LATIN AMERICA AND EUROPE
TOWARDS A MUTUAL UNDERSTANDING.
Economic culture and political constitution in the experience of Peru

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Abstract

In recent years Europe and Latin America have increased their relationships in a multidimensional spectrum where economic, social and cultural interactions are strengthening. Concrete platforms of integration and collaboration between both regions are emerging. In this context, Peru is (again) becoming a central player in the Latin American history, particularly due to its leadership role in the Pacific Alliance initiative, which represents the most ambitious integration initiative in Latin America. Considering this, we think it appropriate to initiate with Peru a process of mutual understanding. The work analyzes the “economic constitutions” of the European Union and Peru. The analysis shows that the principle of subsidiarity and the other underlying principles of the social market economy appear in both economic constitutions as breakthrough elements for a deeper integration and cooperation between the two regions.

JEL Classification: B20, K10, N44, N46.

Keywords: Ordoliberalism, Constitution, Europe, Peru.

Introduction

Latin America and the European Union have recently signed different strategic agreements to support and improve economic cooperation and regional integration, where new platforms of collaboration at all levels (supra-national, national, sub-national) are arising. The European Union and Latin American and Caribbean
Foundation (EU-LAC) is a fascinating case, where sub-national entities of both continents are exploring new forms of cooperation.

In 2013 a Free Trade Agreement between Peru and European Union became in force, representing a remarkable expression of increasing collaboration between Europe and a country that has been historically considered as the “core” of the Andean Community and currently is recognized as one of the leader of Pacific Alliance, which represents the most ambitious integration initiative in Latin America, involving four countries: Peru (promoter of the initiative), Chile, Colombia and Mexico. In such context it is important to trigger a process of mutual understanding between the two regions.

Andean countries and the European Union are experiencing a key phase of changing. In the former, it has been observed a strong social stress due to the increasing debate on political constitutions, especially regarding the legal framework which affects the real economy. The latter is trying to implement a strategy for a smart, sustainable and inclusive growth.

The aim of the paper is to give a contribution to the mutual understanding between the two regions. In particular we intend to compare the economic constitutions of Peru and Europe with the purpose to assess some similarities and divergences.

We have faced some inner difficulties. Peru is a national State, Europe is a supranational entity. Moreover the concept of “economic constitution” is a controversial issue. Here, economic constitution refers to the body of rules which determine goals and means of the intervention of public authorities in the economic sphere.

The paper is organized into three parts. In the first, we will present a brief sketch of the so-called Social Market Economy model, which seems to have inspired the two constitutions. In the second, we will describe the basic features of the economic constitution of Europe. In the third, we will focus on the economic constitution of Peru trying to show the main schools of economic thought behind the designed economic system. In the conclusions, we will try to assess the main similarities and differences between the two constitutions and to evaluate if the Social Market Economy could be a common model to combine economic growth and social justice and to foster
cooperation between the two regions.¹

- **The Theory of Social Market Economy**

The confrontation with the competitive market issues under an "institutional approach" was the most important contribution given by ordoliberals: the competition order is in itself a "public benefit" and as such should be protected. This constitutional perspective of the market, approaches the ordoliberals of the Freiburg School and the institutional research by James Buchanan, who has universalized the liberal ideal of voluntary cooperation, transferring it from market decisions to institutional choices².

First of all, our reference to the social market economy meets an academic (more than political) experiment that was initiated in the second half of the Thirties in Nazified Germany as an experiment that took the name of “Ordoliberalism”. Among the main representatives who contributed to the development and dissemination of that school of thought there were economists such as Walter Eucken, Alexander Rüstov, and Wilhelm Röpke and jurists such as Hans Grossman-Dörth and Franz Böhm³; the latter, together with Eucken, were the coeditors of the “Ordo” journal. In the first volume of their publication, *Ordnug der Wirtschaft* (1936), Böhm, Eucken and Grossman-Dörth drafted a programmatic introduction in which they articulated their firm stance against the persistent legacy of the German Historical School of Economics of Gustav Schmöller and they also asserted the general principle that “all the practical political-legal or political-economic issues had to be linked to the notion of economic constitution”, in the conviction that the interrelationship between law and economics is “crucial”. In the essay/manifesto of 1936, named “Our Task”, the fathers of ordoliberalism pointed out: «Law and political economy were constitutive forces that exercised a remarkable influence – for instance, in the reconstruction of the legal and economic system that took place in all civilized countries at the end of the 18th century. Only during the course of the 19th century and at the beginning of the 20th century they lost their

¹ On the strategic agreement between Andean Community and European Union, see European Commission (2007).
² See Buchanan (1977: 5).
prominence»⁴. The Historical School of Economics, as Eucken wrote in the 1951 edition in his *Foundations of political economy* [1939], is atheoretical in the sphere of political economy and arbitrary in the sphere of economic policy: «Menger maintains that the historical economist must find out the “concrete relationships between facts”. But this is exactly what a historian cannot do. How can he establish through his historical method the connections that exist between price drops, unemployment and output decline and the concrete causes of all these phenomena?»⁵. According to Eucken, the relations that the “historical economist” discerns “are still unknowable through his methods”. In other words, at the heart of the concept of "Ordo" there is a free competitive market, essential so as to ascertain a freedom which is not only economic. Without regulation which conforms to such principles, the market cannot work appropriately or sustain economic growth while providing the base for equitable distribution.

After the Second World War, the Ordoliberal program offered the theoretical foundation for the development of the so-called "social market economy".

The social market economy and its underlying theory, ordoliberalism, present themselves like an alternate and systematic approach leading up to the *Ordnungstheorie* and to the *Ordnungspolitik*. Unlike the authoritarian understanding of the term “order”, for “ordoliberals” the notion refers to *coordination* of individual plans, a decentralized coordination of economic activities in a general framework of rules of the game, and refuse to *subordinate* economic activities to a central authority⁷. This is the reason why we believe, like Vanberg does, that the founders of ordoliberalism emphasized the role of the rules of the game, as the main means to attempt to put in place an economic policy capable of improving economy, i.e. to put in place “correct economic institutions”⁸. For our authors the combination of law and economic analysis is a prerequisite to create what they called the social market economy, i.e. the development of an economic constitution attempting to improve the economic system in an *indirect*...

