

ITALIAN SCHOLARSHIP AND THE STUDY OF CIVIL PROCEDURE IN PERÚ: COMPARATIVE INSIGHTS FROM EXPERIENCE

Carlo Vittorio Giabardo*

This contribution seeks to provide, for the first time, a general picture of the dynamics of reception and adaptation of Italian legal scholarship in the study of civil procedural law in Perú. It does so by drawing both on personal experience and historical context, examining the impact of certain Italian scholars on the methods of study and research themes in Perú, within the broader framework of Latin America. The structure of the work is as follows: after presenting a general overview that illustrates the current depth of Italian influence on Peruvian civil procedural law, also considering the author's first-hand experiences in the country, a periodization is then proposed. This is followed by an analysis of the role of the Italian patres, Chiovenda, Calamandrei, and Carnelutti, in the development of Latin American, and Peruvian, 'scientific proceduralism'. The discussion then shifts to recent decades, highlighting new research trajectories and evolving methodological approaches that have emerged in closer proximity to our time.

* Senior Assistant Professor in Civil Procedure, University of Turin Law School. Qualified as an Associate Professor. Former Professor of Law, Department of Law, *Pontificia Universidad Católica del Perú* (PUCP, Lima, 2022 - 2024), and former Postdoctoral Researcher at the Law School, University of Girona (Spain, 2019 - 2022). Member of the International Association of Procedural Law, of the *Instituto Iberoamericano de Derecho Procesal*, of the Research Group *Proceso, Derecho y Justicia* (PUCP), of the *Associazione Italiana fra gli Studiosi del Processo Civile*, and founding member of the *Associazione Italiana Studiosi della Prova*. This article has benefited from countless conversations, both formal and informal, over the years, with dear friends and colleagues in Perú, making it impossible to thank everyone individually. However, I would like to express my special gratitude to Giovanni Priori Posada, Renzo Cavani, Carla Lucero Tarifa Dianderas, Fernando Medina Álvarez and César Moreno More for their insightful exchanges and helps on the topics discussed here. Any inaccuracies or errors remain solely my own. I also extend my gratitude to *The Italian Law Journal*, and particularly to Camilla Crea and Remo Caponi, for providing a platform to bring visibility to a topic that truly deserves to be known. These reflections represent only a preliminary inquiry into a highly complex topic, the study of which I intend to pursue further in the future.

I. INTRODUCTION: A PERSONAL JOURNEY

I wish to begin these reflections with a quotation which I often share, from two eminent comparatists, Pierre Legrand and Geoffrey Samuel:

‘A French jurist – they write in their account of common law - who might be transported to Bolivia and given two days to conduct preparatory research for a trial would not feel out of place [...]. However, a French jurist who might be transported to England and given a month to conduct preparatory research for a trial would feel completely disoriented. He would have the impression of having arrived on another planet’.¹

Despite the boldness of this statement, meant to emphasize the radical separation between the Romanist tradition of civil law and the common law, I completely agree with it, having experienced it first-hand. My experience stems not only from libraries, but from classrooms, too. Over three semesters (in 2022 and 2023), I taught as a professor at the Law School of the Pontificia Universidad Católica del Perú (PUCP), in Lima, the country’s premier university, where I lectured on the courses of ‘Theory of Conflict and Dispute Resolution Mechanisms’ (a sort of general introduction to civil procedure) and ‘Advanced Seminars on Civil Justice’ (the latter, alongside my dear friend, Professor Renzo Cavani). Earlier, while I was a post-doctoral researcher at the University of Girona, in 2022, I had been appointed as a visiting professor at the PUCP. I then recently returned there as a visiting researcher, in 2024. Since 2020, I have also taught in their Masters’ program in Procedural Law. During my position in Perú, I had also the opportunity to deliver lectures and seminars at various universities, Bar Associations and judicial institutions throughout the country, coming into contact with significant economic and legal realities beyond the capital as well, eg Cajamarca, multiple times in Arequipa, Ica, Huancayo, Trujillo. I can fairly say that all of this has allowed me to develop a comprehensive understanding of the state of the art in civil procedure in Perú, both in terms of theory and practice.

As an Italian law scholar trained in Italian civil procedure, I found myself feeling a deep sense of familiarity with Peruvian procedural law. I experienced an intellectual proximity and an immediate grasp of the theoretical foundations of discussions, even amid differences in law in action. It required no significant effort or cultural adjustment, quite unlike my research experiences in the UK or my contacts with US legal academia, where understanding and engaging with the

¹ «Un juriste français qu'on transporterait en Bolivie et à qui on donnerait deux jours pour mener à bien une recherche préparatoire à un procès ne se trouverait pas dépaycé [...]. Toutefois, un juriste français qu'on transporterait en Angleterre et à qui on donnerait un mois pour effectuer une recherche préparatoire à un procès se trouverait complètement désorienté. Il aurait l'impression d'être arrivé sur une autre planète», P. Legrand and G. Samuel, *Introduction au Common Law* (Paris: PUF, 2011), 21-22.

common law system of civil justice posed a greater challenge.²

From my earliest connections, it was clear that the ‘prestige’ (in the sense attributed to this term by Rodolfo Sacco) of the works of the *patres* of Italian civil procedural law, the ‘doctrinal formant’, was highly regarded.³ This was particularly true of certain figures who, due to circumstances, connections, or personal charisma, had established stronger ties with the Latin American world. At the beginning, I was somehow surprised by the enduring relevance in Perú of figures like Giuseppe Chiovenda, Enrico T. Liebman, Francesco Carnelutti, Piero Calamandrei, Emilio Betti, and then, just to mention those of the past generation who are no longer with us, Mauro Cappelletti, Michele Taruffo, Franco Cipriani, and Sergio Chiarloni. These scholars were not only cited in academic works or recognized by senior members of the judiciary, which is unsurprising in itself, but were also read, debated, and referenced in student assignments and in course research, often with a depth of understanding that surpassed what one might expect in an Italian classroom. I can affirm that Italian procedural law classics, often circulated among undergraduate and postgraduate students as copies, are in high demand, with the most enthusiast of them purchasing original historic monographs, with an almost *reverential* attitude, at considerable expense.

In the following reflections, I shall focus on the dynamics of reception and dialogue with Italian legal scholarship in the context of civil procedure law. However, the significance of this dialogue is evident across almost all areas of law. Many law professors at PUCP had some connection with, or had pursued studies in, Italy, spanning from legal philosophy to constitutional law and administrative law. Today, the leading Peruvian legal publishing houses, such as Palestra (Lima – Madrid) and Zela (Puno), devote a significant portion of their publications to translations of Italian classics across a wide range of legal fields.

Yet, besides civil procedure, there are at least two other areas that, in my view, particularly highlight this privileged relationship with Italy.

The first is private law. The influence of Italian scholarly production (but not Italian legislation) is especially evident in the Peruvian Civil Code of 1984, which, in 2024, marked its 40th anniversary, celebrated through numerous joint initiatives between Italy and Perú.⁴

² The field of civil procedure has indeed been less affected by the ongoing process of ‘convergence’ between civil law and common law cultures. For a discussion, O. Chase and J. Walker eds, *Common Law, Civil Law and the Future of the Categories. Proceedings of the International Association of Procedural Law Conference, Osgoode Hall Law School, Toronto, Canada, June 2009* (Canada: LexisNexis, 2010); M. Taruffo, ‘Aspetti fondamentali del processo civile di *civil law* e di *common law*’ *Foro italiano*, V, 345 (2011). Although, for sure, these statements should be nuanced in light of the trends of integration between legal traditions, at least within Europe.

³ R. Sacco, ‘Circolazione e mutazione dei modelli giuridici’, in *Digesto delle discipline privatistiche, Sezione civile* (Torino: UTET, 1988), II, 365 ff. By ‘doctrinal formant’ is meant the body of relevant scholarly writings; see R. Sacco, ‘Legal Formants: A Dynamic Approach to Comparative Law (I)’ *American Journal of Comparative Law*, 1-34 (1991) and then (II), 343-401 (1991).

