

GLOBALIZED NATION-STATE. THEORETICAL PROPOSAL FOR THE ANALYSIS OF THE IMPLEMENTATION OF THE COLOMBIAN PEACE AGREEMENT*

ESTADO-NACIÓN GLOBALIZADO. PROPUESTA TEÓRICA PARA EL ANÁLISIS DE LA IMPLEMENTACIÓN DE LOS ACUERDOS DE PAZ DE COLOMBIA

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ABSTRACT

One of the most significant possible impediments of the implementation of the Colombian Peace Agreement is vested in the various failures of rulemaking in Colombia. The present article introduces the theory of globalized nation-state based on a selected literature review on theories regarding economic and political processes of contemporary societies. The theory of globalized nation-state proposes to resolve the State paradox and co-optation of the Colombian State introducing political debate with the participation of all members of society in rulemaking. For this reason, it is argued that the proposed theory of globalized nation-state is applicable for the analysis of the implementation of the Colombian Peace Agreement, especially its First Chapter regarding Comprehensive Rural Reform.

Keywords: Peace Agreement in Colombia; Rulemaking; Economic processes; Political processes; Contemporary society; State paradox; State co-optation; Globalized nation-state; Comprehensive Rural Reform

RESUMEN

Uno de los posibles impedimentos—y quizá más significativos—de la implementación de los Acuerdos de Paz de Colombia, puede derivarse de las diversas fallas en la formulación de las normas. El presente artículo introduce la teoría de Estado-nación globalizado basado en la revisión de literatura seleccionada sobre procesos económicos y políticos de la sociedad contemporánea. La teoría de Estado-nación globalizado propone resolver la paradoja y la cooptación del Estado colombiano e introducir debate político con la participación de todos los miembros de la sociedad en la formulación de normas. Por esta razón, se argumenta que la propuesta de Estado-nación globalizado es aplicable al análisis de la implementación de los Acuerdos del Proceso de Paz, especialmente su Primer Capítulo sobre Reforma Rural Integral.

Palabras clave: *Acuerdo de Paz en Colombia; formulación de normas; procesos económicos; procesos políticos; sociedad contemporánea; paradoja del Estado; Estado cooptado; Estado-nación globalizado; Reforma Rural Integral*

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INTRODUCTION

While important criticism of the Peace Agreement has been continuously pronounced by the opposition in Colombia, the Government did not involve these political forces into the negotiations.¹ The Colombian Government decided to validate the Peace Agreement through popular vote. The referendum took place on 6 October, 2016. Although, the Government expected to have enough popular support in the society for its peace deal, the “No” won at the referendum with 50,21 % of the votes. It obliged the Government of President Santos to re-open the negotiations with the FARC to include certain observations of the opposition led by ex-president Uribe.² The Bogota version of the Peace Agreement was finally signed in the Colon Theatre on 24 November, 2016. The Colombian Congress validated the new Peace Agreement 6 days later. The Constitutional Court accepted this indirect popular validation /referendum, although its interpretation was highly debated by the opposition.³ The Court also ruled in favor of the fast track process, established earlier by the Congress.⁴

- 1 Fabio Posada, *Desmintiendo rumores en contra de la paz*, *Colombiacheck* (26 September, 2016). <http://colombiacheck.com/chequeos/desmintiendo-rumores-contr-la-paz.html>
W Radio, Álvaro Uribe habla con La W sobre el proceso de paz. El expresidente Álvaro Uribe explica por qué apoya el “No” en el plebiscito (6 September, 2016). <http://www.wradio.com.co/noticias/actualidad/alvaro-uribe-habla-con-la-w-sobre-el-proceso-de-paz/20160906/nota/3237754.aspx>
Salud Hernandez Mora, *La paz que divide Colombia*, *El Mundo* (29 August, 2016). <http://www.elmundo.es/internacional/2016/08/29/57c31e4322601d221e8c0771.html>
Vanguardia, *El uribismo lleva cuatro años mintiendo sobre el proceso de paz* (14 August, 2016). <http://www.vanguardia.com/politica/369436-el-uribismo-lleva-cuatro-anos-mintiendo-sobre-el-proceso-de-paz>
Caracol Radio, *Las malas notas de Santos y el plebiscito* (8 August, 2016). http://caracol.com.co/radio/2016/08/08/politica/1470676546_761982.html
Semana, *Críticos del proceso de paz. No solo es Uribe* (15 September, 2012). <http://www.semana.com/nacion/articulo/criticos-del-proceso-paz-no-solo-uribe/264797-3>
- 2 Dejusticia, *Propuestas Renegociación Acuerdo de Paz* (2016). http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.872.pdf
- 3 Eduardo Mackenzie, *Colombia: refrendación en falso del proceso de paz* (2 December, 2016). <http://www.periodismosinfronteras.org/colombia-refrendacion-en-falso-del-proceso-de-paz.html>
- 4 With the fast track, the Congress is limited to approve or reject the Peace Agreement implementation legislative projects or constitutional amendments presented by the Government. It is expected to reduce times of legislative process by half throughout the first six months of 2017. Dinero, *¿Qué significa “fast track” para la aprobación del acuerdo de paz?* (14 December,

The negative vote received in the referendum was the only instrument that forced the Colombian Government to open apparent political debate regarding the peace process. Although in the Bogota version of the Peace Agreement certain observations presented by the political opposition have been introduced, it does not mean that the Peace Agreement is the result of public political debate.