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⁵ Eucken (1951: 51).
manner, revising the rules of the game, in sharp contrast with an interventionist economic policy. Razeen Sally writes: «It’s up to the State to put in place and maintain the institutional framework of a free economic order, but it must not intervene in the mechanisms of the competitive economic process: here is the essence of the *Ordnungspolitik*»⁹. All of this in the conviction that the establishment of such an institutional and legal framework, of an effective market order, could have enabled to solve of the social issues of the 19th century. In 1936 Eucken, Böhm and Grossmann-Dörth themselves, in the “Ordo” manifesto, stated that: “We seek to create an economic and social order ensuring, at the same time, the proper functioning of the economic activity as well as decent and humane living conditions. We are in favour of a competitive economy, since it allows to achieve these goals. And we can also say that this end cannot but be accomplished by this means. Competition is a means, and not an end in itself”¹⁰.

In the aim to identify a possible “ideal profile” of what we mean for social market economy, a remarkable contribution is considered the essay “Economic and Social Order”. Unpublished until 1979, it was written in 1943 at the request of the Lutheran pastor from Berlin, Dietrich Bonhöffer, which formed part of a group of studies on the principles that the Christian order should prevail in Germany and coup against Hitler¹¹. A copy of the manuscript was found among the papers of one of the organizers of the 1944 attack against Hitler who was known to be supported by Bonhöffer. Diezte and Lampe were arrested by the Gestapo, Eucken was subjected to harsh interrogation in which were not found proofs that he participated in drafting the document; therefore he was not imprisoned.

Below, is presented a short synthesis of the essay that might be used as a guide in order to understand a possible social market economy ideal model¹²:

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⁹ Sally (1996: 8).
¹¹ The essay was published in the volume: *Der Stunde Null. Die Denkschrift des Freiburger “Bonhöffer-Kreises” politische Gemeinschaftsordnung. Eine Versuch zur Selbstbestimmung des christliche Gewissens in den politischen Noten unserer Zeit*, with an introduction by Helmuth Thielicke and an afterword by Philipp von Bismark, Tübingen, Mohr Siebeck 1979. In order to have a resume on this political affair, see Forte and Felice (2010).
There is no chance to pursue collectively a rational new order, without establishing an economic constitution that meets the need for ethical principles.

At the basis of this view there is necessarily the principle of competition.

It should be based on the responsibility of economic actors and therefore on the freedom of the market and price.

Therefore, the State must put clear rules in order to ensure equality between the various economic operators. Among these, we mention the control of concentrations of economic powers, in particular, endanger the middle class. Similarly, the State should defend and promote family savings and “self consumption”\textsuperscript{13}.

Only if there is a clear failure of the market to function in a satisfactory competitive way, the State will assume the exercise of public enterprise or regulate those private, in a market consistent way.

Monetary policy needs stability, preferably by the link to the gold standard.

Fiscal policy should be based on the prohibition of important debt.

Right prices and wages, as a result of a genuine competitive process, are the best protection against unemployment. The task of the State is only to prevent the "exploitative wages".

Social policy should not consist merely in the sum of uncoordinated individual measures, but must ensure a true community of men. State responsibility is to create the conditions.

The economic system must be protected by constitutional rules which clearly fix the fundamental principles.

Some jurists have affirmed that the economic ordoliberalism theory, the social market economy, will be the foundation of the European Community (De Benedetto 2000: 18-19).

\textsuperscript{13} Here is a clear reference to the small peasant property and the ownership of the factory workers of houses with small farms that allow them a certain degree of economic autonomy
The Economic Constitution of Europe

Europe is not a Super-State. It is neither a classical Federation nor a Confederation. Europe has not a “formal constitution”, since the Constitutional Treaty, approved in 2004, has not been ratified.

What is Europe therefore?

As Manuel Barroso once said, it is “a very special construction unique in the history of mankind”. Europe is a Union, “on which the Member States confer competences to attain objectives they have in common” (Lisbon Treaty, art. 1). The European Constitution is a “consolidated version” of several treaties discussed, approved and revised over time. In this sense, it is a “material constitution” able to change and orient the law of the Member States in many fields, including economy.14

In order to understand the meaning of the current economic constitution of Europe we have to briefly look at the past.15

The ancient idea of a unified Europe re-emerged during WWII. The aim glimpsed by visionary people like Altiero Spinelli was to prevent a new great war. The question faced after the war was: how can we unify Europe?

Economists and politicians elaborated two alternative strategies. One was named “functionalism”. According to the Rumanian economist Mitrany and the French politician Monnet, the first step towards a unified Europe was meant to be opening the markets. A progressive economic integration would have called a model of political unification in the end. Economy first, policy later.

The alternative approach was “federalism”. According to some economists like Robbins and Einaudi, and some politicians like Spinelli, the first step should have been to set up a federate state (weak or strong). Only a government would have been able to manage a

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15 On the history of European constitution from Rome to Lisbon, see Streit and Mussler (1995), Weiler (1990), Schiek, Liebert and Schneider (2011).
complex process of economic integration. Policy first, economy later (see Magliulo 1994).

The functional approach prevailed. The date of birth of modern Europe can be considered April 16th, 1948 when in Paris the Organization for European Economic Cooperation (OEEC) was established in order to manage the aid of the so-called Marshall Plan. Other steps in the same direction followed. In 1950 the European Payments Union (EPU) was set up, in 1952 the European Coal and Steel Community (ECSC) was established and in 1957 six European countries (France, West Germany, Italy, Belgium, Netherlands, Luxembourg) signed the Treaty of Rome which created the European Atomic Energy Community (Euratom) and, above all, the European Economic Community (EEC). The Treaty of Rome accelerated and deepened the process of economic integration. It designed a partial economic union: in addition to pursue a custom union, it foresaw free mobility of labor and capital and a common policy in the agriculture sector. There was no mention of any monetary union: at the time, the relationships among western currencies were ruled by the Bretton Woods Agreements.

