind in this aspect, we need to take care of the economic issues first. The ideal would of course be to advance in parallel form, but one needs to be consistent: we certainly do not want to return to the past, have all the human rights and be drowned in hyperinflation.’

Fujimori himself, however, repeatedly tried to boost his democratic credentials by pointing to new mechanisms for a direct participation of the people in decision-making. At the CADE meeting of 1992 Fujimori (1992b)
vigorously demanded that the newly elected Constitutional Congress CCD should 'go towards direct democracy. Lose fear of the people, give them participation. Give them a referendum so that they can make, modify and derogate laws.'

The constitution of 1993 outlined some procedures for people’s participation. The principal new ones were people’s legislative initiatives, revocation of authorities and, most importantly, the people’s right to a referendum. None of these elements had been explicitly present in the previous constitution, except for a restricted right to a referendum in issues of regional demarcation, and a people’s legislative initiative in constitutional reform. In Peru as well as elsewhere in Latin America, the terms ‘referendum’ and ‘plebiscite’ are often used as synonyms (see Rubio 1999a: Vol. 2, 322–3). In the constitution of 1993, an effective right to hold a referendum was established because it gave people the right not only to vote in a referendum, but also to formulate the questions to be asked in it.

The expectations of increased direct democracy through referenda were mostly left unfulfilled. The democratic innovation of the new constitution was discarded as soon as it was going to be used to politicize an issue that the government was trying to define as strictly ‘economic’: privatization. The privatization of the state petroleum company, Petróperú, was questioned by a large alliance of civil society organizations and, according to the opinion polls, also by the majority of Peruvians. When the organizations started collecting signatures for a referendum on the privatization, the government changed the rules of the game. One of the relatively democratic elements of the constitution, specified in a law according to which a certain percentage of those eligible to vote had the right to bring an issue chosen by them to a referendum, was suddenly modified. A further requirement was added: a certain number of parliamentarians also needed to support the initiative before a referendum could be held. The number of parliamentarians that were required for the approval of the initiative was conveniently defined as two-fifths, an amount that the opposition could never gather in the Fujimorista-controlled Congress of the years 1995–2000. An element of direct democracy was aborted, and the authoritarian character of the government became increasingly evident. The politics of economism, once more, contributed to establishing limits to supposedly democratic concessions.
Notes

1. On the role of the OAS in the election, see McClintock (1994) and especially Rospigliosi (1994).

2. The relatively high number of invalid votes explains this difference. Fujimori supporters got 49 per cent of the valid votes.

3. Author’s interview with Luis Cueva, 2 December 1992, Lima.


5. Author’s interview with Carlos Bolonha, 22 August 1996, Lima.

6. See, however, Bustamante (1993), who points out that the constitution of 1993 still had too many ‘declarative’ rights, which from his perspective were unnecessary.


8. The validity of this interpretation will not, however, be known until a renationalization is attempted. See Bernales (1990: 84–95) on the debate over the constitutionality of Alan García’s bank nationalization attempt.

9. See also Adrianzén (1993: 12–13).

10. To a certain extent this formulation, in Article 60, together with the reference to ‘social market economy’ in Article 58 can be considered compromises that pay lip-service to pluralism in an otherwise economistic constitution. See Rubio (1999a: Vol. 3, 210) for a comparison with constitutions in other states.

11. The increased autonomy of the Central Bank was also an important model for other governmental bodies, such as the National Superintendency of Tax Administration (Superintendencia Nacional de Administración Tributaria, SUNAT); see Durand and Thorp (1998: 216).


13. Scruton’s (1982: 241) definition of judicial review is ‘the challenging of acts performed by the legislative branch of government before a judicial body’.

14. For his own views, seldom expressed publicly, see Montesinos (1996). On his role, see e.g. Youngers (1997) and the declaration of admission of the so-called Cantuta Case by the Inter-American Commission on Human Rights; Informe de Admisibilidad N. 42/99. Caso N°. 11045. Perú.

