

Peru

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Peru has currently twenty-five *departamentos* (departments): twenty-four *departamentos* created in 1979, and the *Provincia Constitucional del Callao* (Callao Constitutional Province) created in 2002. *Departamentos* are sometimes called *regiones* because they have *gobiernos regionales* (regional governments).¹ Subnational governance divides further in *provincias* (provinces), *distritos* (districts), and *centros poblados* (towns) (C 1933, Art. 183; C 1993, Art. 189). With an average population of 151,000, the 195 *provincias* constitute the second-tier subnational layer.

We code the *Provincia de Lima* and the *Provincia constitucional Callao* as asymmetric regions from 2003. The city of Lima used to belong to Lima department,² but since 2002, it has its own jurisdiction. Callao has the special status of *provincia constitucional* (C 1933, Art. 183). Together, the *provincias* of Lima and Callao make up the area of Lima Metropolitana, which we do not code as a case of metropolitan governance because it is a voluntary inter-municipal association without an independent general-purpose administration (OECD 2016: 186-187).³

Peru enacted constitutions in 1933, 1979, and 1993. The 1933 constitution created centralized departments (Wilson and Garzon 1985: 331–2). The central government appointed *prefectos* (governors) as head of the *departamentos* (Arce 2008: 45), and although the 1933 constitution provided for directly elected *concejos departamentales* (department councils) such entities were never created (Céspedes Zavaleta 2005: 42). Centralization was reinforced by the 1948 and 1968 military coups. Given their predominantly deconcentrated characteristics, *departamentos* score 1 for 1950–2002.

¹ The original plan provided two or more *departamentos* with the authority to create a *región*, but this configuration only existed from 1989–92. Since no *regiones* are established today, we refer to the intermediate tier as *departamentos* throughout the period. The term *regiones* in this profile refers to *departamentos* with regional governments except for the brief interlude from 1989–92.

² Since 1979, the government of Lima was regulated by the *Ley Orgánica de Municipalidades* (C 1979, Art. 258; C 1993, Art. 198).

³ Lima Metropolitana also exists as a region for statistical purposes (INEI 2014). Peruvian law grants the status of *metrópoli* (metropolis) to urban areas whose population is above 500,001 and whose authorities issue a land use plan and a metropolitan development plan (Supreme Decree No 019-2003-PCM, Art. 9e). However, areas classified as *metrópoli* do not have any special legal status, and their governments have the same competences as *provincias*.

In 1975, the military government set up a regional structure parallel to the *departamentos* and called them ORDEs (*Organismo de Desarrollo*). The central government appointed the presidents of ORDEs. Each of the twenty-four ORDEs consolidated the deconcentrated regional offices into one regional development institution. In 1981, ORDEs were replaced by twenty-four CORDEs, a much weaker departmental development corporation which managed only public works programs, provided limited representative input, and was urban-based (*Ley de Corporaciones*, as cited in Wilson and Garzon 1985: 332–3). ORDEs and CORDEs are not general purpose.

The 1979 constitution marked the transition to democracy. The new constitution provided for a third intermediate level of government and set 1983 as the deadline. The administration submitted the *Plan Nacional de Regionalización* (National Regionalization Plan), but congress rejected it. In 1987, congress did accept a revised plan, the *Ley de Bases de la Regionalización* and its 1988 modification (Law 24792; Céspedes Zavaleta 2005: 43),⁴ which envisaged the voluntary merger of departments into twelve *regiones*. Enabling laws for all but the Lima-Callao region passed in 1989,⁵ which paved the way for direct elections in five regions in the same year and in six more in 1990 (Kim 1992: 255). Hence, between 1989 and 1992, Peru had three intermediate levels of governance: eleven *regiones* (plus Lima-Callao), twenty-four *departamentos*, and 183 *provincias*.

According to the 1988 legislation, *regiones* could approve regional development plans, budgets, and accounts. They could create, modify, impose, or rescind some taxes and engage in inter-regional and international trade (Zas Friz Burga 2001: 72–3). But their taxing authority was never fully implemented (see fiscal autonomy) and the institutions remained embryonic (Daughters and Harper 2007). Contrary to *departamentos*, which could only exercise powers delegated by the central government, regional governments played an explicit role in the drafting, implementation, and adjustment of national plans and budgets in the regions. The president could veto regional laws if he thought they violated the constitution, but the *asamblea regional* could override the presidential decision and the national constitutional court could challenge the

⁴ The *regiones* are mentioned for the first time in the 1979 constitution (C 1979, Art. 259), which provided for some administrative autonomy, very limited revenue sources, and an assembly with limited legislative powers (Wilson and Garzon 1985: 335).