At the beginning of 1970s a severe crisis occurred. On 15th August 1971, US President Richard Nixon declared the end of gold convertibility for the dollar, thereby decreeing the end of the international economic order established at Bretton Woods. In November 1973, the countries of the OPEC decided to quadruplicate the price of oil, increasing it from 3 to 12 dollars a barrel. The world was struck by the strange new crisis of stagflation. The European construction stopped. But it was just a moment. Then the construction restarted. In 1973 Britain joined the European Community triggering a process of enlargement, and in 1979 a European Monetary System (EMS) was established. In 1985 the Single European Act (SEA) was signed. The aim was to establish the European Single Market by the end of 1992 reinforcing the fundamental four freedoms promised by the Treaty of Rome: free movement of goods, services, people and capital.

Berlin, November 9th, 1989: the wall, and the communism, fall. Europe starts to change. From one hand, it looks at the West imagining a further enlargement. From the other, it
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looks inside itself aware that a single market can only work together with the Economic and Monetary Union. The so-called “Impossible Trinity Theorem” shows in fact that it is impossible to have at the same time fixed exchange rate, full capital mobility and national monetary policy independence. The European Community wanted to maintain the first two targets in order to build a single market. Therefore, it had to renounce to the last target (see Baldwin and Wyplosz 2006: 335).

A second huge phase of political unification, still open, starts with the signature of both the Maastricht Treaty (1992) and the Amsterdam Treaty (1997).

The aim was to introduce a single currency (Euro) as well as to begin a common monetary and fiscal policy. The result is a transfer of economic sovereignty from national states to European bodies.

Some scholars have argued that, after Maastricht, Europe became a “market without State” and a “Union without Constitution”.

They are right. However, the two treaties introduce a body of rules (a material constitution) able to determine goals and means of the economic governance. The aim is to extend both economic freedoms and social rights or, with the words of the Treaty of Amsterdam (art. 2), “to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development”. The way is an active economic policy based on three key principles. The first, “the principle of an open market economy with free competition” (Maastricht Treaty, art. 3A). It implies to renounce any kind of protectionism, either internal or external. The second, the principle of “stable prices, sound public finances and monetary conditions and a sustainable balance of payments.” (Ibidem). It implies that the common monetary policy will be oriented to the target of low inflation (around 2%) while the single national governments will be able to run a deficit spending policy only inside of quantitative limits (Stability and Growth Pact). The last one, the “principle of subsidiarity”, according to which in “areas which do not fall within its exclusive competence, the Community shall take action … only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by
reason of the scale or effects of the proposed action, be better achieved by the Community.” It implies to renounce any kind of strong central authority.

It seems the way traced by the classical constitutions to solve the unsettled question of combining economic freedoms and social rights: the free market remains the best, or only, way to reach that destination. However, the two treaties committed public authorities (national and Europeans) many “common actions” unusual for a liberal State in order to enhance social cohesion. The material constitution of Europe seems, that is, to depict an active economic policy.16

At the beginning of the new Millennium, Europe tries to write a formal Constitution. After the Special European Council held in Lisbon in March 2000 with the aim of launching a new strategy of growth and social cohesion (the so-called Lisbon Strategy), the European Council met again in Laeken in December 2001 in order to call a “Convention on the Future of Europe” entrusted to write a Constitution. The Convention held its inaugural session on 28th February 2002. During the debate, Joschka Fischer and Domenique Villepin proposed a joint motion concerning the idea of “social market economy” (Joerges 2011: 9). The “Treaty establishing a Constitution for Europe” (TCE) was signed on 29th October 2004 by representatives of 25 member states. The article I-3 listed the “Union’s objectives”. There you can read: “The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.”

For the first time, the expression “social market economy” is explicitly adopted by European Union.

The Treaty was however rejected by French and Dutch voters in mid-2005 and the process of ratification stopped. Then, the Intergovernmental Conference decided to approve an international agreement to amend previous basic rules. The Lisbon Treaty was signed by the 27 EU member states on 13th December 2007, and entered into force

16 One key question concerns the compatibility between the European constitution and national constitutions, i.e. Italian: see Magliulo (1999, 2010).
on 1st December 2009. It introduces significant changes in fields concerning foreign affairs, political power of citizens and environment. The most important change concerning “economic constitution” is that it adopts the principle of social market economy introduced by the Convention. This is the entire article 3.3:

“The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.”

Someone could observe that it is only an emphatic declaration. Maybe it is true, like for any other “constitutional principle”. But in March 2010 the European Commission approves a new strategy for the next ten years: “Europe 2020”. The idea of a “social market economy” becomes much more workable. The aim is to promote a growth “smart, sustainable and inclusive”. It is not just an emphatic intention. The European Commission intends to achieve some measurable targets in ten years. They wrote:

“The EU needs to define where it wants to be by 2020. To this end, the Commission proposes the following EU headline targets:

– 75 % of the population aged 20-64 should be employed.
– 3% of the EU’s GDP should be invested in R&D.
– The “20/20/20” climate/energy targets should be met (including an increase to 30% of emissions reduction if the conditions are right).
– The share of early school leavers should be under 10% and at least 40% of the
The younger generation should have a tertiary degree.

– 20 million less people should be at risk of poverty.” (European Commission 2010: 3)

The way to achieve these goals is not only a single and free market. The Commission proposes “seven flagship initiatives to catalyse progress under each priority theme”. They regard: innovation, education systems, digital information, energy efficiency, industrial policy, new skills, and a platform against poverty.

These goals and means are the real content of the current European Social Market Economy: “Europe 2020 sets out a vision of Europe’s social market economy for the 21st century.” (Ibidem)

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- **The Economic Constitution of Peru**

Peru is a particularly complex country due to its geographic location in Latin America and its history. It is considered the cradle of the South American civilization, compared to the Mexican experience in North America, hosting a great variety of cultures. Its geographic location, in the center of the Andes which extend from Chile to Venezuela, configures an intricate economic and a cultural space which in many aspects represent the Andean reality.

In this context, the study of its economic constitution represents a valid effort to understand the reality that has shaped its economic development. The importance of this analysis is confirmed by the recent political situation in Peru, which placed in the center of the political debate, the need to return to the Constitution of 1979, leaving out the current 1993 Constitution.

