

Dialogic perspective of rights in the face of neoliberal policies

Perspectiva dialógica de los derechos ante políticas neoliberales

Uma perspectiva dialógica dos direitos em face das políticas neoliberais

DOI: <https://doi.org/10.21803/penamer.16.32.674>

Patricia Raquel Morris Bolaño

<https://orcid.org/0000-0003-1575-5628>

Doctorado en Derecho. Docente Jornada Laboral Completa con asignación de horas de investigación, adscrita a la Facultad de Derecho y Ciencias Sociales de la Universidad Libre Seccional Barranquilla (Colombia). Correo: patricia.morris@unilibre.edu.co

Oona Isabel Hernández Palma

<https://orcid.org/0000-0003-2153-2711>

Magister en Derecho, Candidata a Doctora en Derecho de la Universidad Santo Tomas. Docente Jornada Laboral Completa con asignación de horas de investigación, adscrita a la Facultad de Derecho y Ciencias Sociales de la Universidad Libre Seccional Barranquilla (Colombia). Correo: oonai-hernandezp@unilibre.edu.co

Alejandro Luis Blanco Zúñiga

<https://orcid.org/0000-0003-1579-8329>

Doctorado en Ciencia Política. Docente Jornada Laboral Completa con asignación de horas de investigación, adscrito a la Facultad de Derecho y Ciencias Sociales de la Universidad Libre Seccional Barranquilla (Colombia). Correo: alejandrol.blancoz@unilibre.edu.co

Jaime Camilo Bermejo Galán

<https://orcid.org/0000-0003-0917-2506>

Máximo grado de formación académica. Docente Jornada Laboral Completa con asignación de horas de investigación, adscrito a la Facultad de Derecho y Ciencias Sociales de la Universidad Libre Seccional Barranquilla (Colombia). Correo: jaimec.bermejog@unilibre.edu.co

¿Cómo citar este artículo?

Morris; P.; Hernández; O., Blanco; A. y Bermejo; J. (2023). Perspectiva dialógica de los derechos ante políticas neoliberales. *Pensamiento Americano*, e#:674. 16(32), 1-16. DOI: <https://doi.org/10.21803/penamer.16.32.674>

Abstract

Introduction: since the effective date of the Political Constitution of 1991, the political postulate Social State of Law has coexisted in Colombia, where its fundamental importance lies in ensuring human dignity based on a social and economic approach and the neoliberal model, which reduces state interventionism. **Objective:** in this sense, the objective of this work consisted in proposing a harmonizing alternative of the aforementioned paradigms, based on the democratic construction of rights, whose perspectives require the inevitable interaction between the government and the civil society. **Methodology:** to accomplish this aim, the methodological path was substantiated by a qualitative approach, on a type of explanatory study, and a literature review was used as a data collection technique. **Results:** Regarding the results, the research revealed the need to achieve the precision of rights, from a broad deliberation to the inside of the society, considering the challenge of carrying out social order programs, in the scope of the economy's neoliberal conceptions. **Conclusion:** the thesis of this work was based on the convenience of resorting to concertation as a formula to enable the advancement and justiciability of rights in terms of civility, in the context of the variety and conflict of interests that coexist within of the political community.

Keywords: Human rights; Social justice; Democracy; Neoliberalism.

Resumen

Introducción: desde la entrada en vigor de la Constitución Política de 1991, coexisten en Colombia el postulado político Estado social de derecho, cuyo cometido fundamental radica en garantizar la dignidad de las personas a partir de un enfoque económico y social, y el modelo neoliberal que reduce el intervencionismo de Estado. **Objetivo:** en este sentido, el objetivo de este trabajo consistió en proponer una alternativa armonizadora de los referidos paradigmas, basada en la construcción democrática de los derechos, perspectiva que demanda la necesaria interacción entre gobierno y sociedad civil. **Metodología:** para este fin, el derrotero metodológico se fundamentó en el enfoque cualitativo, en un tipo de estudio explicativo y se utilizó la revisión bibliográfica como técnica de recolección de la información. **Resultados:** en relación con el resultado, la investigación develó la necesidad de lograr la concreción de los derechos, desde la amplia deliberación al interior de la sociedad, dado el reto de ejecutar programas de orden social, en el ámbito de concepciones neoliberales de la economía. **Conclusión:** a manera de conclusión, la tesis de este trabajo radicó en la conveniencia de acudir a la concertación como fórmula para viabilizar el avance y la justiciabilidad de los derechos en términos de civildad, en el contexto de la variedad y conflictividad de intereses que coexisten al interior de la comunidad política.

Palabras clave: Derechos humanos; Justicia social; Democracia; Neoliberalismo.

Fuentes de financiación: Universidad Libre Seccional Barranquilla, institución que financió el Proyecto de Investigación "Constitucionalismo Dialógico y Derechos Emergentes: Análisis de incidencia de la interpretación constitucional en la eficacia de los nuevos derechos", al cual se vincula el trabajo contenido en este documento.



