

## **The modernizing project in Colombia: an unfinished goal?**

For us, as Latin Americans, the search for poetic modernity runs historically parallel to the repeated attempts to modernize our countries. This tendency begins at the end of the 18th Century and includes Spain herself. The United States was born into modernity and by 1830 was already, as de Tocqueville observed, the womb of the future; we were born at a moment when Spain and Portugal were moving away from modernity. This is why there was frequent talk of "Europeanizing" our countries: the modern was outside and had to be imported.

Octavio Paz, *In Search of the Present* (Nobel Prize Lecture, 1990)

During the nineteenth and twentieth century, the goal of modernizing Colombian society was an obsession that was translated into constitutional reforms and legal institutions. Right after independence, members of the liberal and conservative party agreed that the organization of the state should be a democratic, liberal<sup>1</sup> regime.

The objective of this paper is to show which elements of the modernizing project were either promoted or suppressed during four different historical periods: the Constitution of 1886, the 1936 and 1968 amendments and the 1991 Colombian Constitution. This selective transplant of modernization was designed and structured as a consequence of the constant struggle between members of the conservative and liberal parties. Both liberals and

conservatives had a selective view of which elements to include or exclude. This selection was done by transplanting half-heartedly Western/Modern concepts, privileging some ideals over others.

This paper challenges the mainstream interpretation that although all of the elements of modernization – a political revolution, meaning a liberal, democratic system; a socio-economic transformation, defined as the path away from agricultural dependence and the move toward industrialization; and a cultural break, understood as a move away from tradition, the secularisation of the educational system and the separation of church and state- have been designed as legal transformations, Colombia has been unsuccessful in reaching modernity. It is my opinion that none of the elements of modernity have been truly incorporated to Colombian society<sup>2</sup>. Instead, these modernizing ideals have been translated into laws -through constitutional changes, economic development plans and educational reforms-, which have become a way of understanding the Colombian context and have become an ideology in the sense that they encompass “the set of beliefs, ideas, and values embodied in the legal institutions and legal materials...of a particular society”<sup>3</sup>. In this sense, there is a partial ideal of modernization translated into norms (giving the legal system an

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<sup>1</sup> Jaime Jaramillo Uribe, ‘Etapas y Sentido de la Historia de Colombia’ in Mario Arrubla (ed.), Colombia Hoy, Siglo XXI Editores, 1990, pages 15-52..

<sup>2</sup> Not that I necessarily agree with the transformative powers of the moderinzing ideals.

instrumental role) that has given the appearance of unfulfilled but existent goals. The general agreement that these goals are part of the legal institutions, has either distorted reality or marginalized alternatives.

Which have been the traditional interpretations of the relationship between law and modernization in Colombia? Basically, one could divide them into three. According to a group of lawyers, policy makers, politicians and academics, the failure can be explained because of the control of the democratic system by a set of particular group interests and, the general backwardness of the population<sup>4</sup>. A second interpretation states the opinion of a group of academics who are pessimistic about the content, benefits and structure of the modernizing project (both in core and periphery countries) and who voice a critique of the process of importing foreign/imperialist ideas<sup>5</sup>. Finally, there is a group of optimists who think that progress will eventually come, it is just a matter of time, in this sense they understand that not all of the revolutions have fully taken place, but progress cannot be stopped once it is set forth<sup>6</sup>.

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<sup>3</sup> Jerry D. Leonard, Legal Studies as Cultural Studies: a Reader in (post)Modern Critical Theory, SUNY University Press, 1995, p. age 23.

<sup>4</sup> See among others, Darío Echandía, Ideología y Política, Obras Selectas, Tomo III, Banco de la República, 1981. Alvaro Tirado Mejía, 'Colombia Siglo y Medio de Bipartidismo' in Mario Arrubla (ed.), Colombia Hoy, Siglo XXI Editores, 1990, pages 102-186.

<sup>5</sup> Most of these are Dependency oriented historians and more recently Arturo Escobar, Encountering Development: The Making and Unmaking of the Third World, Princeton University Press 1992.

<sup>6</sup> Marco Palacios, Parabola del Liberalismo, Editorial Norma, 1999.

## 1. The elements of the modernizing project

What has characterized the modernizing project universally?

In its broadest sense, modernization encompasses a break in the understanding of time and how it happens. It marks a progressive way of looking toward the future and leaving behind the past. Alex Callincos describes it in the following way:

In principle, this proposition implied that human nature was, to some extent at least, malleable, and liable to be shaped in divergent forms by different social institutions. But the nature of these institutions could not be properly examined as long as it was assumed that the writers of classical antiquity had already identified the limited range of social forms. The significance of the Enlightenment lies in large part in the fact that it broke with this assumption. It did so by formulating the idea of a new age which no longer seeks to derive its legitimacy from principles derived from the past, but rather offers its own self-justification...