The extreme importance of this debate was (and returns…) due to the fact that the main economic agents see in the 1993 Constitution a key element in the Peruvian economic and political stability, which has significantly contributed to strengthen a dynamic of growth widely recognized. However, the Nationalist Party (currently the ruling party) during the presidential campaign expressed that the current constitutional does not guarantee an "inclusive development", leaving great majority of the population outside
the benefits of economic growth. Consequently, they consider that the present constitution substantially limits the role of central government as an active promoter of economic and social development. Such expressions and recent political orientations in such direction implied that the debate of changing the current Peruvian constitution is still open; nonetheless most political forces and the opposition reject this intention due the instability (economic and social) that would generate.

Under these considerations, it is fully justified the analysis of the two constitutions under discussion (1979 and 1993). The starting point of our analysis intents to verify if both constitutions converge or diverge from a “social market economy”. This aspect is particularly important because, despite the differences in the debate, curiously, their both “constitutional texts” (European and Peruvian) express explicitly their desire to set up a "social market economy". The Peruvian constitutional law state (both 1979 and the current 1993):

"Private enterprise is free. It is exercised within a social market economy. The state encourages and regulates its practice in order to harmonize it with the public interest."(1979 Constitution Art.115)

"Private enterprise is free. It is exercised within a social market economy. Under this regime, the State directs the development of the country and operates mainly in the areas of promotion of employment, health, education, security, public services and infrastructure. "(1993 Constitution, Art.58).

As it can be appreciated, the economic model to follow is defined by both constitutions, but apparently the means to achieve it are not the same; therefore, we find two main problems: (1) Understand the definition of social market economy assumed by each constitution, (2) the means or policies to achieve such economic model.

However, this consideration is self-contradictory, since a social market economy has unambiguous institutional elements which underlie to their structure and shape in a particular way the economic development, despite the absence of a single type of social market economy. The path on which this type of economic system is achieved, is
intrinsic to its definition thus, it cannot be achieved by restrictive policies that favor the enforcement of only one type of institutions (public or private). Therefore, our first task is to identify if the economy sponsored by the constitutional law is consistent with the principles and dynamics that a social market economy seeks.

It should be clarified that this paper does not attempt to "judge" or "define" a unique type of market social economy; our aim is to apply a comparative analysis of the Peruvian constitutional law (1979 and 1993) and contrasting them with the “social market economy” as it has been conceived by the “Ordoliberalism”. This analysis will contribute to identify convergence or divergence elements on this fundamental concept, exercise that contributes significantly to a mutual understanding.

As a first step, it is require to understand the hermeneutical concepts of the constitutional economic law. This is a difficult task, since both constitutional texts do not provide a clear definition of "social market economy" nor "subsidiary role of the state", which is also stated in the 1993 Constitution:

“The State acknowledges economic pluralism. The national economy is based on the coexistence of diverse forms of ownership and enterprise. Authorized only by law, the State can subsidiarily do business, directly or indirectly, due to high public interest or in real national interest” (Art. 60, 1993 Constitution).

This is the reason why promoting mutual understanding is required, to analyze the level of symmetry existing between the concepts that guide and give structure to the economic environment in the European and Peruvian experience.17

4.1. Historical Background

Before starting our analysis, we must ask why the government of Peru, after approximately 15 years of sustainable economic growth and being considered at present as one of the most solid economies in the region which hosts the best environment for

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business in South America\textsuperscript{18}, wishes to return to the 1979 Constitution. For an outside observer, this situation would appear unreasonable. However, there remains the question of why Peruvians have elected a government whose plan of government actively promoted during the presidential campaign a constitutional change.

These simple questions demands a short review of the history of constitutional law instability in Peru. Table 1 summarizes the different constitutional laws that Peru has adopted since its republican history.

<table>
<thead>
<tr>
<th>Year</th>
<th>In force (years)</th>
<th>Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1812</td>
<td>11</td>
<td>Political Constitution of Spanish Monarchy</td>
</tr>
<tr>
<td>1823</td>
<td>3</td>
<td>Political Constitution of the Peruvian Republic</td>
</tr>
<tr>
<td>1826</td>
<td>2</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1828</td>
<td>6</td>
<td>Political Constitution of the Peruvian Republic</td>
</tr>
<tr>
<td>1834</td>
<td>2</td>
<td>Political Constitution of the Peruvian Republic</td>
</tr>
<tr>
<td>1836</td>
<td>0</td>
<td>Peru-Bolivian Confederation: Constitution of the South Peruvian State</td>
</tr>
<tr>
<td>1836</td>
<td>0</td>
<td>Peru-Bolivian Confederation: Constitution of the North Peruvian State</td>
</tr>
<tr>
<td>1836</td>
<td>1</td>
<td>Political Constitution Peru-Bolivian Confederation: Act 28th October 1836</td>
</tr>
<tr>
<td>1837</td>
<td>2</td>
<td>Political Constitution Peru-Bolivian Confederation:</td>
</tr>
<tr>
<td>1839</td>
<td>17</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1856</td>
<td>4</td>
<td>Political Constitution of the Peruvian Republic</td>
</tr>
<tr>
<td>1860</td>
<td>7</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1867</td>
<td>53</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1920</td>
<td>13</td>
<td>Constitution for the Peruvian Republic</td>
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<tr>
<td>1933</td>
<td>46</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1979</td>
<td>14</td>
<td>Political Constitution of Peru</td>
</tr>
<tr>
<td>1993</td>
<td>18*</td>
<td>Political Constitution of Peru</td>
</tr>
</tbody>
</table>

Total 17 Political Constitutions. It means that in average each constitution was in force about 12 years.

\* Up to date

Source: Peruvian Congress

Due restrictions and scopes of the present papers, we start our review considering the Revolutionary Government of General Velasco Alvarado (1968-1975) characterized by a strong socialist and “anti-imperialistic” type of government, which seriously damaged the economic structure of the country.

During Velasco Alvarado government, the foreign mining companies and remarkable international industries (most American companies) in the country were nationalized and a deep Agrarian Reform was applied. As a consequence, the productivity dropped

\textsuperscript{18} Doing Business 2011.
significantly leading to severe losses in production and a growing social and economic marginalization\textsuperscript{19}. It was during this period (1970) that Sendero Luminoso, the bloody Maoist, Marxist and Leninist terrorist group emerged, causing around 70,000\textsuperscript{20} deaths in 30 years.