Resumo

Introdução: desde a entrada em vigor da Constituição Política de 1991, coexistem na Colômbia o postulado político do Estado Social de Direito, cuja tarefa fundamental consiste em garantir a dignidade das pessoas a partir de um enfoque econômico e social, e o modelo neoliberal que reduz o intervencionismo estatal. **Objetivo:** nesse sentido, o objetivo deste trabalho consistiu em propor uma alternativa harmonizadora aos paradigmas mencionados, com base na construção democrática dos direitos, uma perspectiva que exige a necessária interação entre o governo e a sociedade civil. **Metodologia:** para tanto, a abordagem metodológica baseou-se na abordagem qualitativa, em um tipo de estudo explicativo, e utilizou-se a revisão bibliográfica como técnica de coleta de informações. **Resultados:** em relação aos resultados, a pesquisa revelou a necessidade de se alcançar a efetivação dos direitos por meio de ampla deliberação na sociedade, tendo em vista o desafio de implementar programas sociais no contexto das concepções neoliberais da economia. **Resultados:** em relação aos resultados, a pesquisa revelou a necessidade de se alcançar a efetivação dos direitos por meio de ampla deliberação na sociedade, tendo em vista o desafio de implementar programas sociais no contexto das concepções neoliberais da economia.

Palavras-chave: Direitos Humanos, Justiça Social, Democracia, Neoliberalismo.



INTRODUCTION

The Political Constitution of 1991, states in its first article that "Colombia is a social State of law", a political postulate, which involves the transition from a "formal State" to a "material State", whose genesis can be traced to the "European constitutionalism of the post-war period" (Uprimny, 2011, p.6). It is a transformation of the State in its essence, based on values, principles and purposes that strive for the real defense of the rights of the individual, as a condition of its legitimacy. The fundamental imperative of the new constitutional order, guided by the aforementioned political formula, is the achievement of "social justice", which translates into the duty of the State to guarantee the means for the development of a dignified life in society, a requirement that not only implies the necessary intervention of the State in the direction and control of economic activity, but also the adoption of budgetary measures that materialize the purposes and rights. Likewise, the 1991 Constitution establishes dignity, work, solidarity and the prevalence of the general interest as fundamental principles of the State (Art. 1 of the Political Constitution of Colombia) and incorporates an extensive inventory of social rights, consistent with the economic and social content inherent to the political purpose instituted.

However, despite the legitimate purposes of the social rule of law, there is a significant gap between the theoretical approaches, the pretensions that sustain it and the social reality that it is called upon to transform, a situation that is not only a characteristic of the Colombian State, but also of a significant number of Latin States. This connotation is highlighted by several studies of constitutional law. Uprimny (2011), specifically highlights: "Two of the most significant points in these distances have to do with the socioeconomic level, with the problems of overcoming poverty and inequality" (p.20).

One of the explanations for the reality described is the existence of capitalist economic policies that favor the accumulation of money and its supposed redistribution, but which in reality only accumulate wealth and promote social gaps. These policies are based on "theories" or currents promoted by capitalism with political and economic roots that favor inequality; t h e s e include, fundamentally, neoliberalism and globalization, whose methods of economic restructuring, according to Corredor (2003), do not constitute a consistent program of progress, because they have prioritized stability and macroeconomic objectives to the detriment of social welfare and fundamental rights. According to Castela (2021): "Neoliberalism seeks to benefit the capitalist system since it urges the State not to intervene in the economy because, it is assumed, this makes efficiency, growth and generalized prosperity possible" (p.3). (p.3).

The countries, for example, Colombia, that adopted neoliberalism at the end of the 20th century faced transformations in the political sphere, revealed in a broad depoliticization and neutralization of hegemonic currents and struggles promoted by political parties, social movements and trade unions in order to demand their fundamental rights (Valencia, 2020).

In line with the a b o v e , it was considered relevant to inquire: How to materialize rights in the national context, characterized by the coexistence of the neoliberal economic model and the political postulate of the social rule of law? In this sense, the research proposes the convenience of reflecting on the vicissitudes caused by both the socialist and liberal positions of the economy, in order t o find convergence scenarios, and from this perspective proposes a dialogic construction of rights that requires the interrelation between government and citizenship.



Likewise, in order to answer the aforementioned question, it was considered reasonable to assume the following thematic structure: i) Transition from the rule of law to the social rule of law in Colombia, ii) Neoliberalism in Latin America, iii) Brief description of the Colombian economy before the establishment of neoliberalism, iv) Neoliberalism in Colombia, and v) Democratic construction of rights as a harmonizing proposal.

THEORETICAL FRAMEWORK

This section addresses relevant aspects related to the theories on which this article is based. In this sense, in line with the purpose of the research, which was to propose a harmonizing alternative between the paradigms of the social rule of law and neoliberalism, based on the democratic construction of rights, it is pertinent to present not only the fundamental elements of these theoretical constructs, but also those related to the concept of deliberative democracy, given the scope of the approach outlined.

Thus, with respect to the social conception of the State, it is necessary to maintain that multiple thinkers contributed to its theoretical construction, its precursor being the philosopher Aristotle of Stagira, who supported the thesis that the State is an entity of social character (1974), a perspective also defended by philosophers belonging to the contractualist current, for example, Locke (2003), when he states that "a political society is that in which each of its members has abandoned his natural power, surrendering it to the community in all cases that do not exclude the appeal to the legal protection established by society" (p. 49).49) and Rousseau (2001), because, from a similar approach, he conceived the State as an entity derived not only from the acquiescence of all persons, but characterized by its vocation of permanence, the result of the social pact in which "each one puts his person and his power in common under the supreme direction of the general will, and each member is considered as an indivisible part of the whole" (p.55).

The German thinkers Hermann Heller and Lorenz Stein stood out prominently in the formulation of this political postulate. The former, a lawyer and political scientist, author of the work Theory of the State, considered it convenient not only to preserve the achievements obtained in the rule of law, i.e., the adoption of the principle of tripartite separation of power and the recognition of individual guarantees, but also to give it an economic and social scope (Heller, 1942). The latter, a sociologist and economist, considered, according to Tobo (1997), that the phase of political transformations had passed and that of social mutations was beginning; also, given the injustices generated by the excesses of economic freedom, he defended the thesis that the State should implement social reforms in order to avoid possible revolutions.