This conception of modernity as a new epoch representing a radical rupture with the past, gradually takes shape in the course of the eighteenth century. It implied a changed relationship to historical time. Whereas previously European intellectuals had oriented towards the classical past, now they turned toward the future. There was an idea that knowledge progressed, was readily extended to the claim that the entire course of human history represented a more or less continuous forward movement.<sup>7</sup>

This general understanding of time, is accompanied by the configuration of three revolutions: economic, political and cultural.

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<sup>7</sup> Alex Callincos, Social Theory: A Historical Introduction, New York University Press, 1999, page 13.

The economic revolution can be described as the establishment of a productive system characterized by progressive growth, the accumulation of capital, the increasing use of technology and the flourishing of a commercial society through the establishment of an open market. A commercial society involves an increasingly complex division of labor that makes possible the rising output needed to support a growing population. The diverse activities of this economy are bound together by the purchase and sale of commodities in the market and the growth of an urban, middle class with purchasing power that is progressive and different from the traditionalist rural landowners.

The rather rigid social structure of traditional societies also tends to inhibit individualism. Most peasants never expect to change their occupation, and the relatively small numbers of large landowners, warriors, merchants, priests, and rulers, constituting narrow strata within society, also tend to remain within the confines of their inherited status. The sense of achievement inspired by a desire to get ahead or to gain new privileges is consequently limited<sup>8</sup>.

The political revolution is characterized by the strengthening of national sovereign states, linked to its citizens through the establishment of a democratic type of government. In this sense it epitomizes two slogans of the French Revolution: liberty and equality. The liberals defend the legacy of individual freedoms and the division of powers as a way of limiting abuses by a monarch or prince. Therefore, individualism and a break with

tradition are fundamental values of both the economic and political revolutions.

The cultural revolution is represented by the losing ground of the role of the Church and the family in the exercise of transmitting values and knowledge, this was configured through universal access to education and the establishment of a national, secular schooling system. In another sense, the cultural revolution marks a way of interpreting the changes set forth by the other two revolutions. Raymond Williams refers to this idea in the following terms:

The development of the word culture is a record of a number of important and continuing reaction to these changes in our social, economic, and political life, and may be seen in itself, as a special kind of map by means of which the nature of these changes can be explored.<sup>9</sup>

## **2. The modernization project in Colombia**

As I stated in the introduction, during the nineteenth and twentieth century, the goal of modernizing Colombian society was an obsession that was translated into constitutional reforms and legal institutions. Right after

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<sup>8</sup> C.E. Black, The Dynamics of Modernization, Princeton University, 1967, p. 25.

<sup>9</sup> Raymond Williams, Culture and Society: 1780-1950, Penguin Books, 1963, p.16.

independence, members of the liberal and conservative party agreed that the organization of the state should be a democratic, liberal<sup>10</sup> regime.

The idea of importing Western/Modern legal systems was always present and seemed to guarantee the path to modernity.

Independence came at a time when England appeared as the economic development model and the United States as the most successful growth process of a nation recently independent. Therefore, the modernization ideals were the establishment of a capitalist economy and a liberal political system based on popular sovereignty. By 1850 this modernizing project was part of the fundamental ideology of ruling elites who felt that the system was going in the right direction. After all, an independent state had been formed, whose institutional bases were both a constitutional and legal system transplanted from continental Europe: a written set of laws, separation of powers, the election of certain public officials, a criminal and a civil code imported from France.<sup>11</sup>

Nevertheless, the necessary elements of an economic, political or cultural revolution were never truly incorporated, although certain ideas were transplanted and translated into laws, this transplant operated more in terms of what is described by P.G. Monateri in the following terms:

Of course, a main subject today consists of the conscious projects to export “Western” legal models into former socialist countries, to design their institutions, and in the actual drafting of model laws, particularly in the field of corporations. What is amazing is that schemes to create governance through export of legal patterns are carried on notwithstanding the lack of commonly accepted theory of legal “identities” and legal transplants.

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<sup>10</sup> Jaime Jaramillo Uribe, ‘Etapas y Sentido de la Historia de Colombia’ in Mario Arrubla (ed.), Colombia Hoy, Siglo XXI Editores, 1990, pages 15-52..

<sup>11</sup> Jorge Orlando Melo, ‘Algunas Consideraciones Globales sobre “modernidad” y “modernización” in Fernando Viviescas y Fabio Giraldo, Colombia el Despertar de la Modernidad, Carvajal, 1991, page 232.

