

WHEN WEIMAR CAME TO THE SPANISH-AMERICAN WORLD: THE EARLY RECEPTION OF GERMAN CONSTITUTIONAL IDEAS IN PERU (1919-1939)

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SUMMARY: I. Introduction: The Weimar Constitution in the Spanish American world. II. The German dissertation on the influence the Weimar Constitution had on the Peruvian Constitution of 1920. 2.1. The context: Leguía's dictatorship and the constitutional reform of 1919. 2.2. Arthur Schmidt's thesis: reception and reaction in Peru. 2.3. Refuting the German dissertation based on a study of the constitutional archives. III. The reception of the WEIMAR Constitution in Peruvian jurists' work (1919-1939). 3.1. The Weimar Constitution in the work of Manuel Vicente Villarán. 3.2. The Weimar Constitution in the work of José León Barandiarán. IV. Conclusions.

Abstract: This paper explains how the reception of the Weimar Constitution in the Spanish-speaking world began with the discussion of the Peruvian case in the 1920s. Arthur Schmidt (doctoral student of Richard Thoma in Heidelberg) and Friedhelm von Rauchhaupt (professor in Heidelberg) argued that the Peruvian constitution of 1920 had been inspired by the Weimar Constitution. This prompted a discussion among Peruvian and German scholars in the 1930s about whether assuming such an early transatlantic reception could be verified. Parallel to this transatlantic discussion, between 1919 and 1939, Manuel Vicente Villarán and León Barandiarán commented on the Weimar Constitution in Peru.

Keywords: Weimar Constitution, Peruvian constitutionalism, constitutional plebiscite, constitutional reform, dictatorship, emergency powers

I. INTRODUCTION: THE WEIMAR CONSTITUTION IN THE SPANISH-AMERICAN WORLD

The reception of the constitutional ideas of the Weimar Republic in Hispanic America has been of interest in research for many decades¹. The Weimar Constitution represented a republican constitution that expanded social and political rights to the extent of also influencing the Spanish-speaking world². Towards the end of the 1930s, in a short review entitled “The Influence of German Law in South America” (*Deutscher Rechtseinfluss in Südamerika*)³, Ingeborg Richarz-Simons addressed the German public about the reception of German constitutional law in this region. The text was published in the journal *Ibero-Amerikanisches Archiv*, in which Richarz-Simons regularly published in the 1930s on politics and law in South America, particularly discussing the constitutions of Brazil and Uruguay⁴. Her review emphasized the importance of recent publications in Spanish, specifically groundbreaking work by Estuardo Núñez published in Peru in a book on the history of the reception of German law in that country, and by Uruguayan Héctor Lafaille in an article on the reception of German civil law in Argentina. Richarz-Simons reported on how, since Núñez’s book, a transatlantic discourse had developed engaging German law scholars on the influence the Weimar Constitution allegedly had on the Peruvian constitution of 1920:

«It is not possible in this short review to give an overview of how German law influenced the legislation of South American countries. However, the coincidence of the simultaneous appearance of two publications on this subject in Peru and Argentina justifies their joint discussion (...) These works demonstrate the extent to which the influence of German law is based on coincidences, and to which extent it is a philological rather than a legal problem. I mean, only if the Peruvian university professor (See: Es-

¹ Manfredo Koessler and John Zuluaga, eds. “*La Constitución de Weimar en los desafíos del siglo XXI. Una mirada desde Latinoamérica*”, Eckhaus Verlag, Weimar, 2019.; Carlos M. Herrera “*Weimar, the South American way*”, *Rechtsgeschichte - Legal History*, n° 27, 2019, pp.184-194.

² Jesús Esparza Bracho. “*De la Constitución de Weimar a la Constitución Venezolana de 1999: las bases ético políticas de un sistema constitucional*”, *Cuestiones Jurídicas*, Vol. III, n° 2, 2009. pp.85-92; José O. López Oliva, “*La Constitución de Weimar y los derechos sociales. La influencia en el contexto constitucional y legal colombiano a la luz de los derechos sociales asistenciales a la seguridad social y a la salud*”, *Prolegómenos. Derechos y Valores*, Vol. XIII, n° 26, 2010, pp. 233-243; Leticia Vita. “*Weimar en Argentina: los ‘usos’ de la constitución alemana en la convención constituyente de 1949*”. *Revista Argentina de Ciencia Política*, Vol. 1, n° 25, 2020, pp. 94-114.

³ Ingeborg Richarz-Simons. “*Deutscher Rechtseinfluss in Südamerika*”. *Ibero-Amerikanisches Archiv*, Vol. 11, n° 4, 1937/1938. pp. 508-510.

⁴ Ingeborg Richarz-Simons. “*Die Neuen Verfassungen in Brasilien Und Uruguay*”. *Ibero-Amerikanisches Archiv* Vol. 9, n° 1, 1936. pp. 8-17; Ingeborg Richarz-Simons. “*Die Dritte Brasilianische Verfassung*”, Vom 10. November, *Ibero-Amerikanisches Archiv* Vol. 12, n° 2, 1938. pp. 244-254.

tuardo Núñez: *La influencia alemana en el derecho peruano*. Lima 1937. imp. Gil, 46 pages) or the Argentina lawyer speaks German, does he become a mediator and disseminator of German legal ideas (...). If we refer (e.g.) to the most important laws that Peru passed as an independent state, Estuardo Núñez refutes the opinion expressed in a German doctoral thesis and also in Rauchhaupt's work that the Weimar Constitution influenced the Peruvian constitution of 1920. According to Núñez, such influence was hardly possible on purely chronological grounds, as the two documents were written virtually simultaneously and their similarity was more likely to stem from their common Anglo-Saxon sources»⁵.

This paper contributes to research on the reception of the Weimar Constitution in the Spanish-speaking world through a case that is little known in the literature: the Peruvian reception between 1919 and 1939. The Peruvian case is important because it initiated a true transatlantic dialogue: while German law scholars were analyzing the Weimar Constitution's alleged influence on the Peruvian Constitution of 1920, Peruvian jurists were commenting on the constitutional ideas of the Weimar Republic. We now briefly explain why this case is relevant to the literature.

Typically, the traditional literature assumes that the constitutional ideas of the Weimar Republic reached Hispanic America only after they had been disseminated and received in Spain in the early 1930s, following the dictatorship of Primo de Rivera. Herrera summarizes this reading by pointing out that «Spain was clearly one of the carriers bringing German constitutional doctrines to Latin America»⁶. We also observe this reading in studies on the reception of the constitutional theories of Schmitt, Heller, and Kelsen. Scholars were interested in Schmitt's reception on the basis the significant translation and reception of his work in Spain among both Republican and Francoist jurists in the 1930s⁷. Similarly, a doctoral thesis handed in at the University of Granada⁸, marks the beginning of the reception of Heller's ideas⁹. Thus, the reception of Schmitt and Heller in Latin America is usually dated as from the 1940s onwards, thus after

⁵ Ingeborg Richarz-Simons. 1937/1938. "Deutscher Rechtseinfluss in Südamerika", *Ibero-Amerikanisches Archiv*, Vol. 11, n° 4, pp. 508-510.

⁶ Carlos M. Herrera "Weimar, the South American Way", *op. cit.*, p.187.

⁷ Gabriel Guillén Kalle *Carl Schmitt en la Segunda República Española*. Madrid: Editorial Reus, 2018

⁸ Pedro José Román. "La tesis doctoral de Enrique Gómez Arboleya sobre Hermann Heller. Acercamiento del pensamiento filosófico-jurídico del teórico alemán a la España del Primer Franquismo y adquisición de dos decisivos compañeros de viaje en su trayectoria intelectual", *Anales de La Cátedra Francisco Suárez*, n° 37, 2003, pp. 309-335.

⁹ Luis A. González Prieto "La recepción de Heller en España durante el Franquismo", *Revista de Estudios Políticos*, n° 120, 2003, pp.173-194.

their introduction in Spain¹⁰. Similarly, studies on when of the reception of Kelsen's work started emphasize its first reception in Spain¹¹ and its later reception in Latin America¹². Particularly, Kelsen's visit to Argentina, Uruguay, and Brazil in 1949 and his subsequent reception in other Spanish-speaking countries is emphasized¹³.

In contrast to the traditional approach, new literature published in the past decade paints a more complete picture of the Weimar Constitution's reception in Hispanic America. Vita has shown that the reception of the Weimar Constitution in Argentina began in the 1920s and reached a remarkable influence on the political processes in that country in the 1940s¹⁴. In 1920, the lawyer Alfredo Palacios published *El nuevo derecho*, a book in which he commented on the Weimar Constitution. From 1922 onwards, the Weimar Constitution was further disseminated with translations and commentaries on its content in the *Revista de la Facultad de Derecho y Ciencias Sociales* of the University of Buenos Aires¹⁵. Vita has also linked the reception of the Weimar Republic's constitutional theories to some political processes in South America. She finds this evidenced in the Supreme Court's justification of the 1930 coup d'état in Argentina¹⁶ and in the reception of the Weimar constitutionalists in the debates of the Argentine Constituent Assembly of 1949¹⁷. In addition to Vita's studies on the Argentine reception, other studies have pointed to the Weimar Constitution's influence in Mexico, Colombia, and Venezuela¹⁸.

¹⁰ Nicolás Fraile "Conocer la realidad estatal. Arturo Sampay, lector de Hermann Heller", Nuevo Itinerario, Vol. 16, n° 2, 2020. pp. 102-126; Jorge Eugenio Dotti. *Carl Schmitt en Argentina*, Homo Sapiens, Buenos Aires, 2000.

¹¹ Benjamín Rivaya García. "Kelsen En España", Revista de Estudios Políticos y Estratégicos, n° 107, 2000, pp.173-193.

¹² Gonzalo A. Ramírez Cleves, ed. *Kelsen en el mundo: La influencia de la Teoría Pura del Derecho en distintos lugares*. Editorial de la Universidad Externado, Bogotá, 2024.