15. On other presidentialist features of the new constitutions, see Wise (1994a: 198), for whom it is the most presidentialist constitution in Peru’s history, and probably also in the whole region. For a theoretical defence of presidential re-elections in Latin America, see Diamond (1996: 86). On the ‘inefficiencies’ created by the limitations to the chief executive’s term, see Naim (1994).

16. The experience of the authoritarian Leguia government, sometimes compared to Fujimori’s government, during the 1920s was an important reason for such a strict rule; see Garcia Belaunde (1997: 43–4).

17. Though not as extreme as the precommitment rule Charondas established among the Thurians: ‘He commanded, namely, that the man who proposed to revise any law should put his neck in a noose at the time he made his proposal … but if the proposal of revision did not carry, the noose was to be drawn and the man die on the spot’; see Holmes (1988: 208n).
18. The plausibility of the claim was increased by the fact that Montesinos had acted as a lawyer for military officers accused of drug trafficking during the 1980s.


22. See e.g. the comments by Víctor Joy Way in Cambio, 7 June 1999.

23. See e.g. comments of Martha Chávez in La República, 6 June 1999.


25. Fujimori (1998). See also Fujimori's (1992a) National Day speech on 28 July 1992 where he complained that the 'President and the people' were not able to use the constitution of 1979 to make changes in the country but at the same time 'all sorts of criminals' used the constitution to mock justice. It should, however, be noted that the Shining Path, especially until the detention of Abimael Guzmán, has generally had a very critical discourse towards 'bourgeois' human rights.


27. Ibid.

28. Whereas, for example, all signatories to the European Convention on Human Rights automatically accept the jurisdiction of the European Court of Human Rights, the agreements have to be made separately in the Inter-American system. Peru ratified the American Convention on Human Rights on 28 July 1978 and accepted the jurisdiction of the Inter-American Court of Human Rights on 2 January 1981. See Robertson (1997: 12); Faúndez Ledesma (1996: Annex 7).

29. Under Article 78 of the American Convention on Human Rights, a state must give notice of its denunciation of the Convention to the secretary general of the OAS one year in advance of its taking effect. The denunciation does not have the effect of releasing it from its responsibility under the Convention for any violation carried out by the state prior to the effective date of denunciation. For more details, see Davidson (1997: 62). Apart from the case of the dismissed judges described above, the case of Baruch Ivcher, described in Chapter 9, was and is likely to be processed in the Court and, most probably, be decided against the will of the Peruvian government.

30. It is in principle easier to break such legal obligations that are guaranteed by international judicial organs than ones that are guaranteed by national courts. As in the case of the Inter-American Court of Human Rights, the former generally have no means of backing their decisions with the threat of a law-enforcement force.


33. The situation has created a paradoxical situation for people such as Bernales (1997). On the one hand he emphasizes the illegitimacy of the constitution of 1993 because of its origins in the coup of 1992. On the other hand, he recognizes the need to defend the very same constitution against its violations by the Fujimori government.
34. Anti-consstitutionalist is not necessarily anti-constitutional in a particular context. See *Gestión*, 2 July 1997, and especially *Revista Latin Trade* (July 1997) for an analysis of the confidence of investors on the judicial stability of Latin American countries. Together with Venezuela, Peru ranked the lowest.

35. Even though constitutionalism needs to be assessed critically, I disagree with Mandel's (1994) suggestion that 'constitutions are only useful for legitimating power, not for protecting anyone against it'.

36. Author's interviews with Hans Landolt Pardo, 12 June 1997, Lima; Francisco Soberón, 9 June 1999, Lima. See also Keck and Sikkink (1998) on 'transnational advocacy networks'.

37. For an example of the 'democratic' World Bank discourse, see James D. Wolfensohn's (1997) address to the Board of Governors on 23 September 1997 in Hong Kong.


40. As Conaghan (1996: 40) notes, debate on *partidocracia* had already been going on in Venezuela in the 1980s. There are, indeed, various indications that Fujimori had borrowed the analysis of partyarchy from a thesis that dealt with Venezuela.