From this standpoint I think that both the ‘definition of identities’ as well as the ‘import/export’ can be seen as interested non-neutral, purposive projects of governance. (they have also been seen as crude imperialist impositions). Now if we adopt this strategy of analysis to cope with ‘comparative law’ as a discipline, we can see how much it has been an attempt to meet different audiences and their expectations. Which is to say that comparative law is not normally ‘transnational’ at all, but rather it grows within the frameworks of different legal traditions, responding to inner needs of legal elites<sup>12</sup>.

In this sense, even though the elites stated their modernizing ideals in different documents, the constitution and legal institutions say otherwise.

### **The 1886 Constitution**

At the economic level, the Constitution of 1886 (a constitution that was in place, with several amendments until 1991), enacted a strong, centralist, protectionist, authoritarian, interventionist and Presidentialist state<sup>13</sup>.

Politically, the Constitution of 1886 established voting rights only for adult men who were property owners, had an annual income and were literate (limiting in this way the configuration of a truly democratic system)<sup>14</sup>.

This same document had important limitations on individual rights: the

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<sup>12</sup> P.G. Monateri, “Everybody’s Talking:” *The Future of Comparative Law*, 21 *Hastings Intl & Comp. L Rev.* 825, page 4.

<sup>13</sup> Jorge Orlando Melo, ‘La República Conservadora’ in Mario Arrubla (ed.), *Colombia Hoy*, Siglo XXI Editores, 1990, page 60.

<sup>14</sup> Melo, page 61.

death sentence was re-established and the freedom of press was greatly limited<sup>15</sup>.

On the cultural level, the involvement of the Catholic Church in educational matters characterized the elite's schooling system up to the mid thirties<sup>16</sup> and the separation between church and state came in the late twentieth century. Both of these things had as a consequence the enormous cultural value the Catholic Church had as it continued to be the main source of knowledge and transmitter of values in Colombian society.

### **The 1936 Amendment**

During the 1930s the members of the Colombian liberal party understood that the party needed to transform its political content in order to both try to put an end to the escalating social conflicts and at the same time, to get the votes of the workers and landless peasants. Once the progressive wing of the liberal party was in power, they needed to institutionalize this ideological shift by providing the constitutional and legal instruments they considered necessary and appropriate. As a consequence, on September 10<sup>th</sup> 1934, Dario Echandia the Colombian Interior Secretary, presented a constitutional reform project whose objective was to 'de-individualize' the concept of rights and to transform the role of the state according to, in his

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<sup>15</sup> Melo, page 61.

<sup>16</sup> Marco Palacios, 'Modernidad, Modernización y Ciencias Sociales' in Marco Palacios, Parabola del Liberalismo, Editorial Norma, 1999, page 44.

words, a 'modern' idea. Why was this reform necessary? In the Secretary's terms, because of the increase in social conflicts, the escalation in the number and violence of illegal strikes, the constant and fair demands of workers as well the struggles over land property demonstrated the need to put an end to the institutional failures that were a product of the lack of social criteria in the excessively individualistic conception right established in the Constitution<sup>17</sup>.

Echandia explained this in the speech at which he presented the reform:

As you can see, honorable representatives, the project substitutes an excessively individualistic conception of private rights that characterizes the current Constitution, for another that defines the exercise of individual rights as a social duty whose limits must be provided by public usefulness. Individual private rights understood within their social purpose as opposed to absolute individual private rights; that is the ultimate objective of the constitutional reform that the government places for your consideration<sup>18</sup>.

The theoretical support for this shift in understanding was provided by Leon Duguit and his interpretation of the modern role of the state. The specific legal tools were both the incorporation of solidarity ideals into law as well as the transformation of certain legal institutions in order for them to -in a socially responsible way- adapt to the demands of an urban, capitalist, industrializing country.

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<sup>17</sup> Tirado Mejia y Magdalena Velasquez, *La Reforma Constitucional de 1936*, p. 90.

<sup>18</sup> Dario Echandia, 'Exposicion de Motivos', in Alvaro Tirado Mejia and Magdalena Velasquez, *La Reforma Constitucional de 1936*, Editorial Oveja Negra, 1982, p. 162.

### **The 1968 Constitutional Reform**

This reform marks the relationship between economic development goals and modernization. It is the first step to limit the political and social debate into economic terms and to devalue anything outside of the technocratic/economic discourse.

### **The 1991 New Constitution**

In the new Colombian constitution there is a much more complex view of modernity, incorporating both Western ideals with the ethnic realities of the Colombian context.