This political, social and economic instability led to a great popular unrest. In August 1975, a new coup d’état took place, and General Remigio Morales Bermudez took the power announcing the country would return to democracy in 1980. The announcement was certainly positive although it would imply five more years of military power. It is in this context that the 1979 Constitution was shaped.

Peru returned to democracy with the election of President Fernando Belaunde Terry (1980-1985), whose administration was characterized by a fall in the per capita income, increase of external debt and the strengthening of Sendero Luminoso. In 1985, Alan García (1985-1990) won the elections and (again) promoted populist measures that were fostered under irresponsible fiscal and monetary policies and ended plunging the country into a deep economic crisis having in 1990, a record inflation rate of 7,482\textsuperscript{21}.

In this context Alberto Fujimori (president from 1990-2000) took office. Fujimori received a country in complete bankruptcy, growing terrorism and an economic structure created by military governments. In April 1992, Fujimori dissolved the Congress, and in November elected a new congress which would prepare a new Constitution.

In October 1993 the new Constitution was approved, and at present is in force. During this decade, important market reforms took place. Terrorism was defeated, and social programs were widely executed. However, in 2000 corruption comes to light forcing Fujimori to flee the country. A new transitional government led by Mr. Paniagua was established calling new elections won by Alejandro Toledo (2001 - 2006). Toledo consolidated the economic model, although his “trickle down” approach\textsuperscript{22} did not defeat

\textsuperscript{19} It should be noted that during this period, the dependency theory of Raul Prebisch, in some extent also contributed to reinforce the policies of the Revolutionary Government.
\textsuperscript{20} Comisión de la Verdad y la Reconciliación, 2003.
\textsuperscript{21} Central Reserve Bank of Peru, historical statistics.
\textsuperscript{22} Toledo in several public communications indicate his policy of “chorreo” recalling the trickle-down economics.
the poverty at the level that he expected. Alan Garcia has followed Toledo (2006-2011). Garcia’s government will not repeat the damages caused in his first government concentrating therefore in the economic growth and keeping low inflationary rates.

Today, Peru has a solid economic situation, however social aspects were seriously neglected since the government has been focused in maintaining a solid macroeconomic stability. Few improvements have been made in recent years in relation to the quality of health, education, finance, environmental issues, security and other aspects, leaving unattended the vast majority of the population of the country.

Peru has today growth figures which contrast with the quality of life. GDP growth before the international economic crisis reach rate of 10% of growth; currently growth rates has been decline about 5.5% but still is a remarkable growth rate and the highest among Latin American countries. Nonetheless, the reduction of poverty rates are not so impressive as GDP growth rates and GDP per capital levels. Currently, one third of the country citizen leaves in poverty and about 60% of the economy is recognized as “informal”.

Thus, it is verified a wide gap between the growth and poverty. Additionally, the predominant primacy of Lima (in population of people and firms), shows how country inequality has raised. Furthermore, it is observed a “business divide” between large companies (usually mining sector) and the micro enterprises (with 1 to 9 employees represent about 94% of the business units), where the linking element (medium enterprises) are almost absent, impeding the configuration of a wider and diversified manufacture sector that is required to support a vibrant middle class diffused in all the territory.

In other words, the “bread and butter” problems of the population have not been solved in spite of the important economic growth of the last years. The most important and positive reforms carried out during the Fujimori’s Administration reflect the guidelines established by the Washington Consensus (1989), however the social and public management aspects have been neglected.
This statement is not necessarily a criticism of the postulates of the Washington Consensus, many of which helped stabilize the economy, boost trade, among other positive aspects; however, these instruments were not accompanied by solid social policies and institutional reforms.

The disproportion between growth without inclusion or growth without development, would be the explanation of why great part of the population have support a political party that promotes a constitutional change.

4.2. Comparative analysis of the 1979 and 1993 Constitutions

In order to carry out a simple and accurate analysis, we have to selected main components of both constitutional laws (1979 and 1993) that affect the economic performance of the country. Such components that we analyze next are indicated below.

- Private property and labor rights.
- Characteristics of the economic policy structure: design and execution.
- Investments.
- Property and use of natural resources.
- Education.
- Health.

4.2.1 Private Property and Working Rights

Both constitutions have one key element in common; they acknowledge private property and labor rights. The property is recognized as inviolable and is therefore supervised by the State. Exceptions are allowed in cases of public interest declared by law and previous compensation. Likewise, as it will be analyzed below, the Constitution of 1993 limits expropriations done because of public interest, reducing in this way the arbitrariness of the State against the private property.

Additionally, in both constitutions the State recognizes that the worker is entitled to a fair and reasonable remuneration that will enable him to support his family so as to

23 The original constitutional texts that have been quoted area available in Appendix 1.
achieve material and spiritual welfare. The Constitution also recognizes the right to form unions and the right to strike always within a democratic framework.

Key elements to allow a basic market operation are taking into account in both constitutions, although the 1993 Constitution raises the protection of the property rights.

4.2.2 Characteristics of the economic policy: Its design and implementation

The differences between the two constitutions in certain economic areas are not superficial. The 1979 Constitution, hereinafter C79, shows elements that indicate a type of planned economic policy that considers the State as the great designer and main executor of economic policies. In this sense, the 1993 Constitution, hereinafter C93, shows a State that tends more to foster progress through the promotion of employment and education policies, that is, indirect policies to promote economic development. This is an element that will differ significantly from the C79.

<table>
<thead>
<tr>
<th>1979 Constitution</th>
<th>1993 Constitution</th>
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</thead>
<tbody>
<tr>
<td>Article 111. The State formulates social and economic policies by means of development plans regulating the activity of the other sectors. Once the planning is agreed, it is mandatory.</td>
<td>Article 23°. The State creates conditions for social and economic progress promoting productive employment and education for work.</td>
</tr>
</tbody>
</table>

These considerations bring up the debate on industrial policy, which enjoyed wide circulation in Latin America specially under the leadership of Raul Prebisch of CEPAL and thereafter was harshly criticized for its negative effects. In this respect the C93 suggests the abandonment of such policies fostering indirect interventions.