In the case of Heller (1942), it is necessary to emphasize that he assumed serious critical positions regarding the separation of political theories with reality, his primary concern was to explain the *raison d'être* and purpose of the State and Law, defending the thesis that the State must assume a social function. In this sense, as Heller (1942) argues: "The knowledge obtained by sociological means, first of all, of social reality and then of the social conditions of state activity, is the key to all the particular positions of Heller's theory" (p.9). In line with the above, Heller (1942), understands the individual from a double dimension: on the one hand, he is a being

The individual is subordinate to society and, on the other hand, cooperates in the ordering of society. Consequently, it does not admit the absolute autonomy of the individual or separation from the social body.

On the other hand, with regard to the theoretical bases of the neoliberal economic model, it is important to point out that this ideology originated in the middle of the twentieth century in the capitalist sphere, specifically after World War II. Its precursor is the Austrian Von Hayek, who, in "The Road to Serfdom" published in 1944, raises a severe objection to the State model proposed by John Maynard Keynes, also known as the Welfare State. In reality, it is an impetuous theoretical and political resistance against the interventionist state (Anderson, 1999, as cited in Calvento, 2006, p.43).

This book has been considered the founding act of the neoliberal economic model; in it, its author addressed the fundamentals of disagreement with any State limitation to market freedom, a position to which Maurice Allais, Milton Friedman, Walter Lippman, Salvador de Madaria- ga, Ludwig Von Mises, Michael Polanyi, Karl Popper, William E. Rampard and Wilhelm Ropke adhered (Múnera, 2003).

In addition to the above, the theoretical foundations of neoliberalism are also found in the Washington Consensus, also known as the "internationalization agenda", which imposed a private economic model on "developing" countries in a situation of insolvency or high foreign debt, whose purpose was to materialize free trade and the adoption of reforms in the areas of health, education, labor and taxation, changes that succeeded in delaying social policies in these countries (Valencia, 2020).

Finally, with regard to the theoretical reasoning of the concept of deliberative democracy, the most remote antecedent, according to Cortina (2007), is located in Athens, specifically, during the era of the polis or city-states. It is Aristotle (1974) who, in his Book I of Politics, introduces an incipient meaning about its scope; for this purpose, he emphasizes the purpose of the word, which consists of expressing both the beneficial and the harmful and how it becomes an instrument to build society from a political dimension, which makes it possible to deliberate about what is just and what is unjust. However, Cortina (2007) also argues that the term "deliberative democracy" is the result of a new conception of democracy, which emerged in the twentieth century, specifically in the 1990s, and which has gained importance in the field of political philosophy and the media, with Joseph M. Bessette, Bernard Manin and Bernard Manin standing out as proponents of this paradigm. Bessette, Bernard Manin and Cohen; he also emphasizes that the number of followers and opponents of the new approach has been increasing, with Habermas, based on the liberal theory, and Rawls, based on the critical theory, being its most eminent representatives.

The aforementioned model of democracy is also supported by Nino (1997) in the work "The constitution of deliberative democracy". In this regard, he argues that democracy must be the result of a moral dialogue, with the ability to forge an impartial orientation in relation to the predilections of all the people who are part of a society; he proposes a complex constitutional structure, made up of three components of constitutionalism: the historical constitution, the constitution of rights and the constitution of power and, in this sense, he shows how between these elements there can be tension or, on the contrary, mutual collaboration.

Likewise (Gargarella, 2014), in his book "For a Dialogic Justice: The Judiciary as promo-



The thesis that the solution of relevant constitutional issues, given the complexity they involve, must be the result of a broad and open conversation, developed over time, involving both the branches of public power and the members of society (Gargarella, 2014). What he specifically proposes and justifies in the approach of his thesis, refers to the power to talk about the rights that concern us from a critical reflection that ventilate both its content and its limits.

METHODOLOGY

This study was developed based on the qualitative paradigm and from a hermeneutic approach, since it involved understanding the theoretical foundations of both the neo-liberal economic model and the social rule of law. It also proposed a type of explanatory study, whose purpose, according to Hernández et al. (2010), is to clarify the interrelation between two or more variables or concepts. In this sense, the research, in addition to addressing the scope of the aforementioned ideologies, one politically based and the other economically based, proposes a harmonizing alternative that enables the advancement and materialization of rights from a dialogic democratic approach.

Likewise, the method of analysis and synthesis was used for its approach. Thus, first, a study was made of the political model of the social rule of law, its foundations, origin and development in Colombia; then, an examination of neoliberalism, its genesis, scope and evolution both in Latin America and in the national scenario; finally, the feasibility of leading the aforementioned paradigms to a point of equilibrium was outlined.

Regarding the aforementioned method, Vanegas et al. (2010) argue: "Logical analysis is the mental decomposition of the object under investigation into its component parts and, by this way, the obtaining of new knowledge. The synthesis completes the analysis and forms an indissoluble unit with it" (p.56).

RESULTS/DISCUSSION

Transition from rule of law to social rule of law in Colombia

In the field of conceptualization, we can affirm that the social rule of law has its origins in a set of legal and political theories, which have evolved from the epistemological point of view, with Lorenz Von Stein and Hermann Heller standing out among its exponents, as stated in the section on the theoretical framework. Therefore, it is necessary to clarify that there is no absolute consensus on its exact origin, although some important influences, traits, antecedents and characteristics can be identified.