41. See Basombrio Iglesias (1998). In a Reuter's interview on 5 March 1993, Fujimori stated that he could be considered a 'leftist' because he was doing a structural reform, a 'revolution'; see *Resumen Semanal*, 9 March 1993. For a comparison of Velasco and Fujimori, see also Beaumont (1997).

42. Hindess (1997) offers an interesting analysis of ‘political antipolitics’ as one of the most familiar expressions of western political culture.


45. For an account of various problematic features of the privatization of Petroperú, see Saba (1997).

46. Law 26592 established that forty-eight parliamentarians were needed to subject an issue to a referendum; see *Resumen Semanal*, 16 April 1996. See Abad Yupanqui (1998: 107–8) for an analysis of the debate on the unconstitutionality of the law. The same law was put to use again in August 1998 when there was a referendum initiative to oppose the law that allowed Fujimori to stand for a third presidential term in 2000; see *La República*, 30 August 1998.
11 The Monarchization of Democracy

Explaining the Politics of Economism

The conditions imposed by globalizing capitalism through such mechanisms as investment strike and the conditionality of multilateral financial institutions are the most important explanatory factors for the emergence and transnational reproduction of the politics of economism. We should differentiate between such aspects of globalization that have significantly increased their importance in comparison to earlier periods within the lifespan of the capitalist world-system and such aspects that have not. If we, for instance, simply look at the importance of foreign trade, the present situation is by no means unique. Arguments about deepening globalization can therefore seem exaggerated if we analyse the relative weight of foreign trade in the productive activities of individual states.¹

In order to explain and understand the deepening politics of economism during the period under closer focus in this book, we must take into account the increasing power of financial capital.² Moreover, we need to look at changes in administrative practices and institutional arrangements, both nationally and transnationally. From Chapter 4 onwards I have paid attention to the different outcomes of the debt crisis of the 1980s and 1990s as compared with earlier decades. Based on the analysis, it is possible to conclude that significant changes have certainly taken place in the world-system during the recent decades.

A most important contributing factor towards economistic discipline in the 1980s and the 1990s is the highly increased strategic significance of transnational financial links. There are multiple mechanisms that transmit the conditions constituted by these links into concrete state policies. One mechanism functions through the production of policy-relevant knowledge. When transnational financial links were less important, such as during the collapse of the 1930s and the abundance of credit supply of the 1970s, more
nationalist policy advisers tended to get into strategic positions (see Mahon 1996). As institutional investors and credit-rating agencies have become increasingly important since the 1980s, states have been pressured into changing their policies so that they suit investors' interests. Before attributing too much importance to the multilateral financial institutions, it needs to be remembered that they are also often conditioned by the need to maintain their own credit ratings vis-à-vis formally private financial institutions.

The way President-elect Fujimori changed his advisers in 1990 as a consequence of his tour to the financial centres of the world-system was an example of transnational pressures having an effect on the composition of the economic-policy team. Once these changes are initiated, it becomes important to create institutional mechanisms to consolidate the transition to neo-liberal economism. Stephen Gill's transnational historical materialism offers useful insights into this consolidation. Through it we can pinpoint various mechanisms of restraint that limit the future possibilities of states to deviate from the 'sound' economic policy defined by multilateral financial institutions.

The principles of low inflation and budget discipline, as well as the redefinition of the two boundaries that define the political community, are important elements in the thoroughly economistic policy line. States receive various kinds of incentives to show a commitment to sustaining a good investment climate. Showing this commitment through changes in the legal framework and otherwise is often rewarded by higher credit ratings and thus cheaper access to capital to finance government activity. In Peru, the head of advisers in the Ministry of Economy, Carlos Paredes Lanatta, pointed out the relatively low spreads demanded by Peru's creditors in July 1999 as a major consequence of the chosen economic policies during the 1990s. He also emphasized the security created through Peru's agreements with the Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC) (El Comercio, 18 July 1999).

In the particular context of Peru, both the historical weakness of the state and the increasing power of transnationally mobile forms of capital contributed to the failure of Alan Garcia's state-interventionist attempt during the latter half of the 1980s. The investment strike, in the context of an escalating capital flight, was an effective mechanism through which the business elite was able to punish Garcia for politicizing the economic sphere. The burden of foreign debt accumulated during the 1970s and 1980s has
further constrained Peru and other Latin American countries, especially from the 1980s onwards.