The C79 accepts a variety of forms of enterprises and points out a state business activity different from the C93, which indicates that business activity of the state can only be carried out on a subsidiary perspective requiring thus a specific law for its execution.
pluralism. The national economy is based on democratic coexistence of different forms of ownership and enterprise. State enterprises, private, cooperative, self-managed, community and other type of businesses act under the legal representation stated in the law according to their characteristics. Article 113. The state does its business in order to promote the economy, public services and achieve the development goals.

The C79 grants the State a leading role in the business activity, in order to achieve the development of the country, while C93 gives the State a subsidiary role, a key aspect for the configuration of a “social market economy”. Nevertheless, it is observed that this subsidiary role is limited –by the usage of specific laws- also in the case of indirect action to foster the economy. We will come back to this observations later.

4.2.3 Direct Foreign Investments

<table>
<thead>
<tr>
<th>1979 Constitution</th>
<th>1993 Constitution</th>
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</thead>
<tbody>
<tr>
<td>Article 137. The State authorizes, registers and monitors direct foreign investment (...).</td>
<td>Article 62°. The freedom to contract guarantees that the parties may validly agree upon in force of regulations at the time of the contract. Contract terms cannot be modified by legislation or other provisions of any kind. By law-contracts, the State may establish guarantees and grant securities. They cannot be modified by legislation, without prejudice to the protection referred to in the</td>
</tr>
</tbody>
</table>
The domestic and foreign investments are subject to the same conditions.

As it can be appreciated, the differences between both constitutions are evident. While the C79 in its Article 137 seems to take a defensive approach towards foreign investment, the C93 offers high guarantees for foreign investments recognizing the inviolability of any type of contract which cannot be modified by any law. This absolutely guarantees the beginning of a business. Likewise, C93 highlights the contract-law, by which the state may provide additional guarantees for investments.

These differences are relevant: although C93 promotes substantially foreign direct investment and indicates equal conditions between national and foreign companies, a close analysis shows a sort of discrimination against national investment, since the law-contracts (with particular benefits) and the additional guaranties would represent better conditions and benefits than those offered to domestic companies creating in this way a possible unbalances between the benefits provided to foreign and local companies. In this regard, the C93 has more capacity to attract foreign investment, but could lead(ed) to a kind of policy of "picking winners and losers".

4.2.4 Property and management of natural resources

Norms that regulate natural resources are of great importance in an economy and geography such as the Peruvian one, where the mining activity is prevailing. Both constitutions state that natural resources - renewable and nonrenewable - constitute patrimony of the nation. In case of private operation, the State grants exploitation rights.

However, there is a difference between both constitutions. C79 stresses in particular the development of mining activity. Furthermore, it grants an exclusive right to the Amazon region, which represents the 60% national territory. In this way, more of the half of the national territory becomes “split” by a different economic framework. Additionally,
other depressed areas, such as highlands, are not taken into account. This creates a
distortion in vast areas, leaving small policy range to support specific areas.

<table>
<thead>
<tr>
<th>1979 Constitution</th>
<th>1993 Constitution</th>
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</thead>
<tbody>
<tr>
<td>Article 118. The renewable and nonrenewable natural resources are the patrimony of the nation. The law establishes the conditions for their use and its granting to individuals. Article 120. The State encourages the development of the Amazon Region it giving special treatment when required. Article 121. Corresponds to the areas where natural resources are located, an appropriate share in the income produced by its exploitation, consistent with a decentralist policy. Article 122. The State promotes and stimulates the mining activity. Protects small and medium scale mining. Promotes the mining sector. Acts as employer and in other forms prescribed by law. It is mandatory to work the mining concession and gives the owner a property right, subject to the conditions of the law.</td>
<td>Article 66°. Renewable and nonrenewable natural resources are patrimony of the Nation (…). The concession grants its owner a real right, subject to such legal regulation. Article 69°.- The State promotes sustainable development of the Amazon Region by means of an adequate legislation.</td>
</tr>
</tbody>
</table>

4.2.5 Education and Health

Within a framework of a social market economy, it cannot be left unattended those aspects related to education and health. In regards to the first item we note an important difference between the C79 and C93.

<table>
<thead>
<tr>
<th>1979 Constitution</th>
<th>1993 Constitution</th>
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Article 25. It is mandatory the elementary education in all its modalities. Education provided by the State is free at all its levels(…). Article 30. The State acknowledges, helps and supervises private, cooperative, community and municipal education which will be nonprofit. (…) All natural or legal person is entitled to form educational centers respecting always the constitutional principles.

<table>
<thead>
<tr>
<th>1979 Constitution</th>
<th>1993 Constitution</th>
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<tr>
<td>Article 25°. The elementary education, in all its modalities, is mandatory. The</td>
<td>Article 66°. The elementary and secondary education is</td>
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<tr>
<td>education supplied by the State is free in all the levels (…).</td>
<td>mandatory. Education is free in State Centers.</td>
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<tr>
<td>Article 39°. The State</td>
<td>The State guarantees the right to free education in</td>
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<td>State universities to those students who maintain a</td>
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<td>satisfactory record performance and who do not have the</td>
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<td>economic resources to pay for their education.</td>
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<td>With the purpose of guaranteeing greater plurality in</td>
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<td>the educational offer, and in favor of those who cannot</td>
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<td>pay for it, the law establishes that the way to</td>
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<td></td>
<td>subsidize private education in all of its modalities,</td>
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<td></td>
<td>including communal and cooperative.</td>
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The C93 extends this mandatory aspect and therefore free up to high school. However, the most relevant aspect is given in the Art. 30 of the C79, which explicitly states that education as a nonprofit activity. This element is not considered in the C93. Nonetheless, it clearly states the possibility that the state can subsidize the private education and other modalities.
recognize, support and supervise the private education, cooperatives, communal and local which will not have profit aims. (…) All persons, natural and juridicals have the right to create, without profit aims, educative centers within the respect of the constitutional principles.

universities the State guarantees the right to be freely educated to those students that maintain a satisfactory performance and do not have the enough economic resources to support their studies. With the aim to guarantee with more plurality the educational supply, considering those that are not able to afford their education, the law indicates the way to subsidize their private education, including the municipal and cooperative.