¹³ Óscar Sarlo. "La gira sudamericana de Hans Kelsen en 1949: El Frente Sur de La Teoría Pura", Ambiente Jurídico, n° 12, 2010, pp. 400-425; Miriam Gassner. "Der Kreis um Hans Kelsen in Lateinamerika Wie die Reine Rechtslehre Lateinamerika eroberte", Beiträge zur Rechtsgeschichte Österreichs, Vol. 4, n° 1, 2015, pp. 64-83.

¹⁴ Leticia Vita. "Weimar in Argentina: A Transnational Analysis of the 1949 Constitutional Reform", Rechtsgeschichte - Legal History, n° 27, 2019. pp. 176-183.

¹⁵ Leticia Vita. "Weimar en Argentina: los 'usos' de la constitución alemana en la convención constituyente de 1949", op.cit., pp.98-100.

¹⁶ Leticia Vita. "Legitimidad y poder judicial en Argentina: Un análisis de la acordada de 1930 a la luz del pensamiento jurídico de Weimar", Revista Argentina de Ciencia Política, n° 16, 2014, pp. 43-57.

¹⁷ Leticia Vita. "Weimar en Argentina: los 'usos' de la constitución alemana en la convención constituyente de 1949", op.cit., pp. 98-100.

¹⁸ Jesús Esparza Bracho. "De la Constitución de Weimar a la Constitución Venezolana de 1999: las bases ético políticas de un sistema constitucional", op. cit., pp. 85-92; José O. López Oliva, "La Constitución de Weimar y los derechos sociales, op. cit.; Manfredo Koessler and John Zuluaga, eds. "La Constitución de Weimar en los desafíos del siglo XXI", op. cit.

This work contributes to our reflection on the early history of the Weimar Constitution's reception in Hispanic America by examining a little-known case in the literature, i.e., its reception in Peru (1919-1939). This study is divided into two parts. The first part explains how the thesis that the Weimar Constitution inspired the Peruvian constitution of 1920 was developed in the work of Arthur Schmidt¹⁹ and Friedhelm von Rauchhaupt²⁰. By examining the Peruvian context of the time and historical archival sources, this paper shows the German thesis to be false, as those who drafted the 1920 Peruvian constitution had no direct reference to the Weimar Constitution. The second part shows that the reception of the Weimar Constitution in the work of Manuel Vicente Villarán and León Barandiarán between 1919 and 1939 developed concurrently to the German discussion. The paper concludes showing the importance of the Peruvian reception for having initiated a transatlantic dialogue with the German legal scholarship in the Spanish-speaking world.

II. THE GERMAN DISSERTATION ON THE INFLUENCE THE WEIMAR CONSTITUTION HAD ON THE PERUVIAN CONSTITUTION OF 1920

The Peruvian reception of the Weimar Constitution is of interest due to how it triggered a transatlantic discussion with German jurisprudence which was initiated by Arthur Schmidt's dissertation²¹. His work, supervised by Richard Thoma at the University of Heidelberg, set out to prove the early influence of the Weimar Constitution on the Peruvian constitution of 1920. It was the first academic reflection on the reception of the Weimar Constitution in a Spanish-speaking country. In the 1930s, Friedhelm von Rauchhaupt, professor in Heidelberg and expert on the history of the Ibero-American reception of German law, supported Schmidt's thesis in pointing out that this reception of the Weimar Constitution would have been retained in the Peruvian constitution of 1933²². Peruvian jurists, however, responded critically to the work of both Schmidt and Rauchhaupt. To understand the German proposition on the

¹⁹ Arthur Schmidt. *Die Prinzipien der Peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidentschaftsrepublik*. Doktorarbeit, Heidelberg: Ruprecht-Karls-Universität Heidelberg, 1928.

²⁰ Friedrich Wilhelm von Rauchhaupt. "Conceptos del derecho alemán en los derechos de Centro y Suramérica. Ibero-América Y Alemania", 1933, pp.266-270.

²¹ Arthur Schmidt. *Die Prinzipien der Peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidentschaftsrepublik*, op.cit.

²² Friedrich Wilhelm von Rauchhaupt. "Conceptos del derecho alemán en los derechos de Centro y Suramérica. Ibero-América Y Alemania", op.cit., pp. 266-270; Friedrich Wilhelm von Rauchhaupt, "Vorwort Zu Victor J. Guevara - Cuzco, *Federalismo Integral, oder Entwurf einer bundesstaatlichen Verfassung für Peru, 1929*", Ibero-Amerikanisches Archiv, Vol. 4, n° 1, 1933, pp. 85-91.

reception of the Weimar Constitution, knowledge of the Peruvian political context of the years 1919-1920 is important.

2.1. The context: Leguía's dictatorship and the constitutional reform of 1919

The reception of the Weimar Constitution in Peru took place at the time a dictatorship was brought to an end and constitutional reform was brought to conclusion with the Constitution of 1920 being adopted²³. In May 1919, Augusto B. Leguía narrowly won the election against Ántero Aspíllaga, the ruling Civilista Party's (*Partido Civil*) candidate. However, as the Civilista Party refused to recognize his likely victory, the danger arose that Congress, in which the Civilista Party held a majority, in exercising its vote counting responsibility, would ignore the will of the people. Therefore, Leguía, supported by the gendarmerie, staged a coup d'état on July 4, 1919 and took power as provisional president²⁴. On August 17th and 18th, as dictator, Leguía called new parliamentary elections and held a constitutional referendum on 19 reforms. These arrangements strengthened the presidential form of government by extending the presidential term of office from four to five years and reorganizing the relationship between the executive and legislative branches. Thereby the foundations of the parliamentary government of the 1860 Constitution were changed.

On July 5, 1919, Leguía published his *Manifiesto to the Nation*, in which he justified the coup d'état as a means of preserving the popular will expressed in the elections. This would also counter the risk of Pardo y Barreda's Civilista government influencing the Congress to elect Ántero Aspíllaga as the new President of the Republic according to Articles 81 and 82 of the 1860 Constitution²⁵. At the same time, Leguía took the opportunity to denounce not only the deposed government of Pardo y Barreda, but the entire political order that the Civilista governments had established. Leguía accused the *civilistas* of having taken a series of

²³ Carlos Ramos Núñez. *Ley y justicia en el Oncenio de Leguía*, Fondo editorial de la Pontificia Universidad Católica del Perú, Lima, 2015; Víctor Andrés Belaúnde y Juan Bromley. *La Asamblea Constituyente de 1919. Historia de la Asamblea y Galería de sus miembros*. Imp. Torres Aguirre, Lima, 1920.

²⁴ Diario El Comercio, edición de la mañana del sábado 5 de julio de 1919. Número 37,932. Edición de 8 páginas. "El movimiento de ayer. El señor Augusto B. Leguía asume la jefatura del poder ejecutivo con el carácter de presidente provisorio. Personal del ministerio - Detalles del movimiento militar. Manifiesto del señor Leguía. Se convocará a un plebiscito para reformar la constitución. La renovación total del congreso", p.1 (Portada).

²⁵ "Artículo 81: El Congreso hará la apertura de las actas electorales, las calificará, regulará los votos y proclamará Presidente al que hubiese obtenido la mayoría absoluta. Artículo 82: Si del escrutinio no resultase dicha mayoría, el Congreso elegirá entre los dos que hubiesen obtenido mayor número de votos. Si dos o más tuviesen igual número de votos, el Congreso elegirá entre todos ellos". Constitución de 1860. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>, p. 9.

unpopular and anti-democratic measures against the country's middle class who had already suffered from the economic crisis that followed the Great War. In his manifesto, Leguía further attacked the Civilista government for having persecuted the opposition press, e.g., in confiscating its property. Additionally, he condemned the Civilista Party for undermining the authority of the courts, by disregarding their orders to return the opposition press to its owners. Leguía claimed that he represented the true voice of the people, thus expressing their will to advance the reform of the 1860 Constitution²⁶. These actions gave Leguía the political popularity to bring about a constituent moment and embark on his constitutional reforms.

The re-election of senators and delegates would enable the formation of a National Assembly that could approve Leguía's provisional government and would legitimize the constitutional reforms approved in the constitutional referendum. An important role here was that of Mariano H. Cornejo who is considered the Leguía dictatorship's main ideologist and an advocate of strong presidentialism in the 1920 Constitution. In an interview with *El Comercio* on July 5, 1919, Cornejo defined the reform of the 1860 Constitution as an "organization of legislative and executive power"²⁷ that would consist of four reforms in the election of delegates, the president and vice-presidents²⁸. Further, Cornejo affirmed that these constitutional reforms would be sanctioned by a plebiscite and not by a constituent assembly, which he justified by referring to the example of the French Revolution and the Napoleonic constitutional referendums²⁹.

Although the Leguía government established a dictatorship, it enjoyed the recognition of foreign nations, which helped to strengthen the legitimacy it had acquired in Peru to carry out its constitutional referendum. These nations included the major allied powers that had been victorious in the Great War: Great Britain, France, Belgium, Italy, and later the United States. Leguía also received the support of the Catholic Church

²⁶ Diario El Comercio, "*Manifiesto del señor Leguía*", edición de la mañana del sábado 5 de julio de 1919. Número 37,932. Edición de 8 páginas, p. 2.

²⁷ Diario El Comercio, "*Hablando con el Doctor Cornejo*", edición de la mañana del sábado 5 de julio de 1919. Número 37,932. Edición de 8 páginas, p.2.

²⁸ A la pregunta sobre en qué consistirán las reformas constitucionales, Mariano Cornejo respondió: "En primer lugar, suprimir la elección por tercios y establecer la renovación total del congreso. Disponer que esta elección de los miembros del poder legislativo coincida con la del presidente y vicepresidente de la república. Fijar el mandato de éstos y de los representantes al congreso en su período de cinco años, y, por último, suprimir los suplentes". Diario El Comercio, "*Hablando con el Doctor Cornejo*", *op.cit.*, p. 2.