In this sense, Bobbio (1987) argues:

The historical origin of the social rule of law is to be found in the need to protect workers and their families from the inhuman conditions that prevailed in the first factories and mines of



the Industrial Revolution. This protection was won by the unions and workers' parties through a long and hard social and political struggle, and resulted in the appearance of the first social laws, which recognized labor rights and social protection to workers. (p. 275)

Subsequently, the concept of the social rule of law was adopted and developed by several Western European countries, especially after World War II. In these countries, the aim was to build a state model that would overcome the social and economic inequalities caused by the war and promote the welfare of the population through social programs.

In this regard, Gonzalez (2020) states:

The social rule of law emerged in post-war Europe as a response to the needs of economic and social reconstruction of the continent, and as a way of preventing the threat of communism. This model of state was characterized by the recognition of social and economic rights, and by active state intervention in the economy and society, through public policies and social welfare programs (p. 35).

In the case of Latin America, the concept of the social rule of law has also been influential, especially in promoting social justice and equality in countries with contexts of socioeconomic and political inequalities. In many countries of the region, the social rule of law has been framed in constitutions and has been used as an approach to address the needs and demands of the most vulnerable populations. According to Gómez (2021), this political postulate has been gaining strength in the region and, fundamentally, seeks to ensure the population's social, economic and cultural rights, focusing especially on the most vulnerable sectors. Its application has led to the creation of public policies aimed at reducing poverty, social inclusion and the protection of human rights, and has led to the strengthening of legal systems and democracy as instruments for the defense of fundamental rights.

In short, the philosophy of the social rule of law is centered on the transformation of a society that guarantees the dignity of the human being, a doctrine that assigns to the State responsibilities consisting not only in the respect for rights, but also in the execution of tangible actions that make effective the imperative of social justice. This implies understanding that the State is obliged to make investments that lead to the materialization of rights, consistent with the economic and social content that characterizes its essence, and, likewise, to interfere in the economy, since rights today are not only consecrated to restrict political action and thus limit possible excesses and arbitrariness of power, but also to direct the work of the authorities.

In the case of Colombia, the scope of the political postulate of the social rule of law and the meaning of its enshrinement in the Political Constitution of 1991 implies understanding, as a starting point, that it obeys a historical process, the result of political and social transformations that occurred under the Constitution of 1886, a text drafted and promulgated as a response to the socio-political instability that Colombia experienced during the second half of the 19th century. Although this reality of fluctuation or imbalance actually began at the dawn of independence. In fact, Valencia (1997) points out that, between 1811 and 1958, Colombia experienced a total of eleven civil wars and a constitutional struggle, evidenced in fifteen political charters adopted in the period from 1811 to 1886, and in seventy-seven constitutional modifications made from 1886 to 1986.

The 1886 Constitution, which replaced the 1863 Rionegro Constitution of 1863 of a federal nature, established a strong and centralized presidential political regime, with excessive limitations on departmental and municipal authorities, which according to Gómez (2021) "was justified by the need to maintain order and stability in the country, and became one of the characteristic features of the Colombian political organization during much of the twentieth century" (p. 75). It also enshrined the principle of separation of power into three branches (executive, legislative and judicial), strengthened the Catholic Church in public life, instituted a set of individual guarantees (civil rights and liberties), established the binding and non-retroactivity of laws and the protection of private property. It is worth noting that this statute has been strongly criticized not only for adopting a centralist and authoritarian regime, but also for limiting suffrage to a small elite (men over 21 years of age who could read and write, with an annual income or who owned real estate), for the lack of mechanisms for citizen participation and for the lack of political participation of ethnic groups.

It was the eighth Political Constitution of Colombia, drafted by a National Constituent Assembly, convened by President Rafael Núñez, who was also its main author, and remained in force for more than a century, until it was replaced in 1991 by the current Political Constitution, which adopted the political formula of the social rule of law.

Regarding its scope, Tobo (1997) argues:

The change means the transformation from a formal State of law to a material State of law. The State is legitimate in the conscience of men only by the ends it proposes and achieves, as well as by the values it embodies and defends. (p.103)

In other words, the current constitutional order, embodied in the 1991 Political Charter, demands the effectiveness of the purposes that motivated its creation and that reflect the will of the Colombian people, represented by the National Constituent Assembly, the scope of which Quinche (2009) explains from its preamble:

In this sense, and on a purely textual level, the textual purposes of the constituent would appear to be basically two: that of strengthening the unity of the Nation and that of ensuring life, coexistence, work, justice, equality, knowledge, freedom and peace. Life, work, equality, liberty and participation are stated as implicit constitutional principles. In turn, and as disposed values, would be coexistence, justice and peace; all this in the motivation of a just political, economic and social order, which additionally and in updating Bolívar's dream, would promote Latin American integration. (pp. 71-72).

What is ultimately proposed by the current Colombian political charter with the consecration of the postulated social state of law, consists essentially in overcoming or at least significantly reducing the gaps of economic and social inequality, which is why it incorporates a broad repertoire of economic and social rights in order to promote better living conditions. In this regard, Tobo (1997) emphasizes that the conceptions of dignity and freedom, under the new order, emerge from the formal and abstract sphere and acquire an existential character, which leads to optimizing the situation of people in the social context, i.e., the protection of dignity is a condition that energizes freedom, through the institutionalization of an appropriate social organization, is the imperative that leads to the expansion of equality and charges the State with the mandate to protect from a socioeconomic approach.