⁴ Cf L. León Hilario, ‘I quaranta anni del Codice Civile peruviano. Tra l’influenza italiana e

The second one is legal philosophy. Here, the prestige of Italian scholars in Perú is also notable, particularly those from the classical analytic legal philosophy, eg Norberto Bobbio and Uberto Scarpelli and contemporary members of the ‘Genoa School’ of legal theory. Italian constitutional scholars and legal philosophers, such as Gustavo Zagrebelsky and Luigi Ferrajoli, are extremely influential too. That said, Spain’s influence in this area is also strong, largely due to its ambition to create a ‘philosophy of law for the Latin world’, with distinct themes, discourses and its own congresses (in which, nonetheless, many highly prominent Italian legal philosophers also take part).

II. AN HISTORICAL OVERVIEW OF THE INFLUENCE OF ITALIAN SCHOLARSHIP ON THE STUDY OF CIVIL PROCEDURE IN PERÚ

The history of Peruvian civil procedure, by which I mean from the early 20th century to the present, like that of Latin America as a whole, has been shaped by Italian legal scholarship.

For now, let this broad overview, also drawn from my personal experience, suffice, leaving further exploration of some of the ideas merely suggested here to the continuation of this work (paras VI, VII, and VIII).

The most central figures in Peruvian civil procedural law among previous generations, *viz*, José Silva Vallejo (1936–) and, earlier, Mario Alzamora Valdez (1909–1992), were profoundly influenced by the ‘scientific proceduralism’ of the great Italian masters of the past, whom they deeply admired, Chiovenda, Calamandrei and Carnelutti.

The architect of the current Peruvian Code of Civil Procedure of 1993, Juan Monroy Gálvez (1950–), one of Perú’s most prominent lawyers and a Professor of Civil Procedure at PUCP, is also a great admirer of Italian procedural law. His textbook, *‘Teoría General del Proceso’* (originally *‘Introducción al Proceso Civil’*, 1996) is a genuine tribute to Italian authors, cited through translations, with Italian conceptual frameworks employed to explain Peruvian civil procedural law. The editorial series which he directed with his son, Juan Monroy Palacios, *‘Biblioteca de Derecho Procesal’*, has facilitated the translation of many classic Italian monographs, such as Sergio Chiarloni’s *‘Misure coercitive e tutela dei diritti’* (original ed, 1980),⁵ Italo Andolina’s *‘Cognizione ed esecuzione forzata nel sistema*

la ricerca della propria identità’ *Accademia (Associazione dei Civilisti Italiani)*, 348 (2024); J. Espinoza Espinoza, ‘La influencia del modelo jurídico italiano en el Código Civil peruano’ *Rassegna forense*, 107-115 (2008); F. Benatti et al eds, *The Influence of Italian Civil Law in Latin America. 80th Anniversary of the Codice Civile of 1942* (Milano: Mimesis International, 2024). Within a more general context, M. Graziadei, ‘Il codice civile in Italia e all’estero’ *Rivista italiana di scienze giuridiche*, 554, 535-569 (2022).

⁵ S. Chiarloni, *Medidas coercitivas y tutela de los derechos* (Lima: Palestra, 2006).

della tutela giurisdizionale' (1983),⁶ Federico Carpi's *L'efficacia "ultra partes" della sentenza civile* (1974),⁷ Michele Taruffo's *Il vertice ambiguo* (1991)⁸ and Nicola Picardi's *La giurisdizione all'alba del terzo millennio* (2007).⁹ The *Revista Peruana de Derecho Procesal* (1997–2008), which was published by his law firm, hosted numerous translations of Italian works, including those by Giuseppe Tarzia, Luigi Paolo Comoglio, Andrea Proto Pisani, Carmine Punzi, and many foundational articles by Sergio Chiarloni,¹⁰ contributing significantly to disseminating Italian scholarship to Spanish-speaking audiences. However, I have to say that, unfortunately, modern Italian procedural law textbooks (with some exceptions)¹¹ have not been translated, which has resulted in a general reflection on dogmatic categories in Perú that still largely refers to the *patres* and their works.

Today, the two most influential scholars of civil procedure, Giovanni Priori Posada (PUCP) and Eugenia Ariano Deho (PUCP and Universidad Nacional Mayor de San Marcos, both located in Lima), were deeply trained in Italian legal scholarship and both speak fluent Italian. For years, their works have been characterized by an ongoing engagement with Italian legal dogmatics and with the major themes which have shaped Italian legal debates, contributing to a rigorous reconstruction of the Peruvian justice system with a well-grounded comparative awareness. Specifically, Eugenia Ariano developed a close friendship with Franco Cipriani, a key representative of the broad movement known as '*garantismo processuale*', which gained significant traction in Latin America and led to a critical reading on the current Peruvian civil justice system (see also below, para IX).¹² Giovanni Priori, who studied Roman Law in Rome (University of Tor Vergata), is unanimously recognized today as the key link between Italy and Perú in this field, and he is internationally renowned for his studies, which develop at the intersection between constitutional values and the effective protection of rights.¹³

Italian-Peruvian exchanges also remain highly relevant in teaching and

⁶ I. Andolina, *Cognición y ejecución forzada en el sistema de la tutela jurisdiccional* (Lima: Palestra, 2008).

⁷ F. Carpi, *La efficacia "ultra partes" de la sentencia civil* (Lima: Palestra, 2007). Federico Carpi, who also visited Latin-America and Perú many times, is also Doctor Honoris Causa from the University of Arequipa (and from the University of Tucuman, Argentina, too).

⁸ M. Taruffo, *El vértice ambiguo: ensayos sobre la casación civil* (Lima: Palestra, 2005).

⁹ N. Picardi, *La jurisdicción en el alba del tercer milenio* (Lima: Palestra, 2009).

¹⁰ Such as, *inter alia*, 'La justicia civil y sus paradojas', 47-106 (2002); 'Rol de la jurisprudencia y actividades creadoras de nuevo derecho', 589-602 (2003); 'Un mito recurrente. Notas comparativas sobre la autoridad del precedente jurisprudencial', 681-696 (2004); 'Las tareas fundamentales de la corte suprema de casación, la heterogeneidad de los fines surgida de la garantía constitucional del derecho al recurso y las recientes reformas', 37-56 (2008).

¹¹ eg A. Proto Pisani, *Lecciones de Derecho Procesal Civil* (Lima: Palestra, 2018).

¹² Cf, in Italian, E. Ariano Deho, 'Qualche notizia sul processo civile peruviano' *Rivista di diritto processuale*, 97-108 (2005).

¹³ Recently, in Italian, G. Priori Posada, 'La tutela giurisdizionale dei diritti in America Latina: tra differenziazione e flessibilità' *judicium.it* (2024) (online). Also, for a recent collection of some of his procedural works, in Spanish, Id, *El proceso en el Estado constitucional* (Lima: Palestra, 2024).

academic research. Regarding my own direct experience, in the PUCP postgraduate program in Procedural Law (*‘Maestría en Derecho Procesal’*), Italian professors are regularly invited to deliver seminars and lectures. Among them were Michele Taruffo (1943–2020), arguably the Italian legal scholar who had the greatest impact on Latin America, and Andrea Proto Pisani (1939–), as well as, more recently, Luca Passanante. Furthermore, Michele Taruffo and Andrea Proto Pisani – the latter particularly renowned in Perú and Latin America more largely for his studies on *‘tutela differenziata’* – have been awarded the title of ‘Doctor honoris causa’ at the PUCP, the highest possible academic recognition, in 2012 and 2015, respectively.¹⁴

Starting in 2009, the *‘Seminario Internacional de Derecho Procesal “Proceso y Constitución”*’ was organized by Giovanni Priori at PUCP. This annual congress attracted numerous Italian scholars, including, in addition to those already mentioned, Francesco Paolo Luiso, the comparative law professor Michele Graziadei, and the legal philosopher Susanna Pozzolo. In 2024, the 10th Congress focused on collective processes, followed by the publication of the conference proceedings.¹⁵

Additionally, in September 2023, the XVII International Congress of Procedural Law took place at the PUCP, also directed by Giovanni Priori, under the auspices of the International Association of Procedural Law and dedicated to ‘Judicial Independence in the Third Millennium’.¹⁶ This event provided a further opportunity for international visibility and dialogue with a significant segment of the Italian civil procedural law professors (including Elena d’Alessandro, Luca Passanante, Roberto Poli, Daniela Cavallini, Gina Gioia, and Paolo Comoglio. To these, I must add, for their engaging exchanges with the broader Latin America context, Remo Caponi and Vincenzo Ansanelli).