⁵ Grau (Tumbes and Piura); Nor Oriental del Marañón (Cajamarca, Lambayeque, Amazonas); La Libertad- San Martín; Amazonas (Loreto); Cáceres (Junín, Pasco, Huánuco); Libertadores-Wari (Ica, Ayacucho, Huancavelica); Arequipa; Inka (Cusco, Apurímac, Madre de Dios); José Carlos Mariátegui (Puno, Moquegua, Tacna); Ucayali; Chavín (Ancash); and the Lima metropolitan area (Lima and Callao) (Zas Friz Burga 2004: 57–8).

president's interpretation. If the president refused to promulgate the law, the national congress could enact it autonomously (C 1979, Art. 267; Kim 1992: 253–5).

This development was stopped in its tracks when *regiones* were abolished in the wake of the 1992 *auto-golpe* (self-coup) by then president Alberto Fujimori (Jordana 2001: 98; Arce 2008: 45). An *asamblea constituyente* (constituent assembly) approved a new constitution in 1993. Although the 1993 constitution incorporated a section on decentralization, authority flowed back to the central government (Jordana 2001: 99; Arce 2008: 43). The regional governments were replaced by *Concejos Transitorios de Administración Regional* (Transitory Councils of Regional Administration or CTARs), headed by Fujimori appointees. *Departamentos* once again became deconcentrated (Jordana 2001: 99, 199).

Fujimori's authoritarian regime ended in 2002, and with greater democracy came greater decentralization for *departamentos*. Congress approved the *Ley de Bases de la Descentralización* (Law 27783) which regulates *departamentos* (and deactivates the CTARs), and the *Ley Orgánica de Gobiernos Regionales* (Law 27867 and its revision Law 27902) which devolves competences. The *Ley de Bases de la Descentralización* specifies that national executive and legislative powers cannot affect or restrict the exclusive constitutional competences of regional and local governments (Art. 10.2). The *Ley Orgánica de Gobiernos Regionales* details the transfer of functions to the *departamentos*, which acquire responsibility for regional planning and public investment, and more generally for promoting economic activities (Art. 4) (Céspedes Zavaleta 2005).

The lowest level of intermediate government, 195 *provincias* by 2010, had always had constitutionally guaranteed “administrative and economic autonomy” (C 1933, Art. 206), but this was seriously constrained by the 1948 and 1968 coups (Zas Friz Burga 2001).⁶ After the 1979 democratic transition, provincial autonomy was restored (C 1979, Art. 252; C 1993, Art. 194).⁶

Lima has combined provincial and regional governance since 2002. The *Municipalidad Metropolitana de Lima* is part of the *provincia* of Lima (C 1993, Art. 198), but the 1993 *Ley Orgánica de Municipalidades* establishes that the *Municipalidad Metropolitana de Lima* has supremacy if there is a discrepancy between the *municipalidad* and the *provincia* (1993 *Ley*, Art. 152). Territorial authority in Lima is exercised by the *Concejo Metropolitano*, the *Alcaldía Metropolitana*, and the *Asamblea Metropolitana de Lima* (*Ley*, Art. 153). The

⁶ Provincias exploited their new-found autonomy slowly. In the early years, weak capabilities hamper decentralization (Ahmad and García-Escribano 2006: 5; PNUD 2006: 127), but especially since 2003, provincial self-government has matured (Céspedes Zavaleta 2005: 44).

Provincia Constitucional del Callao also combines regional and provincial governance (*Ley de Bases de la Descentralización*, Art. 34).

There is a wide gap between the letter and practice of the law in terms of what these entities do. According to the constitution, subnational governments “organize, administer and control” sanitation, public works, agriculture, industry, mining, pension, and labor laws (C 1933, Art. 192; C 1979, Art. 261; C 1993, Art. 192). In addition, they have authority over indigenous communities (C 1933, Art. 193). Education is also decentralized (C 1993, Art. 16). However, since the 1933 constitution and the subsequent *Ley Orgánica de Descentralización Económica y Administrativa* (1933) were never implemented, these provisions remained dead letter for the *departamentos* until the 2000s. Only *provincias* obtained a measurable amount of policy autonomy.^β

During the military regimes and through the late 1980s the centrally controlled CORDEs implemented central policy in the *departamentos*. After 1988 the *departamentos* acquired some measure of authority over economic policy, but they had to share these with the *regiones* and with the central government. Policy authority remained essentially central during this brief democratizing interval (Kim 1992: 155).^β From 1993–2002, the CTARs displaced *departamentos*.