²⁹ A la pregunta sobre si las reformas constitucionales serían aprobadas en la misma forma en que se aprobaron las constituciones en Francia durante la revolución y en la época de los Napoleones, Cornejo contestó: "Exactamente". Diario El Comercio, "*Hablando con el Doctor Cornejo*". *op.cit.*, p. 2.

through the diplomatic corps of the Holy See, as well as of the directly neighboring countries Bolivia, Colombia, and Ecuador. On July 22, 1919, the decree of July 9th was published in the official newspaper *El Peruano*, which carried Leguía's call for general elections of senators and delegates to the National Assembly and submitted his 19 constitutional reforms to be ratified in a referendum. On July 23rd of the same year Leguía himself, based on his dictatorial authority, decreed the electoral rules for organizing the general elections and the constitutional referendum.

The first paragraph of Leguía's July 22nd decree indicated that the fundamental idea of the constitutional reforms was to implement a "true democracy" (*democracia efectiva*), while the second paragraph indicated the scope of the constitutional referendum that would sanction the 19 constitutional reforms.³⁰ The decree consisted of two articles. With the first, Leguía called for general elections of the delegates who would form the National Assembly, while the second specified the 19 constitutional reforms. The last constitutional article stated that "the next Congress will be convened on September 15th of this year under the presidency of the President of the Senate, and will function as a National Assembly for 30 days to enact the reforms approved by the referendum."³¹ The referendum was held as decreed and a majority of the popular vote³² approved the constitutional reforms, which strengthened the presidential system in Peru.

Leguía's decree of July 23rd consisted of 27 articles: The first five established who the citizens were, what the requirements were for them to exercise their right to vote, and how the election was to be conducted. In four ballots (for the constitutional reforms, for the deputies, for the senators, and for the delegates of the regional legislatures) and in the particular case of the 19 reforms to be decided in the referendum, "voters must erase the articles that refer to the constitutional reforms that shouldn't be accepted."³³ Next, articles 6 to 27, regulated the electoral bodies responsible for the entire electoral process at the regional level: the reception commissions (articles 6 to 9) and the provincial electoral

³⁰ "Considerando (...) 2° Que estas reformas, por su carácter fundamental, deben ser sancionadas por el pueblo mismo, para que los intereses políticos y burocráticos no las desvíen de su objetivo exclusivamente nacional." *El Peruano*, Diario Oficial, Lima 22 de julio de 1919. Año 78, Tomo II. Semestre II, N°156. "Poder Ejecutivo. Votación plebiscitaria para la reforma de la Constitución", p. 1 (Portada).

³¹ *El Peruano*, Diario Oficial, "Poder Ejecutivo. Votación plebiscitaria para la reforma de la Constitución." *op.cit.*, p. 1 (Portada).

³² Asamblea Nacional. *Diario de los Debates de la Asamblea Nacional de 1919*. Presidencia del señor Mariano H. Cornejo. Sesión del jueves 16 de octubre de 1919. pp. 484-485.

³³ "Decreta: (...) Artículo 5.- Los votantes deberán borrar los artículos referentes a las reformas constitucionales que no acepten." *El Peruano*, Diario Oficial, Lima 23 de julio de 1919. Año 78, Tomo II. Semestre II, N°157. "Poder Ejecutivo. Decreto reglamentario de las elecciones generales". p. 1 (Portada).

review boards (articles 10 to 27). These articles highlighted the leading role of justices of the peace, parish priests, and judges of first instance in properly organizing the electoral process and overseeing the role of the government in appointing electoral officers who, together with these actors, constitute the bodies responsible for supervising the process and, above all, counting the votes.

At the National Assembly inauguration on September 24, 1919, Leguía's first message called for completion of the constitutional reforms approved in the constitutional referendum. A majority in the National Assembly supported Leguía from the moment its president, Mariano H. Cornejo, sent his first message to the national representatives to promote the promulgation of the 19 constitutional reforms³⁴. However, this did not happen without debate in the National Assembly, where the first deliberation was on whether or not the Assembly had the power of a constituent assembly. On the one hand, Leguía's supporters argued that the National Assembly was not authorized to discuss and amend the 19 constitutional reforms approved in the constitutional referendum, and that it should be limited exclusively to legalize the constitutional reforms the referendum had approved, as these represented the genuine will of the people. Leguía's supporters invoked Article 19³⁵, and the second part of the July 22, 1919 decree³⁶, while his opponents, such as José Antonio Encinas and Victor Manuel Maúrtua, claimed that the National Assembly had the power of a constituent assembly, so that the constitutional reforms Leguía had introduced could be revised and repealed³⁷.

The constitutional debates dragged on for almost four months, until Leguía and his supporters finally prevailed. On December 27, 1919, all the constitutional reforms put forward in the referendum were approved by the National Assembly and on January 18th, the Constitution of 1920 was promulgated. Based on this context, each of Schmidt and Rauchhaupt proposed that the Weimar Constitution would have gained early influence in Peru.

³⁴ Asamblea Nacional. *"Diario de los Debates de la Asamblea Nacional de 1919"*, pp.1-18.

³⁵ «Decreta: (...) 2° Someter al voto plebiscitario de la nación las siguientes reformas constitucionales: (...) Artículo 19.- "El próximo Congreso se instalará el 15 de setiembre de este año, presidido por el Presidente del Senado y funcionará durante treinta días como Asamblea Nacional para promulgar las reformas que resulten aprobadas por el voto plebiscitario.» El Peruano, Diario Oficial, *"Poder Ejecutivo. Votación plebiscitaria para la reforma de la Constitución"*. op.cit., p. 1 (Portada).

³⁶ «Considerando (...) 2° Que estas reformas, por su carácter fundamental, deben ser sancionadas por el pueblo mismo, para que los intereses políticos y burocráticos no las desvíen de su objetivo exclusivamente nacional.» El Peruano, Diario Oficial, *"Poder Ejecutivo. Votación plebiscitaria para la reforma de la Constitución"*. op.cit., p. 1 (Portada).

³⁷ Asamblea Nacional. *"Diario de los Debates de la Asamblea Nacional de 1919."* op.cit. pp. 542 y ss.

2.2. Arthur Schmidt's dissertation: reception and reaction in Peru

Arthur Schmidt's 1928 doctoral dissertation on the reception of the Weimar Constitution in Peru was the first to address this theme. The study is 119 pages long and is entitled "The principles of the Peruvian constitution in relation to other models and in comparison with the German presidential republic" (*Die Prinzipien der peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidenschaftsrepublik*). We know little about the author, excepting for a short autobiographical description given at the end of his dissertation. Born in 1901, he notes that he began studying at the University of Heidelberg in 1920, then attended a semester at the University of Freiburg and returned to Heidelberg in 1925. On April 5, 1928, he passed his doctoral examination in law under the supervision of the renowned jurist Richard Thoma, professor of Law at the University of Heidelberg. In his acknowledgements, Schmidt points out that his research was also supported by Friedrich Wilhelm von Rauchhaupt, who at the time was an expert in the field studying the Hispanic reception of German law³⁸. According to Schmidt, Rauchhaupt reviewed his German translation of the Peruvian constitution of 1920. Schmidt also notes that he experienced considerable difficulty in compiling a suitable bibliography, but that a Peruvian friend, Guillermo Román Cornejo y Espina, had helped him by providing references to various materials from Peru for his doctoral research³⁹.

In the introduction, Schmidt emphasizes that his study does not intend to provide a general commentary on the Peruvian constitution of 1920; rather, he aimed to analyze its political foundations and compare it with the Weimar Constitution. He posits that Leguía, when he introduced his 19 constitutional reforms, had the constitutional process of the Weimar National Assembly as his political model. Schmidt acknowledges the influence of American and French presidentialism in Peru and Hispanic America, but he argues that seeking a balance between parliamentary government and strong presidentialism is specifically a common project of the Peruvian and German constitutions. For this reason, Schmidt's central thesis is that the Weimar Constitution was the model president Leguía followed in structuring his constitutional referendum and the Peruvian constitution of 1920:

«Fundamental changes had taken place in Europe. The constitutional order of the German Empire had fallen into ruins in 1918 and was replaced

³⁸ Arthur Schmidt. 1928. *Die Prinzipien der peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidenschaftsrepublik*, op.cit., pp. 1-2.

³⁹ Arthur Schmidt. 1928. *Die Prinzipien der peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidenschaftsrepublik*, op.cit., pp. 1-2.

by the parliamentary republic sanctioned by the Constitution of 1919. In the same year, increasing drawn-out dissatisfaction with the existing form of government broke out in Peru. Augusto B. Leguía led the uprising, overthrew the government, and installed a dictatorship. Under the influence of the work of the German National Assembly of Weimar, he suspended the Constitution of 1860, appointed a National Assembly, and tasked it with drafting a new constitution, which was instituted on January 18, 1920. This constitution broke with the previous constitutional order and its strict system of separation of powers. The constitution adopted the system of a parliamentary republic with a president elected by the people, similar to the one that had been enshrined in the Weimar Constitution⁴⁰.

Schmidt's dissertation consists of six chapters. In the first chapter, he describes the central features of the 1860 Constitution, focusing on how this constitution introduced a parliamentary form of government. In the second chapter, he gives a brief overview of Peru's political and constitutional history in the 19th century and emphasizes that the biggest change between the 1860 Constitution and the 1920 Constitution is the strengthening of the presidential authority. In chapter three, Schmidt presents his German translation of the Constitution of 1920. In chapter four, he examines the political foundations of the three branches of government the 1920 Constitution provides for, focusing on the reforms of the 1860 Constitution. The fifth chapter examines the mechanisms of constitutional reform given in the 1920 Constitution. Finally, chapter six, responding to why an examination of the various constitutional articles and their political foundations was undertaken in the first place, elaborates on the similarities and differences between the Peruvian and German constitutions.