There have also been more conjunctural factors such as the civil-but-dirty war between the government and the Shining Path and, to a lesser degree, the MRTA. The spiral of violence weakened the government's ability to manage the apparent expansion of the political sphere, even though it simultaneously provided some justification for the expansion. These factors also contributed to the emergence of Fujimori's government, which combined authoritarian measures with a radical politics of economism. The armed conflict has certainly been a factor that helps to explain the fear of politics that a significant sector of Peruvians acquired during the late 1980s and early 1990s. To the extent that the armed conflict dies out, new possibilities for political participation may therefore emerge.

The transition to neo-liberalism was possible in Peru in the late 1980s and early 1990s also because the social forces that had previously opposed it – such as trade unions and left-wing parties – had weakened. The growing informalization of labour relations was weakening the organized labour movement and its capacity to mobilize against neo-liberal reforms (Crabtree and Thomas 1998: 268; Roberts 1995: 98–9). As analysed in Chapter 10, the labour movement has tried to compensate for the declining relative force it has inside Peru by increasing its transnational links to other pro-labour actors and institutions, such as the AFL-CIO and the ILO. Nevertheless, this attempt to build what might be called alternative globalization or, in modified Gramscian terms, transnational counter-hegemonic blocs, has not been able significantly to contain the politics of economism.

The Construction of Irreversibility

Despite his non-orthodox electoral programme, in 1990 President Alberto Fujimori formed a government that conducted one of the most radical neo-liberal reforms in Latin America. The chaotic situation and the failure of state interventionism in the late 1980s provided reasons for relatively extreme measures. The related disorganization of political institutions such as parties and popular movements was another factor in Fujimori's ability to move forwards rapidly with a programme that, through the politics of economism, isolated the 'economic' from the political and at the same time expanded the former over the latter.
We should take into account that the causality also worked in the reverse direction. The fact that the decisions previously played out in the ‘political’ sphere were increasingly removed into the ‘economic’ sphere contributed to the delegitimation of the parties and other formally political institutions, and not only vice versa. When traditional political institutions were less in charge of the governance of Peru, traditional politicians seemed more incapable than before (e.g. Grompone 1993). Even though Fujimori’s emergence was partially a result of the weakness of the public political sphere in Peru, some of the weaknesses have also been further accentuated by Fujimori’s politics of economism.

It would be incorrect simply to argue that Fujimori’s programme diminished the role of the state. In some parts of economic-policy administration, such as tax collection and intellectual property rights supervision, the state has become increasingly efficient and often more interventionist than before. The law-and-order functions of the state, backed by the threat of physical violence, have also increased, largely as a response to the Shining Path. At the same time, many other state functions have been privatized and mechanisms for the public accountability of the most central decision-making organs of the state have weakened, especially in issues defined as economic.

The role of ‘external’ and transnational actors and institutions in the workings of the politics of economism was very significant even before Fujimori started his presidency on 28 July 1990. His metamorphosis from a heterodox candidate to an orthodox president, as analysed in Chapter 8, was largely due to the pressures he encountered during his tour as president-elect in the financial centres of the world-system. Similar discrepancies between electoral discourse and governmental practice have taken place in various parts of Latin America, as well as in other parts of the world. In Peru, the particularly difficult situation with hyperinflation and political violence created conditions for a relatively extreme form of this change in 1990.

A transition to economism was one part of the story, and making the new programme as immune as possible to future political modifications was another. In Peruvian debates, the quest for the irreversibility of Fujimori’s reforms has often been analysed as an attempt to make him remain the head of state for as long as possible. In a highly personalist regime, such as the Peruvian one, re-election and possible re-re-elections can obviously be
an important element in the construction of institutional continuity. This has also been noted in other Latin American countries, such as Argentina, that have given up their historical prohibitions on immediate presidential re-election. In Peru, Fujimori’s honeymoon with voters, after he was able to reduce inflation and show significant advances in the struggle against subversion, brought him enough popularity to get a relatively easy re-election in 1995, even though the results may have been manipulated through fraud. In 2000, the popularity of Fujimori had diminished so much that his second re-election was only possible through a more scandalous fraud.