CTARs oversaw the implementation of centrally designed public services, coordinated with local governments, and promoted economic development and tourism (Jordana 2001: 99).

The 2002 *Ley Orgánica de Gobiernos Regionales* was a game changer. It specifies the constitutional competences of the *regiones/departamentos* (Arts. 9–10). Regional governments now acquire exclusive authority in regional economic development (Art. 10.a and 10.b), investment in energy and communication (Art. 10.d), agricultural export (Art. 10.g), and tourism (Art. 10.h). They share competences with the central government on education (Art. 10.2.a), public health (Art. 10.2.b), environment (Art. 10.2.d), culture (Art. 10.2.f), and citizen participation (Art. 10.2.h) (Ahmad and García-Escribano 2006: 12). Departments have no authority over their own institutional set up, local government, police, residual powers, and immigration.

In the mid-1970s and the 1980s the ORDEs and CORDEs usurped provincial self-governance, but outside this period *provincias* have extensive competences. They can set up their own institutions, decide their budget, regulate public local services, implement local development programs (C 1979, Art. 254; C 1993, Art. 195), and develop culture and tourism (C 1979, Art. 255; C 1993, Art. 195). *Provincias* have also residual powers (C 1979, Art. 255.6).

The *Ley Orgánica de Municipalidades* regulates the competences of Lima since 2002. The *concejo metropolitano* has control over urban development (Art. 161.1); socio-economic development (Art. 161.2); provision of basic

services (Art. 161.3); industry, commerce, and tourism (Art. 161.4); health (Art. 161.5); environment (Art. 161.6); transport and communication (Art. 161.7); and local security (Art. 161.8), which amounts to decision making power over its own police force. Lima also has authority over its own institutional set up (Art. 122). Lima combines local competences with regional (i.e. departmental) competences.⁷ Very similar provisions apply to Callao.⁸

Peru's indigenous peoples have no general-purpose administration in their communities. Peasant and native community authorities have constitutional recognition as legal entities with administrative and organizational autonomy (C 1993, Art. 89), and rural patrols known as *rondas campesinas* (peasant rounds) have the authority to enforce custom law in some communities (C 1993, Art. 149; Van Cott, 2006). However, these authorities are not granted the status of territorial entities.

FISCAL AUTONOMY

Peru has remained a fiscally centralized country (Haldenwang 2010: 650; Ahmad and García-Escribano 2006: 13; Zas Friz Burga 2004: 72–3). In principle the 1933 and 1979 constitutions provide for *departamentos* to be able to set the rate and base of certain major taxes,⁹ but these provisions were never implemented (Dickovick 2003: 7).^v Not until 1988 did a law flesh out departmental authority, and this Law 24792 assigned to departmental governments 25 percent of the sales tax revenues and transfers from property and occupation taxes, but no control over base or rate (Kim 1992: 254).

A major source of income for *departamentos* has been the so-called *canon minero*, a co-participation scheme whereby a share of corporate income tax from specific economic activities is allocated to the *provincias* and *regiones/departamentos* affected by that activity. The canon concerns mining, fishery, forestry, gas, oil, and hydro-energy sectors (Haldenwang 2010: 650).

The same restrictions apply to *provincias*. This appeared to change in 1979, when the constitution foresaw that the *provincias* would get authority to decide on regional taxes, such as property tax, vehicle tax, and construction tax (C 1979, Art. 257). However, central governments have continued to set the base of all taxes and determined very strict parameters for rate discretion (Ahmad and García-Escribano 2006: 15). “Even the rates of revenues from ‘local’ taxes (such

⁷ Base de Datos Políticos de las Américas. (2002). “Peru: Political Organization.” <http://pdba.georgetown.edu/Decen/Peru/peru.html#nivelintermedio>.

⁸ Municipalidad del Callao official webpage. <<http://www.municallao.gob.pe>>.

⁹ In particular, the *concejos* could determine the base and rate of minor taxes concerning mining, patents, inheritance, and property (C 1933, Art. 194). *Concejos departamentales* could also set the base and rate of a major tax, i.e. personal income tax (C 1933, Art. 194.6).

as the property tax) that accrue entirely to the local governments are centrally determined. In this sense, such revenues are closer in concept to shared revenues (with a 100 percent share) than own-source taxes” (Ahmad and García-Escribano 2006: 15). Therefore, it seems reasonable to conclude that both base and rate continue to be determined by national law (Haldenwang 2010: 651).^γ *Provincias* collect minor taxes such as those concerning motor vehicles, real estate, conveyancing, non-sportive public events, gambling, betting, and traffic fines, and obtain non-tax revenues— but without control over rate or base (Haldenwang 2010: 652).