Despite the above, the 1991 Charter, like the Latin American constitutions, although it has a normative character and is full of goals, its execution has been illusory. On the other hand, even if this is the trend, the disparity between the provisions of the higher statutes and the social and political context of the Latin American peoples is abysmal. This region continues to preserve that dynamic, indicated for several years by various theoreticians, consisting of incorporating ideological contents in the political charters and at the same time having a variety of problems to materialize them in practice and, in that sense, the most acute aspects of such contrasts are related to the socioeconomic situation and the difficulties that have prevented overcoming poverty and inequality (Uprimny, 2011).

Neoliberalism in Latin America

Neoliberalism is an ideological trend that focuses on the individual, "private property and the market" and manages to minimize the State's interference in the economy, as well as the redirection of public policies, in a new context of capitalist development that seeks the accumulation of wealth. Its theses are diverse, fluctuating between those that defend the abolition of the State and those that support the liberal State and even the minimal or ultra-minimal State modality (Múnera, 2003). Thus, neoliberalism fits into the typology of the minuscule State, i.e., that which circumscribes its actions to safeguarding citizens' freedoms from internal aggression and external intimidation, ensuring the preservation of order and individual security.

As for its origin, Perry (2001), quoted by Múnera (2003), explains that this ideology was born after the Second World War in Western Europe and North America, and substantially develops in an energetic theoretical and political resistance to the interventionist state model. Its founding act can be found in the book "The Road to Serfdom", published by Von Hayek in 1944, whose foundations form a forceful opposition to any State restriction of market freedom, which he extends to those who identify with his position: Maurice Allais, Milton Friedman, Walter Lippman, Salvador de Madariaga, Ludwig Von Mises, Michael Polanyi, Karl Popper, William E. Rampard and Wilhelm Ropke.

The genesis of neoliberalism in Latin America lies in the economic crisis of the 1970s, which disrupted the economies of several countries in the region and was caused by external factors, such as the fall in commodity prices and the increase in international interest rates. The governments of the time, many of them characterized by development and protectionist policies, found themselves facing a lack of resources and a decrease in their capacity to finance their programs and policies.

These difficulties led to questioning of the welfare state model and the process of industrialization by import substitution. In this scenario, international financial organizations, such as the International Monetary Fund and the World Bank, promoted key measures that led to trade liberalization, the denationalization of state-owned companies, the reduction of public spending and financial liberalization, etc. These policies were adopted by Latin American states as a strategy to confront the aforementioned drawbacks and return to economic growth, but they also had significant social and political implications.

It should be noted that the neoliberal economic model is related to globalization or "economic, social, political and cultural process" which "as an abstract concept expresses the new modality of globalization".

expansion of capitalism since the last quarter of the twentieth century" (Ornelas, 2004, para. 2). Although it differs from neoliberalism insofar as the latter is a political plan promoted by intellectuals, theoreticians and ideologists belonging to sectors that hold capital, both processes coincide in the way in which capitalism is currently developing and expanding (Ornelas, 2004).

According to Libreros (1999), globalization has had a special influence on the reduction of the public budget and, particularly in Latin America, this has been determined by the set of strategies implemented by the International Monetary Fund to ensure payment of the foreign debt; it has also had an impact on the formulation and implementation of government policies of a social nature, applying a public administration approach based on private management techniques.

In addition to the above, as a result of globalization, the situation of inequality is becoming increasingly widespread, not only within the international community, between States with high standards of living and those on the road to development, but also within national scenarios. In reality, the restructuring methods applied do not constitute a consistent program of progress, because they have prioritized stability and macroeconomic objectives to the detriment of social welfare and fundamental rights (Corredor, 2003, p.66).

Before addressing the section on the genesis and dynamics of neoliberalism in Colombia, it is important to characterize, at least briefly, the development of its economy prior to the arrival of this model on the national scene. For this purpose, the starting point is 1930, taking into account the implications of the world economic recession at the time.

Brief description of the Colombian economy prior to the establishment of neoliberalism

In the 1930s, the Colombian State was influenced by the global economic crisis that began in 1929. The government of the time, led by Enrique Olaya Herrera, implemented a series of policies to address its effects; among these measures were: the promotion of the domestic market and national production, the creation of the Instituto de Fomento Industrial in 1934 and the Ley de Protección a la Industria Nacional in 1935.

According to González (2019), during this phase, Colombia experienced a substantial transformation in its productive organization, reflected in the variety of agricultural jobs and the strengthening of manufacturing production; a process promoted thanks to the government's economic strategies that encouraged foreign investment and interventionist policies of a commercial nature, managing to increase employment and the population's income. However, such policies were not enough to pull Colombia out of the economic difficulties suffered during that period. According to Londoño (2018), the country, to a large extent, depended on coffee exports, which represented more than 80% of foreign trade, becoming the main driver of the national economy, which, although it strengthened the agrarian sector, generated inequity in the distribution of land.

Later, political conflicts arose that prevented a vigorous development of the countryside, such as the dispute over land tenure, colonization, the emergence of illegal armed groups, drug trafficking and the scarce presence of the State in the areas of conflict (Castaño, 2002). This reality was also influenced by the power dispute between liberals and conservatives in the context of the national front, parties that despite their distancing in their political and economic outlooks with the same political and economic perspectives, were able to maintain a strong presence in the areas of conflict (Castaño, 2002).



created points of convergence to preserve and hold the exercise of political power.