Focusing exclusively on the element of continuity implied by presidential re-election can, however, make us blind to the construction of other mechanisms that are used to make neo-liberal institutionality immune from changes. In Peru, the construction of these mechanisms has been referred to in popular parlance as creating conditions for ‘Fujimorism without Fujimori’. Chile’s recent history offers a relevant example of the constitutionalist dialectic between continuity and change. Even though Augusto Pinochet gave up the presidency in 1990, the institutionality created by his government continued to a large extent under the civilian governments of the 1990s (Teivainen 2000b). Through a system of multiple veto-points it has been very difficult for the popularly elected congress members and the civilian governments of the 1990s to make any substantial changes to the Pinochetista constitution of 1980 (Moulian 1997). Álvaro Bardón, a former director of the Chilean Central Bank and one of the so-called Chicago Boys who executed neo-liberal reforms in Pinochet’s Chile, expressed his constitutionalism in 1998 by stating that ‘a free society cannot operate without respected and persisting rules. These can be inadequate, but they need to be changed only with time and almost unanimously’ (El Mercurio, 3 February 1998).

There are many important differences between the government of Fujimori and that of Pinochet. Despite the authoritarian measures of both, Fujimori’s government cannot be defined as a traditional dictatorship, except perhaps during 1992–95 and again during the last months in 2000 before he was ousted. There are, however, also various similarities in the ways both of these authoritarian governments constructed mechanisms of institutional continuity intended to survive beyond the fall of their own governments. In the more legalistic political tradition of Chile, there has
been more emphasis on formal rules in constructing the mechanisms. The influence of the military, for example, is less formalized in Peru than in Chile, where the military can still designate some Congress representatives.

Even though the Fujimori government constantly broke the rule of law in issues such as human rights violations, it tried to pay more respect and even constitutionalize a rule of law in issues considered economic. In Peru, the Chilean model has been more accepted in the politics of economism than in the role of the military. An editorial of the *Expreso* (3 June 1999) was very clear in offering the Chilean transition from the Pinochet era to the civilian governments of the 1990s as a recommendation of how future Peruvian governments should not try to modify Fujimori's economic-policy model (see also Boloña 1999: 161).

The Chilean model has been implicit also in some of Fujimori's own discourse. He, for example, repeatedly referred to himself as *Chinochet*. Even if his use of the term can be partially attributed to his sarcastic sense of humour, it symbolizes some important parallels between Pinochet's Chile and Fujimori's Peru. Many of these parallels are by no means specific to the two countries. A process that can be called the monarchization of democracy is putting limits on democracy in many more contexts than in the Chilean and Peruvian protected democracies. With the term monarchization, rather than creating a category to describe the particular characteristics of Fujimori's authoritarian government, I want to illustrate how the reforms may constrain formally post- or non-authoritarian governments.

**The Transition to Monarchicized Democracy**

On 1 December 1991, in a speech at the Annual Conference of Business Executives, CADE, in Arequipa, Fujimori stated that taking into account Peru's deep and complex problems, the country might need an emperor 'for at least ten years to solve the problems' (*Resumen Semanal*, 5 December 1991). Even though he added that he himself would not be the emperor because of his 'respect for the Constitution', the autogolpe and his following project to perpetuate his presidency would soon give new meaning to his words.

As stated above, the continuity of the institutionality created during Fujimori's government should not be analysed only in terms of Fujimori's re-elections. There are different ways to guarantee such continuity, one of
them being the tendency towards what I would like to call a 'monarchization' of the regime. An immediate interpretation of such a tendency may be that it refers to emperor-like projects by heads of state such as Fujimori. This part of the monarchization can be approached through concepts like O'Donnell's 'delegative democracy', even if in Fujimori's Peru the democratic aspects of the regime were scarce. In terms of constitutional politics, this tendency can be considered relatively anti-constitutionalist, as demonstrated by the various breaches of constitutional order by the Fujimori government, even after its own constitution of 1993 was established. This is, however, only one, and perhaps the least important one of the two meanings that can be given to the concept of monarchization in the Peruvian case.