As mentioned above, Schmidt's argument was soon supported by Friedrich Wilhelm von Rauchhaupt⁴¹, whose work is very important in the discussion of the Peruvian reception of the Weimar Constitution, since he was the leading scholar on the Hispanic reception of German law at the time. In the 1920s, Rauchhaupt began to publish important pioneering studies on the constitutional and international law of Spain and Hispanic America⁴². Unlike Schmidt, Rauchhaupt had visited various

⁴⁰ Arthur Schmidt. 1928. *Die Prinzipien der peruanischen Verfassungsurkunde in ihren Beziehungen zu Vorbildern und im Vergleich mit der deutschen Präsidentschaftsrepublik*, op.cit., p. 40.

⁴¹ Friedrich Wilhelm von Rauchhaupt. 1930. "Vorwort Zu Víctor J. Guevara - Cuzco, *Federalismo Integral, Oder Entwurf einer Bundesstaatlichen Verfassung für Peru, 1929*", op. Cit., pp. 85–91; Friedrich Wilhelm von Rauchhaupt. 1933. "Conceptos del Derecho Alemán en los derechos de Centro y Suramérica", op. cit., pp. 266–270.

⁴² Friedrich Wilhelm von Rauchhaupt, *Geschichte Der Spanischen gesetzesquellen von den Anfängen bis zur Gegenwart*. Heidelberg: Carl Winter, 1923; Friedrich Wilhelm von Rauchhaupt, *Deutsche Wissenschaft in Hispano-America*. Heidelberg, 1927.

countries in South America. In 1926, he held visiting professorships at the University of Chile and the University of Buenos Aires. In Argentina, he lectured on Spanish and American law and its reception in Hispanic America⁴³. In 1928, he published a book in Spanish in Argentina on comparative law between Europe and Latin America, in which he focused on the sources of law common to both regions⁴⁴. In 1929, Rauchhaupt wrote a discursive introduction in German to a book by the Peruvian jurist Víctor J. Guevara⁴⁵. This text reveals that in 1926, having been invited by Guevara, Rauchhaupt had visited the city of Cusco, capital of the ancient Inca empire. His outstanding career eventually brought him honorary membership of the Royal Spanish Academy and an honorary doctorate awarded by the Complutense University in Madrid.

In 1933, in a short essay entitled “Concepts of German Law in the Law of Central and South America” (*Conceptos del derecho alemán en los derechos de Centro y Sudamérica*)⁴⁶, Rauchhaupt examines Schmidt’s dissertation on the influence of the Weimar Constitution on the Peruvian constitution of 1920. His 1929 preface to Guevara’s work shows that Rauchhaupt was well acquainted with Peruvian constitutional history, especially with the federalist and anti-federalist political positions of the 19th century⁴⁷. In his 1933 text, Rauchhaupt explains that through the French and Spanish traditions all Hispanic American republics were influenced by Roman law and its adaptations. Rauchhaupt ascribed the reception of German constitutional law to the work of German jurists who were experts in Roman law. He found that the influence of American constitutionalism is more evident in federal republics such as Argentina, Brazil, Mexico, and Venezuela. Further, Rauchhaupt explains the significant influence of German civil law on the civil codes of Chile in 1855 and Argentina in 1869 as resulting from the work of, e.g., Zachariae von Lingenthal and Friedrich Karl von Savigny. However, regarding the influence of German constitutional ideas in Hispanic America, Rauchhaupt suggests that we find the only and most important case of their reception in the Peruvian constitution of 1920:

⁴³ Victor Tau Anzoátegui, “La influencia alemana en al derecho argentino: Un programa para su estudio histórico”. *Jahrbuch Für Geschichte Lateinamerikas*, Vol. 25, n° 1, 1988, pp. 607–634.

⁴⁴ Friedrich Wilhelm von Rauchhaupt. *Correlaciones en el desarrollo de los derechos de Europa y de América: Estudio de comparación genética de derechos*. Imprenta de la Universidad, Buenos Aires, 1928.

⁴⁵ Friedrich Wilhelm von Rauchhaupt. *Vorwort zu Víctor J. Guevara - Cuzco, Federalismo Integral, Oder Entwurf einer Bundesstaatlichen Verfassung Für Peru, 1929*. *op. cit.*, pp. 85–91.

⁴⁶ Friedrich Wilhelm von Rauchhaupt. *Conceptos del derecho alemán en los derechos de Centro y Suramérica. Ibero-América Y Alemania, op.cit.*, pp. 266–270.

⁴⁷ Friedrich Wilhelm von Rauchhaupt. *Vorwort zu Víctor J. Guevara - Cuzco, Federalismo Integral, Oder Entwurf einer Bundesstaatlichen Verfassung für Peru, 1929*, *op. cit.*, pp. 85–91.

«The most obvious example of the influence of German public law is undoubtedly the Peruvian constitution of 1919/1920, which in many respects follows the German constitution of 1919. In Hispanic-American countries, the presidential republic generally prevails, i.e., the president is the head of the executive and directly appoints his ministers, who rarely (usually once a year) appear in parliament, and who participate through written communication. Peru, through the influence of the WWI Allies, thus imitated the so-called progress of the German constitution, the most recent and most democratic of all, by appointing its ministers by parliamentary majority. Inconveniences, such as those that later appeared in German constitutional practice, were eliminated by the personal and dictatorial power of President Leguía, thus avoiding any abuse of this prerogative granted to parliament by law. The principle of ministerial accountability was also maintained when the Peruvian constitution was revised in April 1933»⁴⁸.

Peruvian jurists received Schmidt's dissertation on the influence of the Weimar Constitution on the 1920 Constitution with skepticism. In 1937, Estuardo Núñez published a groundbreaking study on the history of the reception of German law in Peru⁴⁹ in which he argued that Peruvian jurists of the 18th and 19th centuries, in contrast to those in Chile and Argentina, were most interested in the tradition of German natural law. Particularly, Núñez believed that Peruvian jurists became acquainted with the work of Puffendorf, Grotius, and Wolff through the work of Johann Gottlieb Heineccius⁵⁰. This preference for natural law was established in the 19th century through the significant influence of Krausism in Hispanic America. In Peru, Krausism was introduced by the commentaries of German scholars such as Karl Röder and Heinrich Ahrens⁵¹. Here Núñez emphasizes the important role of the jurist and politician Bartolomé Herrera, who widely disseminated German natural law. Núñez points out that German legal positivism only began to gain influence among Peruvian jurists toward the end of the 19th century. The work of Rudolf von Ihering, Friedrich Julius Stahl, and Friedrich Carl von Savigny was well received and disseminated. At the beginning of the 20th century, German law spread in Peru thanks to Spanish editions and translations published by *Editorial Labor* and *Revista de Occidente* (Madrid), for example.

As a scholar of the history of German law received in Peru, Núñez seriously doubts the influence of the Weimar Constitution on the Peruvian

⁴⁸ Friedrich Wilhelm von Rauchhaupt. Conceptos del derecho alemán en los derechos de Centro y Suramérica, *op. cit.*, pp. 266-267.

⁴⁹ Estuardo Núñez. *La influencia alemana en el derecho peruano*. Imprenta Gil, Lima, 1937.

⁵⁰ Estuardo Núñez. *La influencia alemana en el derecho peruano*, *op.cit.*, pp. 9-10.

⁵¹ Estuardo Núñez. *La influencia alemana en el derecho peruano*. *op.cit.*, pp. 11-13.

an constitution of 1920. His central argument is that there are coincident correlations in the German and Peruvian constitutions, but that these are due to both being inspired by the same American and English constitutional law sources. Additionally, Núñez is skeptical about the Weimar Constitution having been an influence due to the almost simultaneous elaboration of the two constitutions. Núñez responds to the German jurists in this way:

«In public law, it is assumed that the Weimar Constitution (1919) had a certain direct influence on the last two Peruvian constitutions of 1919 and 1933. This should be considered a risky position for chronological and technical reasons. The renowned legal scholars of the University of Heidelberg, Friedrich Wilhelm von Rauchhaupt and Arthur Schmidt, attempted to establish concordances between these constitutions in a dissertation of 1928 (...) Undoubtedly, the Peruvian constitution incorporated contributions of German doctrines in many parts, but to proclaim a direct influence of the Weimar Constitution seems outrageous, if only because the Peruvian legislators who discussed and drafted it that year could not have been so thoroughly informed about a constitution that was adopted at almost the same time and that only became known in Peru some time later»⁵².

Núñez's response to Schmidt's and Rauchhaupt's work initiated a transatlantic discussion between Peruvian and German scholars on the influence of the Weimar Constitution in Peru. This exchange represents a milestone in the history of the reception of German law in the Spanish-speaking world. A German review by Richarz-Simons also reported on Núñez's reaction⁵³. That the Weimar Constitution influenced the 1920 Constitution is endorsed by some jurists until this day⁵⁴. Others, however, are skeptical⁵⁵. García Belaúnde points out that important Peruvian jurists of the 1920s, such as Manuel Vicente Villarán, do not mention the influence of the Weimar Constitution⁵⁶. For García Belaúnde, the greatest

⁵² Estuardo Núñez. *La influencia alemana en el derecho peruano*, op.cit., pp. 26-27.

⁵³ Ingeborg Richarz-Simons. "Deutscher Rechtseinfluss in Südamerika", op. cit., pp.508-510.

⁵⁴ Manuel Ruiz Rafael. "El pensamiento constitucional y la constitución del Perú En el siglo XX", *Revista de Derecho y Ciencia Política*, n° 78, 2023, p. 92; Centurión Freddy Ronald. "Apuntes para la historia constitucional peruana. La Constitución de 1920, cien años después", *IUS: Revista de Investigación de La Facultad de Derecho*, Vol. 9, n° 1, 2020. p.13; Isaac Josué Vasquez, "Propedéutica constitucional peruana y disquisición de teoría del Estado (1823-1993)", *PRIUS - Revista de Derecho Y Ciencia Política*, Vol 1, n° 2, 2023, p. 68.

⁵⁵ Domingo García Belaúnde. "Los Primeros Escritos de José León Barandiarán: El Aspecto Constitucional. Tomo I". *Homenaje a León Barandiarán*, I. Fondo Editorial del Congreso del Perú, Lima, 2000, pp. 212-213.