¹⁴ We shall briefly examine Michele Taruffo’s influence in Perú: below par IX. Regarding Andrea Proto Pisani, it is worth noting that his textbook (*‘Lezioni di diritto processuale civile’*) was translated in Perú by Giovanni Priori and Mayté P. Chumberiza (*Lecciones de Derecho Procesal Civil* (Lima: Palestra, 2018)). See also his collection of works, A. Proto Pisani, *La tutela jurisdiccional* (Lima: Palestra, 2014). Proto Pisani’s academic and personal relationship with Giovanni Priori is particularly strong. He visited Perú three times: first in 2011, and later in 2014 and 2015, both as a keynote speaker and as a lecturer. As said, his most important influence in Perú is on the notion of *‘tutela differenziata’* (‘differentiated judicial protection’); see A. Proto Pisani ‘Tutela giurisdizionale differenziata e nuovo processo del lavoro’ *Foro italiano*, V, 209 (1973); but see also, later, the specifications by A. Proto Pisani himself, when invited to give a lecture at the PUCP in 2014, ‘Necesidad de deshacer los nudos y los equívocos de la expresión tutela jurisdiccional diferenciada’ *Revista de la Maestría en Derecho Procesal (PUCP)*, 179–184 (2014) (online). The Chilean Professor P. Martínez Zuñiga – in ‘La tutela procesal diferenciada: orígenes, indeterminaciones y el rescate de sus notas esenciales’ *Revista de Ciencias Sociales, Universidad de Valparaíso*, 19, 13–47 (2021) – recognizes that ‘Sin que Proto lo haya querido, sus ideas impactaron profundamente en el pensamiento de autores de las más diversas latitudes y sistemas procesales, particularmente en Latinoamérica’. All this is reported by G. Priori Posada, ‘La tutela giurisdizionale’ n 13 above, para 5.

¹⁵ G. Priori Posada and R. Cavani eds, *Los procesos colectivos en debate* (Lima: Palestra, 2024). The history of this congress and its ties with Italy are remembered by Giovanni Priori in the Preface, 9 ff.

¹⁶ E. Oteiza and G. Priori Posada eds, *Independencia judicial en el tercer milenio. Judicial Independence in the Third Millennium* (Lima: Palestra, 2023).

For Peruvian scholars of civil procedure of my generation, and even more so for the emerging one, contact with Italian legal scholarship, including from a perspective of critical engagement, is almost assumed as a given.

To sum up: academically and legally – and, of course, personally! – I felt entirely *at home*.

III. THE INFLUENCE OF ITALIAN SCHOLARSHIP ON PERUVIAN PROCEDURAL LEGISLATION

By and large, the influence of the Italian ‘doctrinal formant’ in Latin America has also extended beyond universities and influenced practice, impacting civil procedure codes and judicial institutions,¹⁷ even though many pragmatic solutions and institutional frameworks are, of course, shaped by specific local characteristics and needs.

The most famous and evident, and the most studied, example of this kind of influence between theory and practice is perhaps the Brazilian ‘Buzaid’ Code of Civil Procedure (of 1973, preceding the one currently in force, from 2015), named after its main author, Alfredo Buzaid (1914 – 1991).¹⁸ More precisely, that Code was not so much indebted to its contemporary Italian legal scholarship *as a whole*, nor to Italian legislation of that time, but rather to the specific ideas and teachings of Enrico Tullio Liebman (1903–1986).¹⁹ It is known that Liebman moved to Brazil in 1939 as a consequence of racial persecution, passing through Montevideo (Uruguay), where he was initially welcomed by Eduardo Couture, and then briefly Argentina. After short experiences in Rio de Janeiro and Minas Gerais, he finally settled as a professor in São Paulo, where he founded what would become internationally known as the ‘*Escola Processal de São Paulo*’.²⁰

¹⁷ For a general account, C. Petit, ‘Due Process and Civil Procedure, or How to Do Codes with Theories’ 66 *The American Journal of Comparative Law*, 791-810 (2018).

¹⁸ A. Buzaid, ‘A Influência de Liebman no Direito Processual Civil Brasileiro’ *Revista da Faculdade De Direito, Universidade De São Paulo*, 131 (1977), and, in Italian, ‘L’influenza di Liebman sul diritto processuale civile brasiliano’, in *Studi in onore di Enrico Tullio Liebman* (Milano: Giuffrè, 1979), I, 6 ff.; D. Mitidiero, ‘O processualismo e a formação do Código Buzaid’ *Revista de Processo*, 165-194 (2010); in Italian, Id, *Per la storia del processo: sulla formazione del Codice di procedura civile brasiliano del 1973*, in A. Briguglio et al eds, *Scritti in onore di Nicola Picardi* (Pisa: Pacini, 2016), II, 1773 ff.

¹⁹ On the figure and life of Liebman, E. Vullo, ‘Enrico Tullio Liebman’ *Giusto processo civile*, 321 (2014); also Id, ‘Un interessante carteggio tra Enrico Tullio Liebman ed Eduardo J. Couture’, *ibid* 615 (2019).

²⁰ N. Alcalá-Zamora y Castillo, ‘La escuela processual de San Paolo del Brasile’ *Rivista trimestrale diritto procedura civile*, 865 (1956); A. Pellegrini Grinover, ‘O Magistério de Enrico Tullio Liebman no Brasil’ *Revista Da Faculdade De Direito, Universidade De São Paulo*, 98 (1986), and also in Italian, ‘L’insegnamento di Enrico Tullio Liebman in Brasile’ *Rivista diritto processuale*, 704 (1986); C.R. Dinamarco, ‘Liebman e a cultura processual brasileira’, in *Enrico Tullio Liebman oggi. Riflessioni sul pensiero di un Maestro* (Milano: Giuffrè, 2004), 35 ff. The

He finally returned to Italy immediately after the war, in 1946 (first in Pavia, then in Turin, and then finally in Milan). Alfredo Buzaid, who was later Minister of Justice of Brazil and President of the *Supremo Tribunal Federal*, studied closely with Liebman in São Paulo and is considered his foremost pupil.

When it comes to Perú, the situation is somewhat different.

Indeed, the influence of Italy on Peruvian codification of civil procedure is, so to speak, *indirect*, ie, mediated through other experiences. However, this does not mean that it is absent. The most direct models for the Peruvian Code of Civil Procedure of 1993 currently in force – a code with a distinctly publicist orientation –²¹ are the '*Código Modelo para Iberoamérica*' (1989),²² together with Argentina's '*Código Procesal Civil y Comercial de la Nación*' (1968).²³ It is in these that the most direct Italian influence can be found, which, in turn, made its way into Peruvian codification through an indirect route. The Italian impact is therefore not so much evident in the practical solutions adopted by the current Peruvian legislation, which, in fact, often diverge significantly, but rather in the *positivization* of the legal categories and in the development of a shared legal language. For this reason, the 1993 Code marks a qualitative leap 'in style', compared to the previous 1912 one, which remained rooted in Spanish legal tradition, without significant influences from the 'pre-Chiovendian' Italian authors and methods.²⁴ For instance, the 1993 code includes a dedicated section on fundamental principles and rights, provides clear conceptual definitions, and embraces 'Chiovendian' values such as orality (ie, oral hearings), concentration, and immediacy, among others.²⁵

With regard to orality, by the way, I can affirm that it remains one of the most debated and investigated topics in the Peruvian context. Despite the principles

relationship between Brazil and Italy in law would require a separate monograph exploring its origins, consolidation, divergences and ongoing connections. Generally, M.C. De Cicco, 'Una visione d'insieme sulla circolazione del modello giuridico italiano in Brasile', in S. Lanni and P. Sirena eds, *Il modello giuridico - scientifico e legislativo – italiano fuori dell'Europa* (Napoli: Edizioni Scientifiche Italiane, 2013), 187 ff.