This aspect is of extreme importance since during Fujimori’s Administration because the development of educational businesses increased largely. On one hand it increased the supply of education - particularly private - but on the other hand the cost of education increased enormously, becoming a truly pro-profit sector, harming families’ budget. This opens an interesting debate, because if the government would be able to support indirectly the private schools or at least would have the possibility to offer better public institutions, it would reduce a sort of monopoly that has been created in the sector, particularly in the capital city.

In regards to health systems, both constitutions promote free and wide services; nonetheless it is interesting that the C93 considers a wider participation of different type of actors (private, public or mixed solutions). Nonetheless, the problem seems to be similar to the educational sector. The lack of direct or indirect support to private initiatives and the poor public supply of health is making too expensive health services, harming families’ budget and reducing significantly its quality of life.
We observed that, although the indication of the subsidiarity role of the state in the C93, it has not being widely exerted. Additionally, it seems that if a sort of fear to this subsidiarity role exists, probably this is a typical case of misunderstanding concepts.

4.2.6 What kind of social market economy pursues the C79 and the C93?

This question is difficult to answer due the absences of definitions in both constitutional laws. Nonetheless, considering the analysis done, we can get some elements.

The C79 considers a prominent role of the state as a central planner, main designer and actor of the economic development of the nation. Foreign direct investors seem to be perceived as necessary but representing a potential threat. An economic policy that looks for sectors selection (picking winners and losers) is observed, particularly mining and agriculture. By the other hand the state intends to guarantee some basic services and clearly states that education cannot have profit aims, remaining as non for profit services.

The type of “social market economy” that emerged from the analysis of the C79 indicates an economic system particularly shaped by the role of the central state, which only requires the role of the private or foreign investors, inasmuch as these provide economic sources to the central government which would become the main distributor of the resources. Additionally, the concern of the natural resources and its protection is not environmental-oriented and foreign investor seem not to be considered as potential partners that contribute with the development of a community and vice-versa. Although these elements are more familiar with a planned economy structure, it is remarkable that C79 considers some typical “market oriented sectors” and “social oriented sectors” that are important elements to configure a social market economy.

The C93 presents several elements that we consider closer to the idea of “social market economy” in the European perspective. Elements such as the subsidiary role of the state, the integration of the private sector as potential provider of social services and the consideration of the state as “promoter” and not “owner” of the development of the country are important. Nevertheless, we observe mismatches between their economic constitution and the way in which the economy and the social aspect evolve. The
contract-laws particularly used during the 90s to attract FDI were certainly necessary, nevertheless could reinforced traditional economic sectors. Moreover, strong policies (direct or indirect) towards small business were not applied, reducing the possibility to create a wider and more mature manufacture sector, essential to create wider middle class.

We also observe, that the government has not used the possibility that law provides under a subsidiary code, such as the indirect support to private education. Instead, it has indirectly promoted a sort of educational and health markets that only a small part of the population can achieve. Rather than providing adequate policies to enhance the subsidiarity (horizontal and vertical), it seems that policies had foster a concentration of the economic power, with consequences in the concentration of population (Lima hosts about 50% of the GDP, about 52% of the business units and about 30% of the country’s population) and therefore producing marginality.

As a consequence we observe a move in the policy setting. From a political concentration to an economic concentration, where both have left a large size of the population at the margin, fact that would explain the current political situation. But, is it really the constitutional law, which can change these patterns? Can the law change a country?

In some extent the answer could be positive, especially if we do not operated under market economy or under a socialist or communist system. Nevertheless, when the basic conditions for a market economy exist and the elements that can pursue a social market economy are present, we think that a change in the constitution can be self-defeating. It means that with the current constitutional framework a “possible social market economy” can be promoted, fact that would be much more difficult with the C79.

As example, with the current constitution the Peruvian state can enhance a truly subsidiary role in strategic sectors such as health, education and infrastructure, role that currently is acting although its weakness. The subsidiarity, the participation, the support to lower layers and other aspects are inherent to the political activity. In our opinion, a renewal perspective of the policies and initiatives is required, rather than a new constitutional law. Peru has already followed the negative path of constitutional
instability; 17 constitutions are witnesses of the fact that changes in constitutions do not guarantee changes in society. The political momentum is giving signs that the debate should be more focused on citizen-center solutions, where the discovery of subsidiarity and its capacity to transform economic success in a social one. Under this perspective the enhancing a mutual understanding between Europe and Peru can produce concrete and long lasting benefits.

A Brief Conclusion

In the first section, we have described some basic features of the so-called Social Market Economy Model conceived by the Ordoliberalism School. It is an attempt, firstly experienced in Germany, to conciliate the classical economic freedoms with the modern social rights.

In the second section, we have examined the economic constitution of Europe which outlines a model of social market economy. According to the constitution, public authorities have to promote a “smart, sustainable and inclusive growth”, and they have to implement a set of interventions conformable to the subsidiarity principle.

In the third section, we have explored in-depth the economic constitution of Peru reconstructing the key passage from the charter of 1979 to that of 1993. Both outline a model of social market economy which commit public authorities to have an active role in promoting an inclusive growth that cannot be achieved only by government centered actions but also with an active participation of social forces.

What do the economic constitutions of Europe and Peru have in common? Our conclusion is that they share a model of social market economy based on the subsidiarity principle and oriented towards a target of high employment and not just of public assistance. This is only a first step in the direction of increasing the “mutual understanding” of two regions which want to cooperate.
REFERENCES


Majone G. (2009), *Europe as the would-be world power. The EU at Fifty*, Cambridge University Press.