⁵⁶ Domingo García Belaúnde. "Los primeros escritos de José León Barandiarán: el aspecto Constitucional. Tomo I", op.cit., p. 231.

influence in Peru came from the French, American, and English constitutional traditions. Also, he says that it was the Mexican constitution of 1917 and the Russian constitution of 1918 that really influenced the Peruvian constitution of 1920⁵⁷. Like Núñez, however, García Belaúnde provides no evidence for his claims in a study of the 1919 constitutional debates. Schmidt's and Rauchhaupt's arguments are therefore, to this day, neither supported nor refuted by historical evidence. Following here is a brief analysis of the 1919 constitutional debates that help us to assess the influence of the Weimar Constitution.

2.3. Refuting the German dissertation based on a study of the constitutional archives

This section shows that the hypothesis the German jurists Schmidt and Rauchhaupt put forward about the Weimar Constitution influencing the Peruvian constitution of 1919 is false. Neither author has provided historical evidence for this claim, so that to this day the topic has not been taken up, developed or explored in depth⁵⁸.

First, Arthur Schmidt noted that the influence of the Weimar Constitution was evident in the similarity between Articles 35, 36, 47, 53, 55, 57, 58, 83, as well as Clauses 20, 96, and 97 of the 1920 Peruvian constitution⁵⁹ on the one hand and Articles 43, as well as Clause 3, 48, 83, and Clause 2, 157, 161, and 163 of the Weimar Constitution⁶⁰ on the other hand. Having reviewed both constitutional texts, it was found that

⁵⁷ Domingo García Belaúnde. *“Los primeros escritos de José León Barandiarán: el aspecto Constitucional. Tomo I”, op.cit., p. 231; Miluska Orbegoso, “Los derechos sociales en Perú. La influencia de la Constitución Mexicana de 1917”, Revista IUS Vol. X, n° 38, 2016, pp.15-18.*

⁵⁸ José F. Palomino Manchego. *“Testimonio y semblanza de José León Barandiarán”, Temas de derecho. Homenaje a José León Barandiarán* (presentación de Martha Hildebrandt, introd. Jorge Avendaño V.), Fondo Editorial del Congreso del Perú, Lima, 2000, pp. 55-62; Carlos Ramos Núñez. *“José León Barandiarán, el esteta de la filigrana institucional”, Temas de derecho. Homenaje a José León Barandiarán* (presentación de Martha Hildebrandt, introd. Jorge Avendaño V.), Fondo Editorial del Congreso del Perú, Lima, 2000, pp. 63-106; José Antonio Silva Vallejo. *“La escuela francesa, la ciencia jurídica alemana y la escuela italiana en el pensamiento de José León Barandiarán”, Temas de derecho. Homenaje a José León Barandiarán* (presentación de Martha Hildebrandt, introd. Jorge Avendaño V.), Fondo Editorial del Congreso del Perú, Lima, 2000, pp. 159-170; Domingo García Belaúnde. *“Los primeros escritos de José León Barandiarán: el aspecto constitucional”, Temas de derecho. Homenaje a José León Barandiarán* (presentación de Martha Hildebrandt, introd. Jorge Avendaño V.), Fondo Editorial del Congreso del Perú, Lima, 2000, pp. 209-222.

⁵⁹ Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>. pp. 4-9.

⁶⁰ Constitución del Imperio (Reich) Alemán de 11 de agosto de 1919. Disponible en: <https://ezequielsgingman.blog/wp-content/uploads/2016/03/constitucion-de-weimar-alemania-19191.pdf>. 25pp. Consulta realizada el 1 de marzo de 2025. Versión en inglés disponible en la Cornell University Library (Donovan Nuremberg Trials Collection): <https://s3.amazonaws.com/cul-hydra/nur/nur01840/pdfs/nur01840.pdf>. 30pp.

these articles address the following thematic axes: a) extraordinary powers, b) social rights, and c) the role of the state. For the purposes of this study, however, Schmidt had to ignore any continuity between the 1860 and 1920 constitutions regarding these constitutional articles and, in particular, regarding the three thematic axes we mentioned.

As far as extraordinary powers are concerned, Schmidt's hypothesis about the influence of the Weimar Constitution's Article 48 on the drafting of Articles 35 and 36 in the 1920 Constitution could be possible, since the 1860 Constitution did not explicitly or implicitly mention extraordinary powers, which could indicate an influence of the Weimar Constitution. It should be noted, however, that Schmidt's work dates from 1928. His study of Articles 35 and 36 of the 1920 Constitution is based on the wording and reform of these constitutional articles after their amendment by Articles 1° and 2° of Act N° 5470, published in *El Peruano* (Official-Gazette)⁶¹ on October 16, 1926, and not on the original text of the constitutional amendment approved in the 1919 referendum⁶².

In the application of extraordinary powers, the limits to the suspension of individual guarantees mentioned in the paragraph added to Article 35 of the 1920 Constitution, as amended in 1926, are the following: personal liberty and prohibiting arbitrary arrests (Article 24), prohibiting unjustified expulsion from the country (Article 30), the inviolability of the home (Article 31), and the right to peaceful assemble without arms (Article 33)⁶³. These individual guarantees coincide with the fundamental rights mentioned in the second paragraph of Article 48 of the Weimar Constitution⁶⁴, which could allow the assumption of the Weimar Constitution indirectly influencing these Peruvian constitutional articles. However, this correspondence in the wording of the texts must be evaluated.

To determine whether Article 48 of the Weimar Constitution had influenced the articulation of emergency powers in the Peruvian constitution, it is important to determine when and how this influence took place. There are two hypotheses: Either the influence took place at the time of the drafting and promulgation of the 1920

⁶¹ Ley aprobada en segunda votación por la Cámara de Senadores el jueves 29 de enero de 1925 y por la Cámara de Diputados el 17 de agosto de 1926, y promulgada por el Presidente de la República el 28 de septiembre de 1926. Ver: Congreso de la República. *"Diario de debates de la Cámara Nacional de Diputados del Congreso de la República"*, op.cit. pp.172-176. Asimismo: Ley N°5470. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: https://www.leyes.congreso.gob.pe/LeyNume_1p.aspx?xEstado=2&xTipoNorma=0&xTipoBusqueda=4&xFechaI=&xFechaF=&xTexto=&xOrden=0&xNormal=5470&xNormaF= 1p.

⁶² "Decreta: (...) Artículo 8.- Las garantías individuales no podrán ser suspendidas por ninguna ley ni por ninguna autoridad." *El Peruano*, Diario Oficial, Lima 22 de julio de 1919. Año 78, Tomo II. Semestre II, N°156. *"Poder Ejecutivo. Votación plebiscitaria para la reforma de la Constitución"*, op.cit., p.1 (Portada).

⁶³ Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>. pp. 4-9.

⁶⁴ Constitución del Imperio (Reich) Alemán de 11 de agosto de 1919. Disponible en: <https://ezequielsgman.blog/wp-content/uploads/2016/03/constitucion-de-weimar-alemania-19191.pdf>. 25pp. Versión en inglés disponible en la Cornell University Library (Donovan Nuremberg Trials Collection): <https://s3.amazonaws.com/cul-hydra/nur/nur01840/pdfs/nur01840.pdf>. 30pp.

Constitution or it happened between the promulgation and the approval of the amendment of Articles 35 and 36 on August 17, 1926. To decide on the validity of these two hypotheses, the minutes of the debates of the National Assembly of 1919 and the National Congress (1925-1926) were analyzed.

As Núñez mentions in his reply to Schmidt and Rauchhaupt⁶⁵, the first hypothesis is already called into question by the historical facts. The Weimar Constitution was adopted on August 14, 1919, that is, one month and ten days after the coup d'état of July 4, 1919, one month and five days after the provisional government of Leguía had proposed the 19 constitutional reforms that were submitted to a referendum on August 24, 1919. August 24, 1919 was almost a month before the 1919 National Assembly was convened⁶⁶, which points to additional relevant circumstances, such as the time it took for news from Europe to reach Peru. All these factors indicate that if there were any (unlikely) direct influence of the Weimar Constitution on the members of the 1919 National Assembly or on the Provisional Government, it must have happened between January 19, 1919 and August 14, 1919. This was the period in which the German constituent assembly, from which the Weimar Constitution had emerged, was in session. This means that from a historical perspective there is insufficient evidence to support the German thesis.

The second hypothesis seems more likely, since the debate diary of the National Assembly shows that in 1926 the position of the 1919 National Assembly regarding the original wording of Articles 35 and 36 was criticized in the meetings of the Chamber of Senators⁶⁷ and the Chamber of Deputies⁶⁸ as impracticable. These bodies explicitly referred to the opinions of the Government Commission of October 29, 1925, the Constitutional Commission of August 16, 1926 and, particularly, to the interventions of delegates Rodríguez Dulanto⁶⁹ and García⁷⁰, and of Senators Glicerio A. Fernández⁷¹, Mariano H. Cornejo⁷², and

⁶⁵ Estuardo Núñez. *La influencia alemana en el derecho peruano*, op.cit., 26-27.

⁶⁶ Asamblea Nacional. "Diario de los Debates de la Asamblea Nacional de 1919", op.cit., pp. 3-18.

⁶⁷ Asamblea Nacional. "Diario de debates del Senado del Congreso de la República", 70° Sesión del jueves 29 de enero de 1925. Presidencia del señor Guillermo Rey, pp. 1301-1309.

⁶⁸ Congreso de la República. "Diario de debates de la Cámara Nacional de Diputados del Congreso de la República", 14° Sesión efectuada el día martes 17 de agosto de 1926. Presidencia del señor Jesús M. Salazar, pp. 172-176.

⁶⁹ Congreso de la República. "Diario de debates de la Cámara Nacional de Diputados del Congreso de la República". op.cit., pp.173-175.

⁷⁰ Congreso de la República. "Diario de debates de la Cámara Nacional de Diputados del Congreso de la República." op.cit., pp.175-176.