²¹ J. Monroy Gálvez, 'La ideología en el Código Procesal Civil del Perú', in Id., *La formación del proceso civil peruano. Escritos reunidos* (Lima: Palestra, 2004), 419 ff. See also the 'political' reconstruction by F. Medina Álvarez, 'La ideología del Código Procesal Civil peruano de 1992-1993' *Revista Brasileira de Direito Processual*, 83-114 (2021), in which the historical antecedents of publicism are also analyzed, particularly in the works of Anton Menger and Franz Klein.

²² Drafted within the framework of the *Instituto Iberoamericano de Derecho Procesal* and approved during the *XI Jornadas Iberoamericanas de Derecho Procesal* (Río de Janeiro, 1988). Cf S. Schipani and R. Vaccarella eds, *Un "Codice Tipo" di procedura civile per l'America Latina* (*Atti del Congresso Internazionale, Roma, 26-28 settembre 1988*) (Padova: CEDAM, 1990).

²³ R. Cavani, 'Convenciones procesales. Un ensayo crítico sobre legislación pasada, vigente y proyectada del proceso civil peruano' *Revista Ítalo-española de Derecho Procesal*, 15–40 (2021).

²⁴ Like most Latin-American procedural codes of the time, it was based on the Spanish model (*Ley de Enjuiciamiento Civil*, 1881). On the history of civil procedure in Perú, G. Priori Posada, 'Breve crónica de la historia de la reforma procesal civil en el Perú', in E. Oteiza ed, *Sendas de la reforma de la justicia a principios del siglo XXI* (Madrid: Marcial Pons, 2018), 403 ff.

²⁵ G. Priori Posada, *ibid* 421.

proclaimed in the code, only recently, primarily through judicial initiative, has a truly oral civil procedure begun to be implemented, partly due to technological advancements.²⁶ As stated, this issue has Italian origins, being closely linked to Chiovenda's teachings. However, here too, historical Italian legal scholarship is invoked mainly to lend strength and prestige to arguments, rather than influencing concrete practical solutions. Italian legislation itself is not directly taken as a model.

IV. CULTURAL DIFFERENCES AND SOCIAL CONTEXTS

Regarding the practical impact of Italian studies and laws, the discussion must be enriched with a few brief considerations on the relationship between law (here, procedural institutions) and culture.²⁷

Of course, Perú is a profoundly different context from Italy (and Europe) in countless respects: economic, social, political, historical and cultural. These differences, naturally, have a significant impact on the dynamics of reception, discussion and adaptation of Italian legal models. In our field, this has led to certain particularities, perhaps not unique to Perú but characteristic of the Latin American environment more broadly.

For instance, Perú (but even more so Colombia, Ecuador, and Brazil) relies heavily on constitutional jurisdiction for the protection of fundamental rights; constitutional judges play a far more pervasive role than in Italy (in this, we should take into account the profound socio-economic inequalities that characterize these countries and the need to ensure fair and equitable protection for all). 'Constitutional procedural law' is in Latin America an autonomous and highly developed area, with its own specific themes and key scholars. Moreover, in Perú constitutional courts are present throughout the entire country (not just in the capital city) and function at multiple levels of jurisdiction. The *amparo* action (absent in Italy) is much used as a quick mechanism for fundamental rights protection, even beyond 'positivized' legal remedies.²⁸

²⁶ G. Priori Posada, 'Del fracaso del proceso por audiencias a la necesidad de regular una auténtica oralidad en el proceso civil peruano' *THEMIS Revista de derecho (PUCP)* (online), 123-143 (2010); R. Cavani, 'Tecnología y oralidad en el proceso civil peruano' *Revista de la Maestría en Derecho Procesal PUCP*, 143-173 (2020) (online); L. Alfaro Valverde eds, *Fundamentos de la oralidad en el proceso civil* (Lima: Jurista editores, 2021).

²⁷ The topic, as a whole, is of growing interest among those civil procedural law scholars who place greater emphasis on comparative analysis. It is sufficient to note that the theme of the last (October 2024) annual congress of the International Association of Procedural Law, held at the Örebro University School of Law, in Sweden, was entitled 'Procedural Law in Multicultural Context'. In general, on procedural law and culture, M. Taruffo, 'Processo e cultura' *Rivista trimestrale di diritto e procedura civile*, 63-92 (2009).

²⁸ On the system of constitutional protection of fundamental rights in Perú through the technique of '*amparo*', G. Priori Posada, 'El amparo en el Perú: más allá de la diferenciación de la tutela jurisdiccional', in C. Simona and A. Saccoccio eds, *Europa e America Latina. Due*

Also, the connected idea that the protection of certain rights must be *differentiated*, meaning that different substantive law situations should correspond to different procedural models, is deeply rooted. Indeed, the expression '*tutela giurisdizionale differenziata*' has its origins in Italy, specifically, as cited above, in the works of Andrea Proto Pisani, and earlier in those of Mauro Cappelletti. However, it has since evolved in independent directions and in more radical ways across all the South American continent.

More broadly, the different cultural contexts influence not only how our shared legal categories are used but also the objectives which they ultimately serve. I would like to share here an example drawn from my personal experience, which is not necessarily generalizable, but it might be helpful to illustrate what I mean. In various debates which I have attended or in which I have participated, I often noticed with a great deal of surprise that, when addressing a procedural issue common to our traditions, such as the broadening of judicial powers, the guarantees for the litigants, the judge's prerogatives in evidence law, the concept of case management, the extension of procedural autonomy of the parties, the duty to cooperate, the pursuit of truth, the notion of precedent and the institutional position of supreme courts, the scope of judicial interpretation and of legitimate judicial lawmaking, etc, the proposed solutions in Perú almost invariably sought to restrict and limit the role of the judge rather than to expand it. At first, I did not understand the reason for this, especially considering that, at a global level, procedural law trends, including Italy, are now increasingly moving in the opposite direction, namely favouring greater empowerment and accountability for judges to ensure effective judicial protection. Only later, with time and experience, did I come to understand that these solutions were shaped by the distinct socio-political context surrounding civil courts in Perú. In fact, in historical terms, Peruvian judges suffered systemic challenges, such as limited resources, inconsistent training, and political interference. This has contributed to the rise of a certain scepticism, and at times even a sense of dissatisfaction, toward the judiciary. Certainly, this dissatisfaction has dramatically diminished in recent years due to increased professionalization of judges and reforms. In fact, during my many engagements with the appellate courts (*Cortes Superiores*) across the country, I witnessed first-hand the high value of Peruvian civil judges, who are committed to the daily struggle to ensure an effective and modern civil justice system. Nevertheless, the context remains complex and multi-faceted, and a certain critical attitude toward the judiciary, in the academia, still persists, although I am confident that, with time, this will give way to the trust that is rightfully due to a modern judiciary.²⁹

continenti, un solo diritto. Unità e specificità del sistema giuridico latinoamericano (Torino: Giappichelli, 2020), I, 781 ff.

²⁹ What I find noteworthy, from a comparative viewpoint, is that these critical solutions are not usually presented or justified openly based on the cultural (ie, social or historical) lack of trust traditionally placed in judges, that is, a contingent factor. Instead, they are framed as the result of a 'scientific' or 'objective' evaluation of the issue, as if the choice advanced flowed inevitably

V. A PERIODIZATION: METHODOLOGIES AND THEMES

From this section onwards, I would like to explore further some aspects which, up to this point, I have only briefly touched upon and place them in their historical context.