### APPENDIX 1

**Original constitucional texts**

<table>
<thead>
<tr>
<th>Constitución 1979</th>
<th>Constitución 1993</th>
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<tbody>
<tr>
<td>Artículo 115.- La iniciativa privada es libre. Se ejerce en una economía social de mercado. El Estado estimula y reglamenta su ejercicio para armonizarlo con el interés social.</td>
<td>Artículo 58.- La iniciativa privada es libre. Se ejerce en una economía social de mercado. Bajo este régimen, el Estado orienta el desarrollo del país, y actúa principalmente en las áreas de promoción de empleo, salud, educación, seguridad, servicios públicos e infraestructura.</td>
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<tr>
<th>Constitución 1993</th>
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<tbody>
<tr>
<td>Artículo 60.- El Estado reconoce el pluralismo económico. La economía nacional se sustenta en la coexistencia de diversas formas de propiedad y de empresa. Sólo autorizado por ley expresa, el Estado puede realizar subsidiariamente actividad empresarial, directa o indirecta, por razón de alto interés público o de manifiesta conveniencia nacional.</td>
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<thead>
<tr>
<th>Constitución 1979</th>
<th>Constitución 1993</th>
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</thead>
<tbody>
<tr>
<td>Artículo 111.- El Estado formula la política económica y social mediante planes de desarrollo que regulan la actividad de los demás sectores. La planificación una vez concertada es de cumplimiento obligatorio.</td>
<td>Artículo 23.- (...)El Estado promueve condiciones para el progreso social y económico, en especial mediante políticas de fomento del empleo productivo y de educación para el trabajo.(...)</td>
</tr>
<tr>
<td>Constitución 1979</td>
<td>Constitución 1993</td>
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<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Artículo 112.- El Estado garantiza el pluralismo económico. La economía nacional se sustenta en la coexistencia democrática de diversas formas de propiedad y de empresa. Las empresas estatales, privadas, cooperativas, autogestionadas, comunales y de cualquier otra modalidad actúan con la personería jurídica que la ley señala de acuerdo con sus características.</td>
<td>Artículo 60.- El Estado reconoce el pluralismo económico. La economía nacional se sustenta en la coexistencia de diversas formas de propiedad y de empresa. Sólo autorizado por ley expresa, el Estado puede realizar subsidiariamente actividad empresarial, directa o indirecta, por razón de alto interés público o de manifiesta conveniencia nacional.</td>
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<tr>
<td>Constitución 1979</td>
<td>Constitución 1993</td>
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<tr>
<td>Artículo 137. El Estado autoriza, registra y supervisa la inversión extranjera directa y la transferencia de tecnología foránea como complementarias de las nacionales, siempre que estimulen el empleo, la capitalización del país, la participación del capital nacional, y contribuyan al desarrollo en concordancia con los planes económicos y la política de integración.</td>
<td>Artículo 62°. La libertad de contratar garantiza que las partes pueden pactar válidamente según las normas vigentes al tiempo del contrato. Los términos contractuales no pueden ser modificados por leyes u otras disposiciones decualquier clase. Los conflictos derivados de la relación contractual sólo se solucionan en la vía arbitral o en la judicial, según los mecanismos de protección previstos en el contrato o contemplados en la ley. Mediante contratos-ley, el Estado puede establecer garantías y otorgarse seguridades. No pueden ser modificados legislativamente, sin perjuicio de la protección a que se refiere el párrafo precedente. Article 63°. La inversión nacional y la extranjera se sujetan a las mismas condiciones.</td>
</tr>
</tbody>
</table>
Artículo 118. T Los recursos naturales, renovables y no renovables, son patrimonio de la Nación. Los minerales, tierras, bosques, aguas y, en general, todos los recursos naturales y fuentes de energía, pertenecen al Estado. La ley fija las condiciones de su utilización por este y de su otorgamiento a los particulares.

Article 120. El Estado impulsa el desarrollo de la Amazonía. Le otorga regímenes especiales cuando así se requiere. Una institución técnica y autónoma tiene a su cargo el inventario, la investigación, la evaluación y el control de dichos recursos.

Article 121. Corresponde a las zonas donde los recursos naturales están ubicados, una participación adecuada en la renta que produce su explotación, en armonía con una política descentralista. Su procesamiento se hace preferentemente en la zona de producción.

Article 122. El Estado fomenta y estimula la actividad minera. Protege la pequeña y mediana minería. Promueve la gran minería. Actúa como empresario y en las demás formas que establece la ley. La concesión minera obliga a su trabajo y otorga a su titular un derecho real, sujeto a las condiciones de ley.

Artículo 66°. Los recursos naturales, renovables y no renovables, son patrimonio de la Nación. El Estado es soberano en su aprovechamiento. (…).

The concession grants its owner a real right, subject to such legal regulation. Article 69°.- The State promotes sustainable development of the Amazon Region by means of an adequate legislation.
<table>
<thead>
<tr>
<th>Constitución 1979</th>
<th>Constitución 1993</th>
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</thead>
<tbody>
<tr>
<td>Artículo 25. La educación primaria, en todas sus modalidades, es obligatoria. La educación impartida por el Estado es gratuita en todos sus niveles, con sujeción a las normas de ley. En todo lugar, cuya población lo requiere, hay cuando menos en centro educativo primario. La ley reglamenta la aplicación de este precepto. Se complementa con la obligación de contribuir a la nutrición de los escolares que carecen de medios económicos y la de proporcionarles útiles.</td>
<td>Artículo 17. La educación inicial, primaria y secundaria son obligatorias. En las instituciones del Estado, la educación es gratuita. En las universidades públicas el Estado garantiza el derecho a educarse gratuitamente a los alumnos que mantengan un rendimiento satisfactorio y no cuenten con los recursos económicos necesarios para cubrir los costos de educación. Con el fin de garantizar la mayor pluralidad de la oferta educativa, y en favor de quienes no puedan sufragar su educación, la ley fija el modo de subvencionar la educación privada en cualquiera de sus modalidades, incluyendo la comunal y la cooperativa.</td>
</tr>
</tbody>
</table>
**CHI SIAMO**

Il Tocqueville-Acton Centro Studi e Ricerche nasce dalla collaborazione tra la Fondazione Novae Terrae ed il Centro Cattolico Liberale al fine di favorire l’incontro tra studiosi dell'intellettuale francese Alexis de Tocqueville e dello storico inglese Lord Acton, nonché di cultori ed accademici interessati alle tematiche filosofiche, storiografiche, epistemologiche, politiche, economiche, giuridiche e culturali, avendo come riferimento la prospettiva antropologica ed i principi della Dottrina Sociale della Chiesa.

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