⁷¹ Congreso de la República. "Diario de debates del Senado del Congreso de la República", op.cit., pp. 1304-1306.

⁷² Congreso de la República. "Diario de debates del Senado del Congreso de la República", op.cit., pp. 1306-1307.

José Manuel García⁷³. A thorough study of all speakers' contributions during the debates that took place in the two chambers of Congress from 1925 to 1926 revealed that the Weimar Constitution was not mentioned in any of these debates during the drafting, discussion and approval of the articles in the Peruvian constitution that referred to the extraordinary powers and the suspension of fundamental rights. Therefore, Schmidt's thesis about the influence of Article 48 of the Weimar Constitution in Peru is refuted.

Concerning social rights, the Peruvian constitution of 1920 represented a novel position compared to the constitutional tradition of the 19th century in that it recognized the power of the state to regulate safety, health, and hygiene in the workplace, as well as minimum wages and compensation for accidents at work (Article 47), the right to free mandatory primary education (Article 53), health care and special protection for children, as well as the poor and the destitute (Article 55), state intervention to reduce the prices of essential goods in exceptional situations (Article 57), and protection of the indigenous peoples (Article 58)⁷⁴.

The Weimar Constitution provided for special protection of labor (Article 157), for the creation of social insurance with special coverage for maternity and old age (Article 161), and for guaranteed minimum working conditions (Article 163). Therefore, the content of the two constitutional texts shows similarities, even if we still need historical evidence to clarify whether there could have been a German influence on the Peruvian constitution of 1920⁷⁵.

An examination of the debate diaries and the archived material confirmed that the two constitutions coincide in their recognition of social rights and in positing the important role of the state in regulating them; however, the claim that this is necessarily due to the influence of the Weimar Constitution cannot be verified. The debate records of the National Assembly show that several articles on social rights (education, health, etc.) were adopted in the sessions of October 27, November 3, and November 5, 1919. Specifically, the protection of labor and the minimum wage, as well as intervention in the market for extraordinary reasons of social necessity, stand out⁷⁶. Regarding Article 47 of the 1920 Constitu-

⁷³ Congreso de la República. "*Diario de debates del Senado del Congreso de la República*", *op.cit.*, pp. 1307

⁷⁴ Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>. pp.4-9.

⁷⁵ Constitución del Imperio (Reich) Alemán de 11 de agosto de 1919. Disponible en: <https://ezequielsgingman.blog/wp-content/uploads/2016/03/constitucion-de-weimar-alemania-19191.pdf>. 25pp. Versión en inglés disponible en la Cornell University Library (Donovan Nuremberg Trials Collection): <https://s3.amazonaws.com/cul-hydra/nur/nur01840/pdfs/nur01840.pdf>. 30pp. Consulta realizada el 1 de marzo de 2025.

⁷⁶ Cabe indicar que la numeración aquí presentada corresponde al proyecto de ley propuesto por la Comisión de Constitución, aunque respecto de la redacción definitiva de la Constitución de 1920 corresponden, respectivamente, a los artículos 57, 47, 53, 55 y 58 de la misma.

tion (Articles 59 and 60 of the draft), which establishes the protection of the right to work at the constitutional level, and which safeguards working conditions and the minimum wage, the debate focused on the importance of the enabling role of the Peruvian state. These protections were supported by the majority of delegates, particularly Prado and Ugarteche, as well as Rada and Gamio⁷⁷. Article 60, which refers to working conditions and the minimum wage, was approved “without debate, by roll call vote and by 76 votes”⁷⁸. In this way, the wording of these constitutional articles was incorporated into Article 47 of the 1920 Constitution with slight modifications.

Historical evidence shows that even the Weimar Constitution had no influence on the wording of the articles on this subject in the 1920 Peruvian constitution. Articles 59 and 60 of the adopted draft were incorporated into the wording of Article 47 of the 1920 Constitution, which consisted of two paragraphs: in the first, an earlier phrase, “provides for the promotion and distribution of labor, for the utilization of production sources and centers, and for the natural and industrial development of the country,” was deleted⁷⁹. This could reflect an ideological nuance which assigned a weakened promotional role to the state in the economy. In the second paragraph, however, the verb phrase “may determine” was changed to “shall determine,”⁸⁰ indicating a transition from the optional to the obligatory, thus establishing the regulation of maximum working conditions and the minimum wage as a state obligation. There was hardly any debate on Article 57 of the Constitution (Article 57 of the draft), which concerns the state’s intervention in the market through a law for extraordinary reasons, which was limited to a minimal aspect of the wording. Thus, in the final draft of Article 57 of the 1920 Constitution, “order” was replaced by “dictate laws” and “establish government” was replaced by “exercise executive power” which clarified the article’s meaning and subjected this power of the executive to the principle of legality⁸¹.

⁷⁷ Asamblea Nacional. “*Diario de los Debates de la Asamblea Nacional de 1919*”, *op.cit.* p. 833.

⁷⁸ Asamblea Nacional. “*Diario de los Debates de la Asamblea Nacional de 1919*”, *op.cit.* p. 835.

⁷⁹ See: Asamblea Nacional. “*Diario de los Debates de la Asamblea Nacional de 1919*”, *op.cit.* pp. 833-836. Asimismo, véase: Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>.

⁸⁰ See: Asamblea Nacional. “*Diario de los Debates de la Asamblea Nacional de 1919*”, *op.cit.* pp. 833-836. Asimismo, véase: Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>.

⁸¹ See: Asamblea Nacional. “*Diario de los Debates de la Asamblea Nacional de 1919*”, *op.cit.* pp. 833-836. Asimismo, véase: Constitución de 1920. Disponible en el Archivo Digital de la Legislación del Perú del Congreso de la República: <https://www.leyes.congreso.gob.pe/constituciones.aspx>. p.5.

In summary, Schmidt's thesis regarding the influence of the Weimar Constitution on the Peruvian constitution of 1920 lacks any historical evidence and should therefore be completely discarded. The 1920 Constitution represented a remarkable advance in Peruvian constitutional history in the modern sense, since it marked a break with the 19th-century constitutionalism in at least two aspects: a) the regulation of the regime of exceptions, and b) the constitutional recognition of social rights, among which protecting the right to work and regulating the minimum wage stand out. Both of these are common aspects in the Weimar Constitution. However, Núñez's argument that the Weimar Constitution had no influence on the history of Peruvian law is also wrong. Even if the Weimar Constitution had no influence at the level of constitutional debates, important jurists of the time found it interesting and their work showed reception of some of its ideas. Here, the fact and nature of the transatlantic dialogue between Peruvian and German legal scholars becomes clear.

III. THE RECEPTION OF THE WEIMAR CONSTITUTION IN PERUVIAN JURISTS' WORK (1919-1939)

The commentaries of Peruvian jurists on the Weimar Constitution emerged in the context of their dictatorship and the constitutional reform which Leguía initiated in 1919 and which developed until the end of the 1930s. The German policies and constitutional laws attracted the attention of various Peruvian intellectuals in the 1920s. Víctor J. Guevara, a lawyer and professor from Cusco, published a short essay in which he compared the constitutions of Peru, Uruguay, and Germany⁸². Further, the Peruvian essayist Francisco García Calderón published a book in Barcelona in 1928 entitled "The Spirit of the New Germany" (*El Espíritu de la Nueva Alemania*)⁸³. However, we find the most important reception of the Weimar Constitution in the work of Manuel Vicente Villarán and León Barandiarán, both jurists and professors. This section describes how such reception originated and developed.

3.1. The Weimar Constitution in the work of Manuel Vicente Villarán

The Weimar Constitution aroused great interest in Peru from the moment it was promulgated in Germany. Manuel Vicente Villarán published the first commentary on this constitution in the Peruvian journal *Studium* in December 1919⁸⁴.

⁸² Víctor J. Guevara, "Acotaciones a las Constituciones del Perú, Alemania y Uruguay", *Hacia Indolatinia*, Cusco, 1926, pp. 71–109.

⁸³ Francisco García-Calderón, "El Espíritu de La Nueva Alemania", Casa Editorial Maucci, Barcelona, 1928.

⁸⁴ Manuel Vicente Villarán, "La Nueva Constitución de Alemania", *Studium: Publicación Universitaria de Ciencias Sociales, Políticas y Económicas* Vol. 1-3, 1919, pp. 21–30.

Villarán was a Peruvian politician and one of the most important Peruvian jurists of the early 20th century. He was dean of the National University of San Marcos (1922-1924) who later opposed Leguía's dictatorship⁸⁵. He headed the constitutional commission that drafted the foundations of the 1933 Constitution⁸⁶, and in the 1936 elections he was also a presidential candidate. Quite early in his career he already had an interest in German legal philosophy, specifically in the study of natural law, Kant's philosophy of law, and Krausism⁸⁷. Villarán studied the imperial German constitutional system from the 1910s onwards. His writing and lectures of 1915-1916 on constitutional law, in which he analyzed the constitutions and political institutions of the United States, England, Germany, and France⁸⁸ testify to his profound knowledge of comparative constitutional history. Villarán's commentary on the Weimar Constitution published in December 1919 was one of the first such reviews in the Spanish-speaking world. He summarized the content of the new constitutional order in Germany and above all emphasized the characterization of the President of the Reich (*Reichspräsident*) as a new republican authority that had emerged in German law⁸⁹. With this text he aimed to inform the Peruvian public, as becomes clear in the *Studium* journal editors' comment on his text at the beginning of the essay:

«In this essay, Dr. Manuel Vicente Villarán offers us an admirable synthesis, with the precision and clarity that characterize all his writing, and a complete impression of the current constitution of Germany. The organization of the new [German] Republic, which we otherwise know only through some fragmentary studies that have been published, is clarified by our highest authority on the subject. We believe that this will be of extraordinary interest to our intellectuals and scholars»⁹⁰.