I do not intend, nor do I possess the historical expertise, to conduct a detailed study on how specific Italian authors and works have influenced the convergent or divergent development of specific procedural institutions in Perú. Instead, my more modest aim in the following reflections is to offer an overview of the influence of Italian legal scholarship on the *methodology* of studying civil procedural law, and consequently, on the *themes* debated within legal academia. I should also note that, at least in part, the discussion about Perú must be situated within the broader analysis of the role of Italian procedural law ideas in Latin America, particularly in those countries which, from the outset, were notably more receptive to Italian categories – such as Brazil, Uruguay, and Argentina.

For purposes of this article, I propose dividing this influence into two mayor phases.

The first ‘golden’ phase occurred during the first half of the 20th century (1920s – 1950s) and was marked by the diffusion of the foundational works of key figures, especially Chiovenda, Carnelutti and Calamandrei (see below paras VI, VII and VIII). These works were inherently ‘systematic’ in nature, designed to set the terms of future debates. These studies were particularly well-suited for export beyond Italy’s borders, especially through Spanish translations, though in some cases these translations were produced only years later. Their contribution indeed lay in the reconstruction of foundational procedural categories, such as ‘legal process’, ‘procedural legal relationship’, ‘jurisdiction’, ‘action’, ‘*res judicata*’, etc, with a scientific approach, that is, one grounded in *objectivity*, according to the methodological standards of the time. Therefore, they maintained a certain degree of abstraction from the specific legislative frameworks that were in force. Their primary concern, in other words, was conceptual rather than a positive reconstruction of the living law. Their vocation was one of generality.

In the years that followed, however, Italian influence became less pronounced. This minor reach coincided with Italian authors’ growing focus on domestic and code-specific procedural institutions. This period, roughly spanning from the 1960s to the early 1990s, represented the peak of what could be called the epoch of ‘Italian dogmatism’. It was characterized by the publication of monographs dedicated to narrowly defined procedural institutions within the discipline of the Italian Code of Civil Procedure. While these works played a pivotal role in shaping the scientific study of civil procedure in Italy and in establishing its academic

from principles of justice (such as the ‘Due Process’ or the ‘Rule of Law’). This is the friendly critique I have often shared with my dear friend, Professor Renzo Cavani, from whose engaging discussions and debates I have learned, and continue to learn, a great deal.

independence, they were *by definition* less conducive to translation and international diffusion.

Later, the interest in Italian studies experienced a resurgence, as the strictly positivist-dogmatic method waned and Italian scholars began addressing broader and more general themes, engaging with social, ideological, political and philosophical dimensions of civil procedure, often employing comparative methods (below para IX). This body of work was better suited to have an international reach. Here, we find works of enormous international impact, by authors including Mauro Cappelletti, Michele Taruffo, Franco Cipriani and Sergio Chiarloni, on topics such as access to justice and the connections among procedural institutions and society, the constitutionalization of procedural law and human rights (due process and fair trial), legal epistemology and the pursuit of truth and political ideologies of civil procedure (along the ‘authoritarianism/guarantism’ distinction). These are all themes which have had a decisive resonance in shaping the directions of procedural scholarship in Latin America and specifically in Perú. These trends accelerated in the 1990s, in the so-called ‘post-systematic’ era³⁰ and continues to grow today.

VI. CHIOVENDA’S SCIENTIFIC INFLUENCE IN THE SPANISH-SPEAKING WORLD

Let us start from the beginning.

This first period, to which I refer as the ‘scientific’ phase, due to its defining method, stands out for the influence of Giuseppe Chiovenda (1872–1937), whose impact extended from Italy, through Spain, to virtually every country in Latin America.³¹

Chiovenda truly marked a ‘before’ and ‘after’ in the study of civil procedure and it is common to speak of the ‘pre-Chiovendian’ and ‘post-Chiovendian’ eras. This distinction is rooted in his glorification of the autonomy of civil procedure as a science, an autonomy that represented a significant methodological revolution in Italy. Chiovenda’s ambition, which he successfully achieved, was to elevate civil procedure from being a technical sub-field of substantive law to an independent academic discipline, brought within the domain of public law. This transformation granted our field, both in Italy and in the systems inspired by the Italian model, a unique academic and scientific dignity,³² a transition famously described as

³⁰ On this methodological shift in Italy, V. Denti, ‘Sistematica e post-sistematica nella evoluzione delle dottrine del processo’ *Rivista critica del diritto privato*, 469-492 (1986).

³¹ For a thorough analysis, A. Pérez Ragone, ‘Algunas reflexiones sobre Chiovenda y su legado para Latinoamérica: Laudatio’ 55, *Ius et Veritas (PUCP)* (online), 162-175 (2017).

³² However, this evolution was not without its drawbacks. Without a doubt, that methodological approach led Italian scholarship to develop some of the most advanced analyses regarding the structure and function of procedural legal institutions. However, it also created a sort of ‘disconnection’, a separation, between procedural and substantive law. This division became the focus of increasing criticism from the 1970s onwards, particularly from *antiformalist* scholars

moving from ‘*procedura civile*’ to ‘*diritto processuale civile*’.³³

If I were to identify a single word that describes Chiovenda’s greatest legacy, in a comparative sense, for Latin American, it would be ‘system’.³⁴ His method, which can be defined as ‘historical-dogmatic’, ie, centred on the analysis of fundamental concepts (‘dogmas’) and their historical derivations, starts from a theoretically-grounded understanding of Roman law and progresses to the elaboration of the categories of the German-speaking world (which was the intellectual legacy of Vittorio Scialoja, with whom Chiovenda studied). Unlike earlier Italian authors, like Pisanelli, Mattiolo, Lessona and to a lesser extent Mortara, Chiovenda’s method did not focus on studying the legal process as mere practice, but rather on a comprehensive, coherent, and principle-based vision ‘as a whole’ of rights’ protection. His approach drew heavily on scientific as well as ‘political’ roots from German scholars such as Oscar von Bülow and Adolf Wach, and Austrian figures like Franz Klein.³⁵

It is not as widely known as it deserves to be, that Chiovenda was held in remarkably high regard also in Spain from the very beginning. This is evidenced by figures such as Tomás Montejo y Rica (1856–1933) in Madrid, who is claimed to be the first Spanish-speaking author ever to have cited Chiovenda in a work;³⁶ José Casais Santaló (1894–1971), who studied between 1918 and 1920 in Rome with Chiovenda and translated into Spanish, for the first time, in 1922, Chiovenda’s ‘*Principii di diritto processuale civile*’;³⁷ Juan A. de la Puente, who translated Chiovenda’s ‘*La condanna nelle spese giudiziali*’ (1901),³⁸ Josep Xirau (1893–1982), in Barcelona, who participated in the collection ‘*Studi in onore di Giuseppe*

(such as, eg, Adolfo Di Maio and Michele Taruffo) who argued that the ‘excessive abstractness’ of these theoretical constructions paid insufficient attention to the effectiveness of judicial protection.

³³ S. Satta, ‘Dalla procedura civile al diritto processuale civile’ *Rivista trimestrale di diritto e procedura civile*, 28 (1964).

³⁴ G. Chiovenda, ‘Del sistema negli studi del processo civile’ (1907), now in *Saggi di diritto processuale civile* (Milano: Giuffrè, 1993), I, 238 ff.; M. Taruffo, ‘Sistema e funzione del processo civile nel pensiero di Giuseppe Chiovenda’ *Rivista trimestrale di diritto e procedura civile*, 1133–1168 (1986).

³⁵ This also brought attention to German-speaking procedural law scholars, who had, until then, been somewhat neglected from Latin America. I therefore agree with V. Pasqualotto, *Processo civil comparado. Do direito comparado à comparação no processo civil* (San Paolo: Rev. dos Tribunais, 2022), 126, for whom, although not a comparative lawyer himself, Chiovenda contributed significantly to comparative civil procedure.

³⁶ Cf M. Cachón Cadenas, ‘Cátedras y catedráticos de procedimientos judiciales y de derecho procesal durante la primera mitad del siglo XX’, in his beautiful collection *Historias de procesalistas, universidades y una guerra civil (1900-1950)* (Madrid: Dykinson, 2012), 40, who affirms that the work cited was Chiovenda’s *Saggi di diritto processuale civile* (1904).