A more fundamental meaning is that, through the constitutional politics of economism, democracy may be in danger of experiencing a fate that is parallel to what has happened to monarchy in various countries during past centuries. Various European countries, such as Norway, the United Kingdom and Spain, are still formally monarchies. It is, however, quite obvious that the monarchs have only marginal or ceremonial powers, and that the most important political decisions are made elsewhere. These countries are called constitutional monarchies, because it was often through the establishment of constitutional rules that the powers of the monarch were and are limited. Similarly, through the constitutional politics of economism, the powers of democratic institutions are being restricted. When political decision-making is, in formally democratic countries, increasingly taken away from democratically elected bodies and insulated in 'technical' and 'economic' bodies, there is a possibility that present-day democratic institutions may at some point have only marginal or ceremonial functions. Even though the administrative units where these marginalized institutions function may still be defined as democracies, in this situation their powers could be similarly limited as are those of present-day queens and kings of constitutional monarchies.

The main parts of this book were written before the fall of Fujimori's government. Its aim is not to provide an overall analysis of a particular Peruvian government, nor to explain its fall. Nevertheless, a few lines on the post-Fujimori situation in Peru can be useful to shed light on the more general limits to democracy in apparently non-authoritarian contexts.

During the last years and months of Fujimori's government, street pro-
tests and other forms of mobilizations were becoming increasingly intense. Soon after his infamous re-election in 2000, Fujimori had to resign and escape to Japan. The transitional government led by Valentín Paniagua faced the task of re-creating the rule of law. The spectacular proofs of widespread corruption during the 1990s delegitimized Fujimori and his associates in the eyes of many Peruvians and made it easier for the Paniagua government to remove as well as imprison many public and silent architects of the authoritarian past.

The year 2001 has been a democratic spring for Peru. Establishing the rule of law in post-authoritarian situations is in various ways an admirable task. At the same time, Peru after Fujimori’s fall is an example of the limits of many transitions to democracy, and of the limits of many so-called established democracies as well.

In Peru, the politics of economism consolidated during the 1990s has received little criticism in the immediate post-Fujimori context. For example, there are constant references to the importance of having ‘autonomous institutions’. Even if the autonomy of judicial organs can be considered highly desirable for democratic projects, the fact that the autonomy of the Central Bank or of Economic Ministry technocrats is generally assumed to be equally beneficial for democracy is an example of the influence of economism. Similar confusion about different aspects of the democratically beneficial autonomy of institutions such as central banks can be observed in most parts of today’s world.

To make democratic reforms more profound, the economistic legacy of Fujimori should be questioned. Democratic demands should also be transferred to various supposedly neutral economic institutions. At the same time, it may be understandable that the establishment of the rule of law is a priority for many democratic actors. Short-term objectives are often more legitimate than long-term goals, but without long-term goals it is difficult to have radically democratic horizons.

Notes

1. For different perspectives on the issue see Hirst and Thompson (1996) and Radice (1998).
3. Durand and Thorp (1998: 209–10) offer a detailed and well-argued analysis of the ‘most successful of Fujimori’s reforms’: the tax administration reform. At the same
time, it needs to be remembered that tax policies were often used by Fujimori to punish his opponents and reward his allies.

4. For some differences, see Quijano (1995).

5. Chino is a popular nickname of Fujimori, referring to his Asian heritage. See Demelas-Bohy and Lausent-Herrera (1995: 13–14) for an analysis of its usage. It should be noted that since Pinochet's arrest in London in October 1998 Fujimori has not used the comparison.

6. On constitutional innovations in seventeenth-century England, which involved restraints upon the power of the monarch, see Gill (1999); North and Weingast (1998).

7. On constitutionalist ideology as 'both a revolutionary and a counter-revolutionary weapon', see Sejersted (1988: 133).