Villarán elaborates the argumentation presented in this essay of December 1919 in a concise book dedicated to the Weimar Constitution⁹¹,

⁸⁵ Manuel Vicente Villarán. *Lecciones de Derecho Constitucional*. Ed. Domingo García Belaúnde. Fondo Editorial de la Pontificia Universidad Católica del Perú, Lima, [1915-1916] 1998.

⁸⁶ Manuel Vicente Villarán. *Exposición de Motivos Del Anteproyecto de Constitución Del Estado 1931. Comisión presidida por Manuel Vicente Villarán*. Ed. Carlos Ramos Nuñez. Centro de Estudios Constitucionales. Tribunal Constitucional del Perú, Lima, [1931] 2017. pp. 27-29.

⁸⁷ Manuel Vicente Villarán. *Lecciones de Derecho Natural*. Imprenta de J. Francisco Solís, Lima, 1896, pp. 34-54.

⁸⁸ Manuel Vicente Villarán. *Lecciones de Derecho Constitucional*, *op. cit.*

⁸⁹ Manuel Vicente Villarán, "La Nueva Constitución de Alemania", *Studium*: Publicación Universitaria de Ciencias Sociales, Políticas Y Económicas Vol. 1-3, 1919, pp. 24-25.

⁹⁰ Manuel Vicente Villarán, "La Nueva Constitución de Alemania", *op. cit.*, p.21.

⁹¹ Manuel Vicente Villarán. *El Gobierno de Alemania*. Lima: Librería Imprenta Gil, Lima, 1920.

published in 1920. This text represents a further development of the topics he had already covered in his comparative law lectures at university⁹². The first part of his work, inspired by his reading of A. L. Lowell⁹³, summarizes the constitutional order of imperial Germany. The text begins by contextualizing the emergence of the German Empire during the Napoleonic Wars and the Congress of Vienna of 1815. Villarán describes the political hegemony of Prussia in organizing the imperial constitution⁹⁴. He goes on to explain the emergence of the Weimar Republic as a consequence of the German defeat in World War I: «As a result of the war, Germany was politically reshaped. The National Assembly meeting in Weimar gave the German people a new constitution, which has been in effect since August 13, 1919, whereby a democratic republic was established on the ruins of the empire»⁹⁵. An essential element for Villarán was that the Weimar Constitution abolished the concentration of the emperor's personal power⁹⁶, and bringing about a new concentration of personal power in the authority of the President of the Reich.

Having been a witness to the Leguía dictatorship and the constitutional reforms that strengthened the powers of the president in Peru between 1919 and 1920, a concerning aspect of the Weimar Constitution to Villarán was the far-reaching powers afforded the German President. He examined the strengthening of the presidential powers in Peru in his text comparatively dealing with the constitutions of 1860 and 1920⁹⁷. This concern of Villarán's directly preceded the important discussion between reputed German jurists of the time, such as Hugo Preuß, Richard Grau, and Carl Schmitt, about the dictatorial nature of the powers of the president⁹⁸. For Villarán the German presidential powers are exceptionally extensive in that the president represents the German nation in international affairs and can conclude treaties that would require the Imperial Council's approval if they concern matters that are subject to national legislation. He further points out that the President of the Reich appoints and receives ambassadors and dismisses officials, both civilian

⁹² Manuel Vicente Villarán. *Lecciones de Derecho Constitucional*, op. cit.

⁹³ Lawrence Lowell Abbott. *Governments and Parties in Continental Europe*. Houghton, Mifflin and Company, Boston and New York, 1900.

⁹⁴ Villarán Manuel Vicente. *El Gobierno de Alemania*, op. cit., pp. 5-7.

⁹⁵ Manuel Vicente Villarán. *El Gobierno de Alemania*. op.cit. p. 13.

⁹⁶ Manuel Vicente Villarán. *Lecciones de Derecho Constitucional*. op.cit., pp. 163-174.

⁹⁷ Manuel Vicente Villarán. *Las Constituciones de 1860 y 1920. Concordadas para uso de los estudiantes de derecho constitucional*. Librería e Imprenta Gil, Lima, 1920, pp. 32-37.

⁹⁸ Richard Grau. *Die Diktaturgewalt des Reichspräsidenten und der Landesregierungen auf Grund des Artikels 48 der Reichsverfassung*. Edited by Öffentlich-Rechtliche Abhandlungen. Vol. 5, Otto Liebmann, Berlin, 1922; Gerhard Anschütz, Karl Bilfinger, Carl Schmitt, and Erwin Jacobi. *Der deutsche Föderalismus. Die Diktatur des Reichspräsidenten*. Vol. 1. Verhandlungen der Tagung der deutschen Staatsrechtslehrer zu Jena am 14. und 15. April 1924. Berlin: De Gruyter, (1924) 2013.

and military, unless the law provides otherwise. The president also has supreme command of the nation's armed forces. Villarán adds that the German president could use armed force to compel compliance with the constitution or federal laws if one of the confederate states would fail to fulfill its duties⁹⁹. He notes the summary of these far-reaching German presidential powers in Article 48 of the Weimar Constitution that provides for a state of emergency:

«The President of the Reich may take the necessary measures to restore order and security in the country if these are seriously disturbed or threatened, if necessary by the use of armed force, and to this end may suspend in whole or in part the guarantees of personal liberty, the inviolability of the home, the right to privacy in correspondence, freedom of speech and writing, freedom of assembly and association, and the inalienability of private property»¹⁰⁰.

Villarán's took up the issue of the far-reaching powers assigned to the President in the Weimar Constitution again in the 1930s, in a Peruvian context that was once again characterized by a political crisis and a dictatorship. On August 22, 1930, General Luis Sánchez Cerro staged a coup against the Leguía dictatorship and installed a junta, which called both presidential and constituent elections in October 1931. Sánchez Cerro and his party, the Revolutionary Union (*Unión Revolucionaria*), the first fascist-oriented party in Peru¹⁰¹, won the 1931 elections. In this context, Villarán chaired the Constitutional Commission of 1931, which laid the foundations for the constitution of 1933. Sánchez Cerro, however, was assassinated in April 1933, after which the Constituent Assembly granted General Óscar R. Benavides, far-reaching dictatorial powers to suppress revolutionary groups, similarly to provisions of the Enabling Act of 1933 in Germany. Having been dictator since 1933, Benavides called new presidential elections in 1936. In these 1936 elections, Villarán ran as the presidential candidate of a party with liberal-democratic tendencies. Luis A. Eguiguren of the Social Democratic Party won these elections, but the government did not recognize his victory. Benavides extended his own dictatorial mandate to 1939. In this context of dictatorship and the destruction of the constitutional order, Villarán published a second expanded edition of his book on the Weimar Constitution in 1936.

The second edition of Villarán's book is subtitled "The Empire, the Republic, the Dictatorship" (1936). It gives an appraisal of the destruc-

⁹⁹ Manuel Vicente Villarán. *El Gobierno de Alemania*, op. cit., p.17.

¹⁰⁰ Manuel Vicente Villarán. *El Gobierno de Alemania*. op.cit. p.18.

¹⁰¹ Tirso Molinari . *El Fascismo en el Perú: La Unión Revolucionaria 1931-1936*. Universidad Nacional Mayor de San Marcos, Fondo Editorial de la Facultad de Ciencias Sociales, Lima, 2006.

tion of the German constitutional order with a description showing similarities with events in Peru in the 1930s. The text extends his study of the Weimar Constitution by also reviewing related English and French literature¹⁰². Villarán's central thesis is that the transition from the Weimar Republic to Nazi dictatorship was a consequence of the erosion of the republican constitution, caused primarily by the excessive use of the presidential powers provided for in Article 48. Villarán highlights the instability of parliamentary governments and the emergence of political polarization between the National Socialist and Communist parties. He insists that the republican order was dismantled due to the far-reaching powers of the President of the Reich, against which he had already warned in 1920: "The constitutional order was seriously altered by the excessive use of the extraordinary or emergency powers conferred on the President of the Republic in Article 48 of the Constitution"¹⁰³, and he points out that "no one in 1919 foresaw the way in which Article 48 would be understood and applied"¹⁰⁴. Villarán then gives a detailed overview of the emergency decrees in Germany from 1920 to the 1930s. Here Villarán presents Article 48 of the Weimar Constitution as key to establishing the Nazi dictatorship and undermining the republican constitutional order¹⁰⁵.

3.2. The Weimar Constitution in the work of José León Barandiarán

We also find reference to the emergence and destruction of the constitutional order of the Weimar Republic in the work of León Barandiarán¹⁰⁶, an expert in civil law and one of the leading Peruvian jurists of the 20th century.

Barandiarán completed his law studies in 1928 with a dissertation on the philosophy of law, in which he examined the political foundations

¹⁰² Villarán lists the following texts as the bibliographic sources for his new edition: *Governments and Parties in Continental Europe*, by A. Lawrence Lowell; *European Governments and Politics*, by Frederic. A. Ogg; *The Nazi Revolution in Germany*, by Milfred S. Wertheimer; *Les Modifications apportées par la Régime National Socialiste aux Institutions politiques du Reich*, by Maurice Aubry, published in *Revue du droit publique et de la Science politique, en France et à l'Étranger*, july-september, 1934; *Le Pouvoir du Führer-Chancelier en Allemagne*, by M. Gerhart Riegner, published in *Revue du droit publique et de la Science politique, en France et à l'Étranger*, october-december, 1935. Villarán adds that a book by René Brunet, professor at the Faculty of Law in Caen, *La Constitution Allemande du 11, Août 1919*, and the work *The Crisis of German Democracy*, by Herbert Krauss, professor at Göttingen, have also been used.

¹⁰³ Manuel Vicente Villarán. *El Gobierno de Alemania: El Imperio, la República, la Dictadura*. Imprenta Editorial Gil, Lima, 1936, p. 57.

¹⁰⁴ Manuel Vicente Villarán. *El Gobierno de Alemania: El Imperio, La República, La Dictadura*, op.cit. p. 57.