³⁷ M. Cachón Cadenas, ‘Jose Casais Santaló, primo allievo e traduttore spagnolo di Giuseppe Chiovenda’ *Giusto processo civile* 1263–1299 (2010); and in Spanish, Id., ‘Desventuras de José Casais Santaló, primer traductor español de Chiovenda’ *Justicia: Revista de derecho procesal*, 13–96 (2010).

³⁸ G. Chiovenda, *La condena en costas* (Madrid: Rev. Derecho Privado, 1928).

Chiovenda, who also invited Chiovenda to Barcelona³⁹ and Francisco Beceña (1889–1936).⁴⁰

Regarding the dissemination of Chiovenda's work in Latin America, we must remember the important role played by Tomás Jofré (1868–1930), Professor of Procedural Law at the Universities of Buenos Aires and La Plata in Argentina.⁴¹ In Brazil, it was of course Liebman, a student of Chiovenda, who translated and disseminated the works of his mentor.

VII. LATIN AMERICA AS A LAND OF EXCHANGE

In this first phase, the reception of Italian legal scholarship was not merely *on paper*. The 1930s and 1940s witnessed the migration of key European legal figures fleeing dictatorships. In this, Latin America proved to be remarkably open, both materially, by providing support and academic opportunities to those escaping Europe, and intellectually, by absorbing the ideas of great masters.

Among the European civil procedural law scholars who lived and worked in Latin America, we already mentioned Enrico T. Liebman, in Brazil. We now have to add James P. Goldschmidt, from Germany (1874–1940), who, later in life, relocated to Montevideo, Uruguay, but unfortunately passed away shortly after his arrival; the Spanish scholars Niceto Alcalá-Zamora y Castillo (1906–1985) and Santiago Sentís Melendo (1900–1979), who respectively went to Mexico and Argentina; the Italian legal sociologist Renato Treves, who moved to Argentina (Tucumán); and the Italian eclectic jurist Tullio Ascarelli, a scholar of private law, commercial law and philosophy of law, who settled in Brazil.⁴²

Amid these changes, the main point of contact between Europe and Latin America was Eduardo Couture (1904–1956), Professor of Civil Procedure in Montevideo (Uruguay). His figure is truly pivotal for the history of this field, and it is impossible here fully to capture the magnitude of his contributions, both as

³⁹ Chiovenda was unable to attend, as he was denied permission by the Italian government at the time. This episode is recounted by F. Cipriani, 'Giuseppe Chiovenda, il manifesto Croce e il fascismo', now in Id, *Scritti in onore dei padres* (Milano: Giuffrè, 2006), 281 ff.; see also, in Spanish, Id, 'Las conferencias no pronunciadas por Giuseppe Chiovenda en Barcelona', trad. by Montero Aroca, *Revista de derecho procesal*, 289–294 (1995).

⁴⁰ M. Cachón Cadenas, *Francisco Beceña. Un procesalista de primera hora* (Barcelona: Atelier, 2017); J.M. Aroca, 'Aproximación a la biografía de Francisco Beceña' *Revista de derecho procesal* 131–163 (1980).

⁴¹ A. Pérez Ragone, n 31 above, 167, fn 18; also A. Levaggi, 'Tomás Jofré, introductor de Giuseppe Chiovenda en el derecho argentino' *Revista Electrónica del Instituto de Investigaciones Ambrosio L. Gioja*, 98–106 (2004).

⁴² There were also lesser-known figures, such as Camillo Viterbo (1900–1948), a Professor of Commercial Law in Sardinia, who emigrated to Argentina and Brazil, before returning to Cagliari, and Marcello Finzi (1879–1956), a professor of Criminal Law at the University of Modena, who moved to Córdoba, Argentina.

a scholar and as a human being.⁴³ A prolific author and great friend of the Italian legal community, he welcomed and greatly helped, among others, Liebman, Goldschmidt, Treves and Ascarelli when they emigrated to Latin America; he was then warmly received by Piero Calamandrei, with whom he shared a close friendship, during his visit to Italy in 1949.⁴⁴

After Chiovenda, Carnelutti and Calamandrei were the two procedural law scholars who had the greatest reach in Latin America, due to their deepening of the scientific study of civil procedure. Of this triad, Santiago Sentís Melendo famously said: ‘*Chiovenda innovando; Calamandrei, confirmando; Carnelutti, inquietando*’.⁴⁵ With this phrase, he captured the essence of their work and their distinct sensibilities. Chiovenda is highlighted for having laid the conceptual foundations, Calamandrei for having deepened and refined those concepts and Carnelutti for his spiritual insight, capable of revealing the human dimension behind procedural institutions.

Carnelutti visited Latin America three times, when he was already well-known and widely read. The first time, he travelled aboard the transatlantic vessel ‘*Andrea Gritti*’ in 1946, visiting Buenos Aires, Montevideo, Santiago, Rio de Janeiro, San Paulo, and Lima (University of San Marcos), for a series of conferences, at the invitation of Eduardo Couture. During that voyage, he learned Spanish and wrote the book ‘*Arte del Derecho*’ directly in Spanish, a work that has recently been republished in Italian.⁴⁶ Couture described him as a ‘benevolent figure’, a ‘biblical patriarch’, with an almost ‘mystical presence’.⁴⁷ Carnelutti later returned to Argentina, to Salta, for the Second Argentine Congress on Procedural Law in 1948. Finally, Carnelutti visited Lima again in 1951, on the occasion of the quadricentennial

⁴³ E. Oteiza, ‘Eduardo J. Couture. Huellas que ayudan a comprender el presente’, in A. Landoni Sosa and S. Pereira Campos eds, *Estudios de Derecho Procesal en Homenaje a Eduardo J. Couture* (Montevideo: La Ley Uruguay, 2017), I, 11 ff. In Italian, beautiful is the reconstruction by G. Losano, ‘Tra Uruguay e Italia: Couture e Calamandrei, due giuristi democratici nell’epoca delle dittature europee’, in M.R. Polotto et al eds, *Derecho privado y modernización: América Latina y Europa en la primera mitad del siglo XX* (Max Planck Institute for European Legal History) 275-312 (2015).

⁴⁴ To draw all the threads together on this point, a milestone in this process of cross-pollination of ideas was the first international congress of the Italian Association of Civil Procedural Law Scholars, held in Florence from September 30 to October 3, 1950, that brought together jurists from across all the Spanish-speaking world, including Spain (V. Fairén Guillén), Brazil (O. da Cunha, from Rio de Janeiro, and T. Castro from Recife), Mexico (N. Alcalá-Zamora y Castillo), Uruguay (E. Couture), and other countries. This congress laid the foundation for the subsequent creation of the International Association of Procedural Law.

⁴⁵ S. Sentís Melendo, ‘La escuela procesal italiana’, in *Scritti Giuridici in onore a Francesco Carnelutti* (Padova: CEDAM, 1950), I, 196.

⁴⁶ *Arte del derecho. Seis meditaciones sobre el derecho*, edited by S. Sentís Melendo, 1948. Now, *Arte del diritto* (Torino: Giappichelli, 2017). On this *oeuvre*, C. Consolo, ‘A proposito della riedizione di ‘Arte del Diritto (1946-1949) e di giusto processo vissuto con grazia’ *Rivista di diritto processuale*, 1134-1146 (2018).