In this sense, Orjuela (1998) states:

In effect, the old and bloody struggle for leadership in running the country between the conservative faction of the elite, which based its predominance mainly on the continuity of agrarian and traditional society, and the liberal faction, which advocated an industrialized and modern society, was resolved through a mutually beneficial pact: the supporters of modernization obtained the collaboration of the traditional sector for the industrialization of the country, in exchange for the latter being able to conserve part of its privileges based on the partial continuity of traditional society. This explains why the various attempts at agrarian reform in Colombia have failed, why the large agrarian property has paid very little taxes and why, in a large part of the national territory, political relations are of a clientelist nature. (p.19).

Subsequently, in the 1970s, after the end of the import substitution stage, the Colombian State began to divest itself of its obligations, which began to be assumed by private entities (Castaño, 2002). Also, according to Ocampo (1987), during this period, Colombia managed the economy judiciously, curbing the enormous indebtedness that characterized other Latin American countries. A system of mini-devaluations, measures related to the promotion of exports, exchange controls and an expansion of tax-financed public spending were, among others, the policies implemented that helped to optimize the management of the Colombian economy.

Neoliberalism in Colombia

Neoliberalism in Colombia began with the mandate of Cesar Gaviria (1990-1994). It can be understood as a set of economic and social policies that have been applied in the country with the objective of promoting free competition, free trade, deregulation of the economy, elimination of tariffs and trade barriers, labor flexibilization, reduction of public spending and the opening of foreign capital; its implementation has counted, like other Latin American States, with the auspices of the International Monetary Fund and the World Bank (Castillo, 2018). According to González (2021): "Neoliberalism in Colombia has meant a profound transformation of the economic and social structure of the country, with trade liberalization, financial liberalization, the reduction of the State and the casualization of labor" (p. 42).

Evidently, the economic model adopted, based on neoliberal ideology, is a contradiction with the political postulate set forth in the 1991 Charter. Indeed, since Colombia has been established as a social state based on the rule of law, the achievement of its goals and the materialization of the proposed principles require not only its indispensable interference in economic action, but also the fulfillment of commitments aimed at optimizing the quality of life of the people, which translates into investments to subsidize the cost of rights, especially those of a welfare nature. According to Quinche (2009), since their genesis, these paradigms have been contradictory, mainly because they were based on different principles regarding the State and the economy.

Consistent with the neoliberal ideology, the Colombian State, in the words of Álvarez (2016), has been implementing reforms in various dimensions (political, social and economic) aimed at an imaginary economic strengthening in order to be able to fit into the international scenario; in other words



In these terms, the changes implemented by the government have been adjusting to the regime instituted worldwide, which projects economic development based on a mercantilist approach that diminishes and even proscribes social progress. Through these reforms engendered in the mandate of Virgilio Barco, implemented in the Gaviria administration and preserved by successive governments, the felling of goods and public servants began to be revealed, due to the privatization of public institutions, left to the will of transnationals, or also by the implementation of fiscal adjustment measures that seek to exterminate the State to facilitate oppressive trade policies.

Likewise, the modifications experienced at the global level determined by the neoliberal model have originated significant legal mutations, which safeguard the current economic order, thus forging the dominance of powerful States and international organizations over the welfare of nation-States and their members; Colombia has not been alien to this reality. Thus, as Cárdenas (2015) argues: "The State and the law have been adjusting to these transformations, and not necessarily in favor of the rights of the individuals that make up the respective societies, but to shore up the interests of the new global capitalism". (para. 1). This reality is unveiled, for example, in the structural changes made in health matters contained in Law 100 of 1993, regarding which Mora (2014) refers:

The health system in Colombia and its legal developments are framed within the "right useful to capital, insofar as its development is guided by the profit-efficient logic that guarantees the capital calculation, hand in hand with the legal security that will shield the processes of capital accumulation under the principle of legality" (p.352).

Now, in addition to the legal armor, neoliberalism has been rooted in a culture that promotes individualism and competition, which imprints a pragmatic orientation on personal freedom and, in this sense, human beings assume the commitment of having the conditions that enable them to achieve "success", verbigracia property and productivity, requirements that give freedom an absolute character, with an exclusive focus on survival in the context of "a war of all against all" that becomes contrary to social and political struggles (Mosquera, 2021).

Democratic construction of rights: a harmonizing proposal

It should be noted, then, that the entry of the neoliberal economic policy in Colombia goes hand in hand with the new Constitution, which arose in response to popular clamor, given the social, economic and political complexities faced by the country at the end of the 1980s and whose institutional response lacked sufficient capacity to resolve the social and public order demands that citizens were acclaiming.

The constitutional text, which came into being on July 4, 1991 after a constituent process, conceives the Colombian State as a social state based on the rule of law, which implies, as stated, the establishment of state programs for the realization of real equality through the overcoming of social gaps, maximizing the protection of this category of rights, aimed at the search for a dignified life based on the satisfaction of the basic needs of the human being.

This reality, that neoliberal economic policies and social rights enter Colombia hand in hand with constitutional postulates, evidences the need to achieve a balance,



on the one hand, in view of the duty of governmental entities as guarantors of the enjoyment of fundamental rights and other fundamental goods (art. 2 C. N.) and, on the other hand, understood the institutional conditions for the implementation of social policies. N) and, on the other hand, understanding the institutional capacities for the implementation of social policies, the latter, based on the experiences faced with the so-called crisis of the 70s that impacted the legitimacy of the welfare state, since, as Anchustegui (2012) states, despite having a broad bureaucratic structure, it was not sufficient for the effective implementation of social policies, which generated distrust among citizens and implied new reflections on the public management model.