BORROWING AUTONOMY

Until 2002 *departamentos* did not have the authority to borrow on the international markets. Domestic debt was allowed but limited to smaller short-term credits, and was usually funded by local credit institutions (Ter-Minassian and Craig 1997: 161). *Provincias* could in principle borrow but debt was tied to conditions. For example, it could not be used for current expenditures (Stein 1999: 379). Except for the big cities of Lima, Arequipa, and Cusco, borrowing was almost non-existent.^β

A series of laws beginning with the 2002 Fiscal Decentralization Law put in place a regulatory framework for subnational borrowing, which requires that: the central government guarantees external debt; loans are only used for investment; the three-year average primary balance is positive; and the annual real primary expenditure does not grow more than 3 percent. Each government must publish an annual development plan that is consistent with the national fiscal framework (Liu and Webb 2011: 15). The laws also established a fiscal reporting system. Loan guarantees require compliance with the Annual Debt Law and proof of the capacity to pay, which gives the national government the authority to veto subnational borrowing (Liu and Webb 2011: 18). While this procedure does not necessitate central government approval for every loan, the International Monetary Fund, the World Bank, and the Inter-American Development Bank consider it equivalent to prior central approval (Ahmad and García-Escribano 2006: 9–11; Lora 2007: 249; Liu and Webb 2011: 18).

A 2013 Fiscal Responsibility Law stipulates that the outstanding debt balance for subnational governments may not exceed the subnational government’s average current revenues of the last four years (Law 30,099, Art. 7.a) and creates penalties for noncompliant governments (Art. 8). However, domestic borrowing is no longer subject to national government *ex ante* approval. Only foreign borrowing continues to be subject to prior national government approval, and it may only be invested in public infrastructure. Therefore, we adjust the score to 2 from 2013 for *departamentos*, *provincias*, Lima, and Callao. Law 30,099 was

further modified in 2016 by legislative decree no. 1275, which enables subnational governments with BBB+ or higher credit ratings to be exempted for one fiscal year from all restrictions on borrowing that are specific to subnational governments. Still, they remain subject to the prohibition on exceeding the overall public-sector debt ceiling.

Borrowing by subnational governments has grown steadily since 2013. In 2016, borrowing amounted to 33% of regional governments' investment funding, compared to 6% in 2013.¹⁰

REPRESENTATION

Under the 1933 constitution, government-appointed *prefectos* headed *departamentos* (C 1933, Art. 185). No departmental assembly existed before 2002.

From 1988–92 *regiones* had a directly elected executive (Dickovick 2003: 6; C 1993, Art. 191). In the *asamblea regional*, 40 percent of the delegates were directly elected, 30 percent were representatives of the provincial mayors, and the remaining 30 percent were representatives of interest associations (Kim 1992: 255; Wilson and Garzon 1985: 335). By 1990, *asambleas regionales* existed in all *regiones* (Kim 1992: 255).

Since 2002, departments are sometimes called regions. Executive power is exercised by the *presidente regional* (regional president), who is elected by popular vote. A 2015 constitutional reform (Law 30,305) changed the name of regional executives to *gobernador regional* (regional governor). The *consejo regional* (regional council), also directly elected, exercises legislative power.

Provincias have had *consejos municipales* chaired by *sub-prefectos*, later renamed *alcaldes* (mayors), since 1933 (C 1933, Arts. 185 and 194; C 1993, Art. 194). The *consejos municipales* and the *alcaldes* have always been directly elected. *Provincias* score the maximum on representation except for a twelve-year hiatus during military rule (1968–79).

Lima's government is made up of the *Concejo Metropolitano*, the *Alcaldía Metropolitana*, and the *Asamblea Metropolitana de Lima* (*Ley Orgánica de Municipalidades*, Art. 153). The *Concejo Metropolitano* is composed of the *alcalde* and the *regidores*, both directly elected (*Ley Orgánica de Municipalidades*, Art. 156). In the *Provincia Constitucional del Callao*, both the *presidente regional* and the *consejo regional* are directly elected.