⁴⁷ E. Couture, ‘Carnelutti y nosotros’, in *Scritti giuridici in onore a Francesco Carnelutti* (Padova: CEDAM, 1950), I, 321.

celebration of the University of San Marcos. On that occasion, he delivered the closing address '*Defensa de los abogados y de la abogacía*', whose original version was published in the journal '*Mercurio Peruano*' (1952) and later was republished, in 1966, by the law review 'THEMIS' of the PUCP.⁴⁸

The major works of Piero Calamandrei were also translated into Spanish, primarily by his most renowned translator, Santiago Sentís Melendo.⁴⁹ In 1952, from February 14 to 28, at the invitation of Niceto Alcalá-Zamora y Castillo, Calamandrei travelled to Mexico and delivered his famous 'Mexican lectures' entitled '*Proceso y democracia*', at the Universidad Nacional Autónoma.⁵⁰

VIII. THE 'SCIENTIFIC METHOD' OF CIVIL PROCEDURE IN PERÚ

Perú has been highly receptive of all these developments. As mentioned in the beginning, Mario Alzamora Valdez and his disciple, José Antonio Silva Vallejo, were the first two scholars who engaged most extensively with Italian scientific method. At the same time, due to his close ties with Italy, the earlier figure of Julián Guillermo Romero (1861–1925) also deserves mention, being the first Peruvian procedural law scholar to ever quote Italian professors.⁵¹

Mario A. Valdez (Cajamarca 1909–1993) was an eclectic figure in the Peruvian intellectual landscape. Holding degrees in both philosophy and law, he initially devoted himself to philosophical and psychological studies and writings. He was a lawyer and a law professor at San Marcos University and at the PUCP, and his publications covered a vast array of topics.⁵² In the field of procedural law, he

⁴⁸ 1966, 3 ff. This historical document, of significant value, is available at <https://tinyurl.com/u3c89mmd>.

⁴⁹ Eg. his *Introducción al estudio sistemático de las providencias cautelares* (or. ed. 1936), with a Foreword by E. Couture (originally published by *Editorial Bibliografica Argentina*, Buenos Aires, 1945), where the Uruguayan professor contextualizes the contribution of Italian legal thought to the world and the work of the great civil procedural law scholars. Thanks to Giovanni Priori for showing me this Foreword (repr. *Ara Ed.*, Lima, 2005).

⁵⁰ Spanish transl. by H. Fix Zamudio, by the *Ediciones Jurídicas Europa-América*, Buenos Aires, 1960. On these lectures, A. Panzarola, "'Processo e democrazia': il garantismo processuale nelle lezioni messicane del 1952 di Piero Calamandrei" *Revista da Faculdade de Direito do Sul de Minas*, 369-392 (2023).

⁵¹ Julián Guillermo Romero served as Dean of the Lima Bar Association, was a Professor of Commercial Law at San Marcos University and also held judicial offices. In addition, he fought in the war against Chile. During his youth, he studied in Rome and maintained close and extensive contacts with Italian legal scholarship between the 1910s and 1920s, both on a personal and academic level. He is the author of the six-volume work *Estudios de legislación procesal* (1914–1916), a commentary on the 1912 procedural code. This commentary includes references to pre-Chiovenda Italian authors, such as Luigi Borsari (1804–1887) ('Procedura Civile'), Giuseppe Gugino (1843–1917) ('Procedura Civile Romana'), and Chiovenda himself ('La condanna nelle spese giudiziali'). I am grateful to Giovanni Priori for showing me these invaluable volumes and citations.

⁵² See the tribute by Carlos Fernández Sessarego (1926–2019) - a distinguished Peruvian private law scholar with strong ties to the Italian legal tradition - 'Semblanza de Mario Alzamora

demonstrated a profound knowledge of Italian debates and historic precedents.⁵³

José A.S. Vallejo (Chiclayo, 1936–) studied under M.A. Valdez. He is a professor at San Marcos University and a former Supreme Court judge. Of both scholars it can be said that their objective, in line with the scientific and publicist methodology, was not so much to explain the then-existing Peruvian Code of Civil Procedure (of 1912), but rather to analyze general procedural categories from a normative perspective, focusing on what should be, rather than what is.⁵⁴

This approach mirrored that of the scientific view of those Italian jurists for whom the pure analysis of positive law, while central, was not the sole objective.

IX. THEMES AND AUTHORS OF THE RENEWED ITALIAN INFLUENCE (1960S–2000S)

As noted before, in the decades immediately following the enactment of the Italian Code of Civil Procedure, Italian authors engaged in a meticulous effort to reconstruct procedural institutions from a dogmatic perspective within the framework of positive law. This was the era in which a series of monographic studies flourished, focusing on specific procedural phenomena, eg third-party interventions, appellate remedies, default proceedings and so forth. Methodologically, these studies built upon the achievements of previous generations but focused on narrowly-cut questions. That period played a decisive role in consolidating civil procedure as an autonomous and scientifically robust discipline in Italy. However, these studies, by their very nature, were less suited for export, as their primary ambition was to rationalize the provisions of the Italian Code and develop solutions consistent with the system in force.

The situation shifted with the emergence of a new scholarly sensitivity starting roughly in the late 1960s. From this point onward, greater emphasis was placed on the *social* foundations of legal norms, including procedural law ones, and on their relationship with the broad reality. In the evolving intellectual climate of the 1970s and beyond, legal studies saw a decisive opening toward areas outside law, yet intrinsically connected to it, such as politics (eg, along the axis of

Valdez' *Ius et Praxis*. *Revista de la Facultad de Derecho de la Universidad de Lima* (online), 9-39 (1984). See also the tribute to his mentor by J. Silva Vallejo, 'La vida y pensamiento de Mario Alzamora Valdez', *Revista de Investigación, Facultad de Derecho y Ciencias Políticas de la Universidad Nacional Mayor de San Marcos*, 41-61 (1998). Also R. Cavani, *Convenciones procesales* n 23 above, 20, fn 13.

⁵³ Among his most important books of civil procedure, *Derecho procesal civil: Teoría general del proceso* (Lima: Eddili, 1953), and *Derecho procesal civil: Teoría del proceso ordinario* (Lima: Tipografía Peruana S. A., 1967). Also, Id, 'La enseñanza del Derecho Procesal Civil en la Universidad Nacional Mayor de San Marcos: 1936-1976', *Revista de derecho y ciencias políticas*, 194 (1976).

⁵⁴ J.A. Silva Vallejo, 'La escuela italiana del procesalismo científico' *Ius et Praxis*. *Revista de la Facultad de Derecho, Universidad de Lima*, 9-37 (1982); Id, 'Los fundamentos científicos del Derecho Procesal' *THEMIS Revista de derecho (PUCP)*, 24-35 (1989).

Marxism *vs* capitalism), society, ideology, economics (these were also the first years of Law & Economics in Italy), philosophy, epistemology, etc. The earlier ‘Kelsenian purity’ of legal analysis was increasingly replaced by a more complex awareness, both in methodology, now more anti-dogmatic and truly comparative, and in the preferred themes of research, often characterized by a strong reformist spirit and a very critical look toward existing laws.

It is from this moment that Italian influence on Latin American and, consequently, Peruvian procedural law resurged with particular strength.

A necessary disclaimer is that this influence is multi-faceted and diverse, extending to the present day in renewed and highly complex forms. In these brief concluding reflections, I shall focus just on four Italian figures, who have passed away, with the caveat that each of them would require in-depth analysis in its own right. The intellectual legacy of scholars of this caliber cannot be confined to just a few lines, as they have profoundly shaped the legal and cultural trajectory of an entire region of the world.

I begin by stating that the most internationally recognized manifestation of this methodological and thematic renewal is found in the work of Mauro Cappelletti (1927–2004). A scholar of comparative civil procedure, he was the last student of Piero Calamandrei. He first worked in Florence, both at the University and later at the European University Institute in Fiesole, before establishing himself in the United States, at Stanford University. His influence has been of primary importance in Latin America, particularly on the issues of the constitutional protection of rights, access to justice, legal aid for the underprivileged (his six-volume ‘Florence Access-to-Justice Project’, 1978–79, remains foundational), alternative dispute resolution mechanisms, and class actions. In a recent article, Giovanni Priori rightfully highlights how Mauro Cappelletti engaged in a dialogue with Latin America from the very beginning of his path, starting with his book *‘La giurisdizione costituzionale delle libertà’* (1955), translated into Spanish in 1961 by the Mexican professor Héctor Fix Zamudio (1924–2021), a disciple of Niceto Alcalá-Zamora y Castillo.⁵⁵ In that work, the Latin-American *amparo* action is taken as a model for the differentiated protection of fundamental rights. From there, Cappelletti’s influence spread widely, proving fundamental to the reconceptualization of procedural law in light of constitutional values (a development known as the ‘constitutionalization of procedural law’).⁵⁶

The second figure who must unquestionably be mentioned is Michele

⁵⁵ *La jurisdicción constitucional de la libertad (con referencia a los ordenamientos alemán, suizo y austriaco)* (Mexico City: Instituto de derecho comparado, 1961). H. Fix Zamudio, who also translated Calamandrei’s “Mexican Lectures”, was a renowned Professor of Law at the UNAM and later President of the Inter-American Court of Human Rights (1994–1997).