The struggle for social rights, in their progressiveness and justiciability, is a challenge that requires synergy among the actors involved, that is, each of the spheres that nurture the political community; Hence, in the face of the challenge of implementing social policies in neoliberal dimensions of the economy, the concept of governance or the pretension of a new management of public administration arises, in an attempt to overcome the evils of the last century which, on the one hand, reduced the management capacity of the welfare State and, if you will, on the other hand, facilitated a paternalistic or dependent culture that weakened the exercise of citizenship and, consequently, republican life (Guerrero, 2000. p. 471). p. 471).

Social rights, in the midst of globalizing energies and societies guided by technological advances, require citizen appropriation, and this is only possible when government and citizens interact in a collaborative manner, so that not only the State, specifically the public administration, is a controller or observer, but also executes social programs, facilitates the liberal development of the economy and, at the same time, promotes spaces for citizen participation. Thus, the materialization of rights, both liberal and social, must be the result of discursive formation of citizen opinion and will in order to avoid the "dead end" of the social state referred to by Habermas (1998) as long as it is achieved effectively, the circular connection between private autonomy and public autonomy, since concomitantly and reciprocally, the dimensions of autonomy are strengthened through the communication that takes place in the public-private space (Habermas, 1998, p. 491), having a positive impact on the public sphere (Habermas, 1998, p. 491). 491), positively impacting private autonomy, which is strengthened when the subject understands himself as the author of the right to which he is being subjected (Habermas, 1998, p. 491).

The social rule of law does not mean, then, a rejection of or contradiction with respect to the liberal or neoliberal state. Rather, it is a framework of legal, political and social perspectives that must find, from a democratic understanding of the State, a point of harmonization or equilibrium that recognizes the crises caused by both socialist and liberal visions of the economy and the urgency of rethinking the public construction of society in the interest of the realization of rights. In this harmonization, the reactivation of citizens is a key element, not only because they should be managers of their rights in the exercise of their public and private autonomy, but also to be effective overseers of the regulatory/controlling role of the State, which so far has raised serious doubts about the effectiveness of public administration in Colombia, with respect to its essential function in a Social State of law, which is to ensure, in addition to their tranquility and freedom, their progress and social assistance (Guerrero, 2000, p. 60).

CONCLUSIONS

From the research carried out, it is feasible to conclude that the current constitutional order, initiated in 1991, is characterized by the coexistence of the political postulate of the social rule of law and the economic model of the social and economic model neoliberal.



These are divergent doctrines, given that while the philosophy of the social rule of law seeks to channel the transformation of Colombian society, not only by establishing the human dignity of individuals as the main foundation, but also by giving this value an economic and social content and, therefore, assigning to the State commitments that must be translated into tangible actions in order to materialize social justice, The ideological basis of neoliberalism essentially lies in an energetic theoretical and political opposition to the interventionist state model, which has represented a significant metamorphosis of the country's economic and social organization, reflected in economic openness, financial deregulation, reduction of public spending and labor instability.

Faced with the challenge of achieving the effectiveness of rights and promoting decent conditions of coexistence, within the framework of the neoliberal economy, the research found it pertinent to apply a new conception of public management, which seeks to strengthen citizen participation and self-determination (diminished by the excesses of the welfare state) and their interaction with the government, This proposal is based on the discursive approach of democracy, whose basis is reason assumed from a communicative perspective, oriented to a conscious political discussion, which makes it possible to find consensus in the face of the imbalances or vicissitudes caused by both the socialist and liberal doctrines of the economy.

Consistent with the above, the contribution of this paper lies in the scope of the proposal outlined, regarding the need to generate spaces for citizen consensus-building, in the context of the variety and conflict of interests that coexist within the political community, as a formula to make the advancement and justiciability of rights viable in terms of civility.

Acknowledgments

To the Universidad Libre Seccional Barranquilla for funding the Research Project "Dialogic Constitutionalism and Emerging Rights: Analysis of the incidence of constitutional interpretation in the effectiveness of new rights", to which the work contained in this document is linked.

Conflicts of interest

The researchers declare that there is no conflict of interest that could affect the impartiality of the publication of this document.

This work is licensed under a Creative Commons Attribution Non-Commercial No Derivative Works License.