¹⁰⁵ Manuel Vicente Villarán. *El Gobierno de Alemania: El Imperio, La República, La Dictadura*, op.cit., p. 65-72.

¹⁰⁶ Domingo García Belaúnde Domingo. "Los Primeros Escritos de José León Barandiarán: El Aspecto Constitucional, op. cit., p.231.

of European constitutionalism of his time¹⁰⁷. Like Villarán, Barandiarán was a law professor at the National University of San Marcos who took part in the constitutional commission that laid the foundations for the Peruvian constitution of 1933¹⁰⁸. His first commentaries on the Weimar Constitution appeared in 1929¹⁰⁹ as precursors to his book on the subject, published in 1930¹¹⁰. In contrast to Villarán's work, however, Barandiarán could give depth on the theories of German constitutional law since he had spent time in Germany in the mid-1930s, in the context of the Nazi dictatorship¹¹¹. Studying with an Alexander von Humboldt Foundation research grant, Barandiarán witnessed both Hitler's dictatorship and the debates among German jurists on the destruction of the Weimar constitutional order. In 1934, he published a critical commentary on how National Socialist jurists justified the Weimar constitution's destruction¹¹². He admired the Weimar Constitution and rejected the authoritarian theories of the National Socialist legal scholars.

In contrast to Villarán, Barandiarán had a more theoretical approach to the political foundations of the German state, in particular to the representatives of legal positivism of his time. His first book is a study on the general history of the philosophy of law. Here, he goes into detail on Georg Jellinek's theory of the state¹¹³, which he summarizes as follows: «The German theory of the state (...) asserts that law emerges from the state. In order not to fall into arbitrary regulation, the state restricts itself by determining its own boundaries. Thus, if the state creates law, it is by nature the sole bearer of law»¹¹⁴. Barandiarán affirms that in the German tradition the state is defined as the regulatory authority (*Herrschaft*), pointing out that "Jellinek, Laband, and Rehm formulated the idea that every state has the power to issue decrees"¹¹⁵. In the same vein, he cites Jellinek's position that "the state is a legal entity capable of having a legal will" and he shows how Laband reiterates this in stating that "the unity

¹⁰⁷ José León Barandiarán. *Estudios de Filosofía del Derecho*. Imprenta Minerva, Lima, 1929.

¹⁰⁸ Manuel Vicente Villarán. (1931) 2017. *Exposición de Motivos Del Anteproyecto de Constitución Del Estado 1931*, op. cit., pp.27-29; Domingo García Belaúnde. "Los Primeros Escritos de José León Barandiarán: El Aspecto Constitucional", op. cit., pp. 217-218.

¹⁰⁹ José León Barandiarán. "La Organización Federal y la Constitución de Weimar", Nueva Revista Peruana Vol. 1, n° 2, 1929, pp. 187-194.

¹¹⁰ José León Barandiarán. *La Constitución Alemana de 1919*. Imprenta Minerva, Lima, 1930.

¹¹¹ "Entrevista a José León Barandiarán" by Themis: Revista de Derecho, Lima, 1985. <https://revistas.pucp.edu.pe/index.php/themis/article/view/10485>, p. 5.

¹¹² José León Barandiarán. "Las Reformas en el Régimen Constitucional de Alemania", La Revista del Foro: Órgano del Colegio de Abogados de Lima, n° 7-8, 1934, pp. 292-308.

¹¹³ Georg Jellinek. *Allgemeine Staatslehre*. 4th ed. Berlin: Julius Springer, (1899) 1922.

¹¹⁴ José León Barandiarán. *Estudios de Filosofía Del Derecho*. Imprenta Minerva, Lima, 1929. p.71.

¹¹⁵ José León Barandiarán. *Estudios de Filosofía Del Derecho*. op.cit. p. 84.

of political purpose is what gives the state the attribute of personality”¹¹⁶. Barandiarán identifies with this approach of German legal positivism, as Jellinek’s and Laband’s state theory articulate it. Thus, his commentaries on the Weimar Constitution are influenced by these legal concepts of the German imperial state.

Barandiarán published his first comments on the Weimar Constitution in October 1929, followed by a book on the subject, published in 1930. An important feature of his work is that it is based on primary literature published in German. Barandiarán drew inspiration from influential work of Wittmayer¹¹⁷ and Fischbach (whose work was translated into Spanish)¹¹⁸. Particularly noteworthy is his recourse to the forgotten work of Wittmayer, one of the first lawyers in Germany to study the Weimar Constitution and its political foundations. While Barandiarán’s work does not give an exposition of the virtues and shortcomings of the Weimar Constitution, it concentrates on describing its content and political foundations. For this reason, he is not critical of the authority assigned to the President of the Reich, nor of the Weimar Constitution’s Article 48. In contrast to Villarán¹¹⁹, Barandiarán comprehensively examines how the National Socialist jurists justified the destruction of the constitutional order established in the Weimar Republic.

In 1934 Barandiarán published an essay on how Hitler’s dictatorship was justified and how Nazi lawyers devastated the Weimar Republic in the journal of the Lima Lawyers’ Association (*Colegio de Abogados de Lima*). The political context is important because Barandiarán, like Villarán, was a member of the constitutional commission that drafted the Peruvian constitution promulgated on April 9, 1933. After President Sánchez Cerro was assassinated on April 30, 1933, the Peruvian National Assembly had transferred far-reaching legislative powers to the dictator, Óscar R. Benavides. The 1933 constitution was repealed, but the dictatorship suspended various of its articles. Barandiarán’s 1934 essay was ostensibly only informative, but it did contain an implicit warning to Peruvian jurists, in depicting the establishment of the dictatorship in Germany, showing certain parallels to Benavides’ dictatorship in Peru. Barandiarán claims that the Weimar Constitution was not abolished, but that it clearly ceased to exist after the constitutional laws the Hitler dictatorship introduced. He essentially refers to the Enabling Act of March

¹¹⁶ José León Barandiarán. *Estudios de Filosofía Del Derecho*. op.cit. p. 85.

¹¹⁷ Leo Wittmayer. *Die Weimarer Reichsverfassung*. Tübingen: J. C. B. Mohr (Paul Siebeck), 1922.

¹¹⁸ Oskar Georg Fischbach. *Allgemeine Staatslehre*. Sammlung Göschel, 358. Berlin, Germany: De Gruyter, 1922; Fischbach, Oskar Georg. *Teoría General del Estado*. Colección Labor, Biblioteca de Iniciación Cultural. Editorial Labor, Barcelona, 1929.

¹¹⁹ Manuel Vicente Villarán. *El Gobierno de Alemania: El Imperio, La República, La Dictadura*. Imprenta Editorial Gil, Lima, 1936.

24, 1933, the subsequent laws formulated to bring the federal states into line (*Gleichschaltung*), and to the *Law for the Reconstruction of the Reich*. Barandiarán emphasizes how leading National Socialist jurists such as Carl Schmitt justified the destruction of the Weimar Constitution:

«The Weimar Constitution is not repealed, at least not formally. The law of January 30, 1934 and the laws before and after that do not, either individually or as a whole, constitute a complete body of law that comprehensively regulates the political organization of Germany. This means that they cannot be qualified as a constitution (...) And yet, more than one author disputes that the Weimar Constitution should be regarded as the basis of today's constitutional system in Germany. Carl Schmitt refers to this in *Staat, Bewegung, Volk*, p. 55 and Heinrich Krüger in *Die Verfassung der nationalsozialistischen Revolution*, p. 7 »¹²⁰.

The commentaries Villarán and Barandiarán wrote show how an early reception of the Weimar Constitution developed in Peru in a context characterized by dictatorship and political crisis. The first comments on the new German republican constitutionalism were put forward by Villarán when he witnessed how the Leguía dictatorship had strengthened the powers of the president. Villarán was concerned about the far-reaching powers of the German president, and so it is no coincidence that he published the second edition of his book on the Weimar Constitution in 1936, exactly at a time when Peru was once again experiencing a dictatorship. Barandiarán published his work on the destruction of the German constitutional order in 1934, just at the time when the National Assembly had transferred far-reaching powers to the dictator Benavides. Barandiarán's description of how the Nazi lawyers justified the Enabling Act of 1933 show the similarities to how the Peruvian Assembly had delegated far-reaching dictatorial powers to Benavides. Notably, this Peruvian reception of German constitutional ideas developed in parallel with the German jurists' discussion of the alleged reception of the Weimar Constitution in the Peruvian constitution of 1920. This discussion, as mentioned above, initiated a transatlantic dialogue on the reception of the constitutional ideas of the Weimar Republic in the Spanish-speaking world.

IV. CONCLUSIONS

This paper shows that the Peruvian case represents a milestone in the history of the reception of the Weimar Constitution in the Spanish-speaking world. This becomes clear in considering that the discus-

¹²⁰ José León Barandiarán. *“Las Reformas en el Régimen Constitucional de Alemania”*, *op. cit.*, p. 293.

sion of the German influence on the 1920 Constitution in Peru triggered a transatlantic discussion between Peruvian and German jurists. By analyzing documents in the parliamentary archives, we could show that Arthur Schmidt's thesis about the influence of the Weimar Constitution on the 1920 Peruvian constitution must be rejected. There is no historical evidence that the Weimar Constitution had any influence on the drafting of Leguía's constitutional laws or on the constitutional debates before and after the promulgation of the 1920 Constitution. However, this research also discloses that when German jurists investigated the alleged influence of the Weimar Constitution in Peru, there were Peruvian jurists who simultaneously commented on and analyzed the Weimar Constitution. Particularly, the work of Manuel Vicente Villarán and León Barandiarán represent such engagement. These authors express concern about the strengthening of presidential power as the cause of decimating the republican constitutional order in Germany. Villarán and Barandiarán reflected on the Weimar Constitution in the context of the Leguía and Benavides dictatorships in Peru. Thus, the Peruvian case is significant for having initiated a transatlantic dialogue between German- and Spanish-speaking jurists.

Enviado el (Submission Date): 7/3/2025

Aceptado el (Acceptance Date): 21/4/2025