⁵⁶ Generally, G. Priori Posada, ‘La constitucionalización del derecho procesal’, in *XXXV Congreso Colombiano de Derecho Procesal: en homenaje al maestro “Hernando Morales Molina” en el centenario de su nacimiento* (Bogotá: Ed. Instituto Colombiano de Derecho Procesal, 2014), 911–936.

Taruffo (1943–2020), the Italian jurist who, perhaps more than any other, left an indelible mark on research directions throughout the Spanish-speaking world. A Professor at the University of Pavia, his influence extended from Spain, where he had a particularly close personal and academic relationship with Jordi F. Beltrán, at the University of Girona,⁵⁷ to Chile, Mexico, Colombia, Brazil, and, of course, Perú. In fact, Perú was one of the countries which Michele Taruffo visited most frequently from the 2000s. His connection with Peruvian academia went well beyond mere professional engagement; it was also a deeply personal friendship. He was awarded the title of ‘Doctor honoris causa’ not only, as previously noted, by the PUCP, but also by several other institutions, including, *inter alia*, the Facultad de Derecho y Ciencias Políticas of the University of San Marcos (Lima, 2013) and the Universidad Nacional San Agustín (Arequipa, 2012⁵⁸). He was invited as a keynote speaker for the centennial celebration of PUCP’s Faculty of Law in 2019, alongside Luigi Ferrajoli. Taruffo’s work shaped contemporary discussions on topics such as the relationship between civil processes and truth, evidence law and legal reasoning, the motivation of judicial decisions, but also precedents and the role of Supreme Courts. In 2024, the Peruvian academic community dedicated a commemorative volume in his honour, to which, by the way, I had the privilege of contributing.⁵⁹

One of the issues that still animates debates on civil procedure in Perú and Latin America, whereas in Europe, I have to admit, it has largely lost its original polemical edge, is the major distinction, often framed in terminology that I consider imprecise, between so-called ‘authoritarianism’ and ‘guarantism’. This distinction reflects a broader division between the ‘public’ and ‘private’ dimensions of civil procedure.⁶⁰ In essence, the first vision emphasizes the judge’s role and its public (‘social’) function, while the second one places greater primacy on the role of the

⁵⁷ It was Jordi Ferrer Beltrán, Professor of Philosophy of Law at the University of Girona, who first translated Taruffo’s classic work, *La prova dei fatti giuridici. Nozioni generali* (Milano: Giuffrè, 1992) into Spanish, *La prueba de los hechos* (Madrid: Trotta, 1st ed 2002). This translation played a crucial role in disseminating Taruffo’s epistemological rationalist approach to evidence law across the entire Spanish-speaking world and provided an extraordinary impetus to studies on fact-finding in law, a field in which Ferrer himself is now one of the leading scholars. Michele Taruffo was then a visiting professor for many years at the University of Girona (*Cátedra de Cultura Jurídica*) and a professor in its Master in Evidential Reasoning, directly shaping entire generations of lawyers, Supreme Court judges and law professors across the entire Latin America continent. His personal library is now housed at the University of Girona, alongside numerous artworks and memorabilia collected during his many travels throughout the world. In Girona, beyond a tribute published during his lifetime (J. Ferrer Beltrán and C. Vázquez Rojas eds, *Debatiendo con Taruffo* (Madrid: Marcial Pons, 2015)), his legacy is also kept alive through the *Michele Taruffo Girona Evidence Week*, with its first edition held in 2022 and the second one in 2025.

⁵⁸ I thank Carla Tarifa and Judge Carlos Polanco for providing this information.

⁵⁹ G. Priori Posada and R. Cavani eds., *Proceso, Prueba, y Decisión. Un homenaje a Michele Taruffo* (Puno: Zela – PUCP, 2024).

⁶⁰ On this debate, R. Cavani and Á. Castillo, ‘Garantismo y publicismo en el proceso civil: un enfoque analítico’ *Revista de derecho PUCP* (online), 433–468 (2021). Also, C.V. Giabardo, ‘Valores públicos y proceso civil en el derecho comparado’ 343 *Revista de Proceso*, 427–445 (2023).

parties and sees the legal process in itself as a guarantee against state power. Franco Cipriani (1939–2010), Professor of Civil Procedure at the University of Bari, was among the most important proponents of the second perspective. His works had a major influence throughout the entire Spanish-speaking world, forming a scholarly network that included, among others, Girolamo Monteleone (Italy), Juan Montero Aroca (Valencia, Spain), Adolfo Alvarado Velloso (Rosario, Argentina), and Eugenia Ariano Deho (Lima, Perú).⁶¹ Indeed, one might argue that the impact of the ‘guarantism’ position resonated even more strongly in Latin America, where the debate still remains highly relevant, while in continental Europe (and even more in the common law world) the opposition between these two perspectives has largely given way to a focus on the effectiveness of judicial protection, a more ‘neutral’ value. In Perú, Eugenia Ariano translated many of Cipriani’s works and continued his critical approach, particularly critiquing the current Peruvian Code of Civil Procedure of 1993, which, as noted earlier, was influenced by a public model.⁶² Franco Cipriani himself visited Perú (Lima and Arequipa), participating in 2002 and 2003 in the *Congreso Internacional de Derecho Procesal* held at the Universidad de Lima.⁶³

Lastly, I would also like to mention Sergio Chiarloni (1936–2022), from the University of Turin, to whose figure and legacy I feel particularly connected. His writings had significant resonance in Perú, as well as in Argentina, Colombia, and Brazil. Personally, I can attest that every procedural law scholar to whom I have spoken in Perú knew Sergio Chiarloni by name. In addition to the translation of his monograph on coercive judicial powers and his most theoretically important law articles (briefly noted above, para II), it is worth recalling that Sergio Chiarloni visited Perú in 2001, together with Professor Giovanna Visintini (Professor of Private Law at the University of Genoa) for a conference, at which Giovanni Priori served as his interpreter (Chiarloni’s speech focused on ethics and procedural law). Years later, Christian Delgado, a Peruvian procedural law scholar who also studied in Italy, conducted a long interview with him, which was later published, in Italian in the *Revista de Processo*,⁶⁴ a prestigious Brazilian law journal, edited by Teresa Arruda Alvim (Professor of Civil Procedure at *Pontificia Universidade Católica de São Paulo*, who also has strong ties to Italy) and frequently disseminates Italian legal scholarship. It is an indication of the prestige which Sergio Chiarloni enjoyed in the field of civil procedural law throughout the whole of Latin America.

⁶¹ F. Cipriani, *Batallas por la justicia civil*. Essays collected and translated by E. Ariano Deho (Cuzco: Cultural Cuzco, 2003).

⁶² eg, E. Ariano Deho, ‘En los abismos de la “cultura” del proceso autoritario’, in J. Montero Aroca ed, *Proceso Civil e Ideología. Un prefacio, una sentencia, dos cartas y quince ensayos* (Valencia: Tirant lo Blanch, 2006), 357 – 379; Id, *Problemas del proceso civil* (Lima: Jurista Editores, 2003).

⁶³ On YouTube, videos of those conferences are available, <https://tinyurl.com/y6a8vk3t>. Eugenia Ariano was translating the speeches live.

⁶⁴ C. Delgado, ‘Entrevista al Professore Sergio Chiarloni’ 225 *Revista de Processo*, 455-469 (2013).