References

- Álvarez, J. (2016). Impacto de las reformas económicas neoliberales en Colombia desde 1990. *In Vestigium Ire*, 8(1), 78-91. <http://revistas.ustatunja.edu.co/index.php/ivestigium/article/view/1003>
- Anchustegui Igartua, E. (2012). Republicanismo político y ciudadanía social. *Araucaria. Revista Iberoamericana de Filosofía, Política y Humanidades*, 14(27), 62-77. <https://www.redalyc.org/articulo.oa?id=28223180004>
- Aristóteles (1974). *La Política* (12 ed.). Espasa-Calpe, S.A.
- Bobbio, N. (1987). *Estado, gobierno, sociedad. Por una teoría general de la política*. México: Fondo de Cultura Económica.
- Calvento, M. (2006). Fundamentos teóricos del neoliberalismo: su vinculación con las temáticas sociales y sus efectos en América Latina. *Convergencia Revista de Ciencias Sociales*, n.41, pp. 41-59. <https://convergencia.uaemex.mx/article/view/1410>
- Cárdenas, J. (2015). Las características jurídicas del neoliberalismo. *Cuestiones constitucionales*, (32), 3-44.
- Castaño, R. (2002). Colombia y el modelo neoliberal. *Revista Saber ULA*. (pp. 59-76). www.saber.ula.ve/bitstream/123456789/17535/2/
- Castelao-Huerta, I. (2021). Investigaciones sobre los efectos de la neoliberalización de la educación superior pública en América Latina. *Educação E Pesquisa*, 47, e232882. <https://doi.org/10.1590/S1678-4634202147232882>
- Castillo, J. (2018). César Gaviria y el neoliberalismo en Colombia. *Revista de Economía Política*, 38(2), 41-57.
- Constitución Política de Colombia [Const]. 2da ed. Editorial Legis. <https://www.funcionpublica.gov.co/eva/gestor-normativo/norma.php?i=4125>
- Corredor, C. (2003). El problema del desarrollo. En: Restrepo D. (Ed). *La falacia neoliberal, crítica y alternativas*. pp. 63-84. Universidad Nacional de Colombia.
- Cortina, A. (2007). Democracia deliberativa. En Rubio Carracedo, J., Salmerón, A. M., y Toscano Méndez, M. (Eds.), *Ética, Ciudadanía y Democracia*. Universidad de Valencia.
- Gargarella, R. (2014). *Por una justicia dialógica: El Poder Judicial como promotor de la deliberación democrática*. Siglo XXI Editores.
- Gómez, A. (2021). El Estado social de derecho en América Latina. *Revista de Ciencias Sociales*, 9(1), 20-35.
- González, J. (2020). El Estado social de derecho en la Europa de posguerra. *Revista Internacional de Ciencias Sociales Interdisciplinarias*, 9(2), 33-50.
- González, L. (2019). Transformaciones económicas en Colombia durante la década de 1930. *Revista de Historia Económica*, 37(1), 53-70.
- González, L. (2021). Neoliberalismo y exclusión social en Colombia. *Revista de Estudios Sociales*, 76, 30-45.
- Guerrero, O. (2000). *Teoría Administrativa del Estado*. UNAM.
- Habermas, J. (1998): *Facticidad y validez*. Traducción de M. Jiménez Redondo. Trotta
- Heller, H. (1942). *Teoría del Estado* (1ª ed. Español). Traducción de L. Tobío. México: Fondo de Cultura Económica.
- Hernández, R., Fernández, C. y Baptista, M. (2010). *Metodología de la investigación*, 5 ed. Mc Graw Hill.
- Libreros, D. (1999). Globalización Educativa y Plan de Desarrollo. *Revista Pedagogía y saberes* 13, (pp. 59-64) <https://doi.org/10.17227/01212494.13pys59.6>.
- Locke, J. (2003). *Ensayo sobre el gobierno civil* (3ª ed.). Traducción de J. Carner. México: Porrúa.
- Londoño, F. (2018). El café en la economía colombiana de los años 30. *Revista de Estudios Económicos*, 45(2), 45-60.



- Mora, D. A. (2014). Las formas jurídicas (pos) neoliberales desde Colombia: el sistema de salud en las dinámicas lucro-estructuras del derecho útil al capital. *Universidad del Rosario*, 2-384.
- Mosquera, P. V. (2021). Los principios filosóficos del neoliberalismo: una aproximación a sus consecuencias políticas en Colombia. *Revista de Antropología y Sociología: Virajes*, 23(1), 243-263.
- Múnera, L. (2003). Estado, política y democracia en el neoliberalismo. En: D. Restrepo, (Comp.). *La falacia neoliberal, crítica y alternativas*. Editorial Universidad Nacional de Colombia.
- Nino, C. (1997). *La Constitución de la democracia deliberativa* (1ª ed.). Editorial Gedisa S.A.
- Ocampo, J. (1987). Historia económica de Colombia. Siglo XXI - Fedesarrollo, Bogotá.
- Orjuela, L. (1998). El Estado colombiano en los noventa. Entre la legitimidad y la eficiencia. *Revista de Estudios Sociales*. <http://journals.openedition.org/revestud-soc/31331>
- Ornelas, J. (2004). Globalización neoliberal: Economía, Política y Cultura. Globalización. *Revista de Economía, Sociedad y Cultura*.
- Quinche, M. (2009). *Derecho Constitucional Colombiano*. Editorial Temis S.A.
- Rousseau, J. J. (2001). *El contrato social (15ª ed.)*. Traducción de E. Azcoaga. Madrid: Biblioteca EDAF.
- Tobo, J. (1997). Estado social de derecho e impartición de justicia en Colombia. *Revista Derecho del Estado* 1, 53-62. <https://revistas.uexternado.edu.co/index.php/derest/article/view/7992>
- Uprimny, R. (2011). Las transformaciones constitucionales recientes en América Latina: Tendencias y desafíos", en C. Rodríguez-Garavito (Ed.), *El derecho en América Latina. Un mapa para el pensamiento jurídico del siglo XXI*. Editorial Siglo XXI. p. 114.
- Valencia, H. (1997). *Cartas de Batalla. Una crítica del constitucionalismo colombiano*. Universidad Nacional Instituto de Estudios Políticos y Relaciones Internacionales, Fondo Editorial CEREC.
- Valencia, P. (2020). Los principios filosóficos del neoliberalismo: una aproximación a sus consecuencias políticas en Colombia. *Revista de Antropología Y Sociología: Virajes*, 23(1), 243-263. <https://doi.org/10.17151/rasv.2021.23.1.11>
- Vanegas, G., Ballén, R., Daza, A., Ávila, V., Cadena, W., Matías S., Gómez, B., Bocanegra, H., Peña, W. y Galeano, J. (2010). *Guía para la elaboración de proyectos de investigación en derecho*. Universidad Libre.