¹⁰ Pedro Llanos and Epifanio Baca, "Nota de Información y Análisis: Crece endeudamiento regional tras la caída del canon," *Grupo Propuesta Ciudadana*, November 16, 2017. <http://propuestaciudadana.org.pe/wp-content/uploads/2017/11/NIA-16-2017-CRECE-ENDEUDAMIENTO-REGIONAL-TRAS-LA-CAÍDA-DEL-CANON-2.pdf>. Accessed July 20, 2019

Shared rule

Departamentos, provincias, and the special regions of Lima and Callao had no shared rule until 2015.

LAW MAKING

Until 1992 Peru had a senate which was non-territorial (*senado funcional*). The 1979 constitution foresaw a senate composed of representatives from the *regiones* (C 1979, Art. 165), but this provision was never implemented. Since 1993 Peru has a unicameral parliament (C 1993, Art. 90). In 2018, a proposed constitutional reform to reinstate a bicameral parliament failed to be ratified by the voters via referendum.

EXECUTIVE CONTROL

Until 2016, there was no mechanism for executive control. Regional presidents could exert some indirect influence through the *Asamblea Nacional de Gobiernos Regionales* (National Assembly of Regional Governors), which began to function in 2007, but the central government did not generally participate. For example, Peru's fiscal responsibility laws of 2000 (amended in 2003) and 2013 (amended in 2016), which constrain borrowing and fiscal policy for *departamentos* and *provincias*, came into being without subnational input. There is no intergovernmental coordination on debt management.

In 2016, the national government introduced a shared rule executive control mechanism known as GORE-Ejecutivo. It involves periodic meetings between the national government (usually cabinet ministers but also sometimes the president or the PM) and regional governments (including the governments of Lima and Callao) to discuss the decentralization process and enable subnational authorities to propose investment projects for their regions and discuss some national policy challenges (such as climate change, border security, and human trafficking).¹¹ We therefore adjust the score to 1 on multilateral executive control for *departamentos*, Lima, and Callao. A similar mechanism, MUNI-Ejecutivo, was established in 2017 for province- and district-level municipal governments. MUNI-Ejecutivo meetings are held on a regular basis between national government delegates and the authorities of the regional, provincial, and district governments of different departments.¹² Since meetings do not

¹¹ “¿Qué es el GORE Ejecutivo?” *Secretaría de Descentralización*, Presidencia del Consejo de Ministros, <http://www.descentralizacion.gob.pe/index.php/que-es-el-gore-ejecutivo>. Accessed July 20, 2019

¹² “¿Qué es el MUNI Ejecutivo?” *Secretaría de Descentralización*, Presidencia del Consejo de Ministros, <http://www.descentralizacion.gob.pe/index.php/que-es-el-muni-ejecutivo>. Accessed July 20, 2019

involve all *provincias* in the country simultaneously but only those of individual *departamentos*, we code *provincias*' executive control as bilateral, with a score of 1.

FISCAL CONTROL

There are no routinized channels for fiscal shared rule.

BORROWING CONTROL

There are no routinized channels for borrowing shared rule.

CONSTITUTIONAL REFORM

Regions do not co-determine constitutional change.

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Self-rule in Peru

		Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
						Assembly	Executive	
Departamentos	1950–2002	1	0	0	0	0	0	1
	2003–2012	2	2	0	1	2	2	9
	2013–2018	2	2	0	2	2	2	10
Regiones	1989–1992	2	0	0	0	1	2	5
Provincias	1950–1962	1	2	0	2	2	2	9
	1963–1967	2	2	0	2	2	2	10
	1968–1975	1	2	0	2	0	0	5
	1976–1979	1	0	0	2	0	0	3
	1980–1989	2	0	0	2	2	2	8
	1990–2002	2	2	0	2	2	2	10
	2003–2012	2	2	0	1	2	2	9
	2013–2018	2	2	0	2	2	2	10
Lima	2003–2012	2	3	0	1	2	2	10
	2013–2018	2	3	0	2	2	2	11
Provincia Constitucional del Callao	2003–2012	2	3	0	1	2	2	10
	2013–2018	2	3	0	2	2	2	11

Shared rule in Peru

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Departamentos	1950–2015	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	2016–2018	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Regiones	1989–1992	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Provincias	1950–2016	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	2017–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Lima	2003–2015	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	2016–2018	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Callao	2003–2015	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	2016–2018	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1

National legislature has: L1=regional representation; L2=regional government representation; L3=majority regional representation; L4=extensive authority; L5=bilateral regional consultation; L6=veto for individual region. Total for shared rule is either multilateral (M) or bilateral (B).

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