The theoretical framework presented in this article is considered to provide a point of reference for the analysis of the implementation of the Colombian Peace Agreement, especially as related to its first chapter titled “Towards a New Rural Colombia: Comprehensive Rural Reform (CRR).”

It is suspected that one of the most significant possible impediments of the implementation of the Colombian Peace Agreement is vested in the various failures of rulemaking in Colombia. The proposed theory of the globalized nation-state intends to provide the theoretical basis to rethink rulemaking. The proposed theory on the globalized nation-state, is based on the findings of various authors discussing economic and political processes in contemporary society. As analyzed by the cited authors, these economic and political processes resulted in the critical complexity of rulemaking in contemporary society. The theories discussed are specifically selected to provide the base of the own theoretical proposal of the author on the globalized nation-state. It is not aimed to be a survey of literature to cover complete knowledge areas. The challenge is to combine analytical fragments in a coherent complexity to reflect the social,

2016). <http://www.dinero.com/pais/articulo/que-significa-fast-track-para-la-aprobacion-del-acuerdo-de-paz/239995>

President Santos is also entitled to issue presidential decrees with value of law in relation with the implementation of the Peace Agreement. It is noteworthy to mention that the first presidential decree with value of law issued by President Santos was revoked by the Constitutional Court. The Court based its arguments on lack of argued substantial connection of regulatory issue to the Peace Agreement. *El Espectador*, *Corte Constitucional tumbó el primer decreto que expidió el Gobierno vía 'fast track'* (9 March, 2017). <http://www.elespectador.com/noticias/judicial/corte-constitucional-tumbo-el-primer-decreto-que-expidio-el-gobierno-fast-track-articulo-682318>

political and economic elements of rulemaking in contemporary Colombia.

For this reason, in the first part of this article the *preliminary considerations of the application of the theory of globalized nation-state to the implementation of Chapter 1 of the Peace Agreement* is presented. In the second and third parts of this article, to provide a better understanding of the proposed theory on the globalized nation-state, its underlying theories are presented on *economic processes* including discussions about 1) Trade and Protectionism and Agricultural Exceptionalism; 2) Economic regulation after the Washington Consensus and 3) Trade Inequality and Poverty; and on *political processes* 1) the World risk society, 2) Denationalized State as Institutional Domain and the Global Social Actors, 3) Reflexive Justice, 4) Participation and Public Sphere, 5) State as policy actor in Latin America. Finally, in the Conclusions further suggestions are made about difficulties of rulemaking as an impediment of the implementation of the Colombian Peace Agreement.

I. PRELIMINARY CONSIDERATIONS ABOUT THE APPLICATION OF THE THEORY OF GLOBALIZED NATION STATE TO THE IMPLEMENTATION OF CHAPTER 1 OF THE PEACE AGREEMENT

The proposed theory of globalized nation-state observes with cautiousness the theories of transnational State. On the other hand, this new nation-state is the result of the second age of modernity, the first being precisely the establishing of the nation-state. Globalization creates significant negative externalities such as inequality and social unrest, which must be addressed in political processes. On the other hand, the framework of these political processes is the nation-state.

The renewed role of the nation-state requires a reformulation of the nation-state itself. This global nation-state or globalized

nation-state must be interventionist in its nature. The aim of this interventionism is precisely to correct market failures, which are identified as causes of market inefficiencies and social inequalities.

The purpose of the globalized nation-state is to reinforce the political processes towards a new social status quo. This social status quo is not the same as an egalitarian society. The social status quo reflects the realities of the globalized societies. The globalized societies are unique and culturally defined. For this reason, the social status quo is different for each and every globalized society, as well as, the political processes leading to the social status quo.

The actors of the political processes are redefined based on a pluralist reading of the globalized societies. The new political actors are the members of these globalized societies organized in particular interest groups, with growing importance of the participation of the globalized civil society. They are the result of the politicized, locally-defined, globalized societies. The politicization of society is the base of these new democracies identified with the new social status quo.

As a consequence, the globalization results in identifiable fragmented private opinions, which become public opinion through the politicization process of the global societies. The globalized nation-state acts as an arbitrator if the society becomes democratized; but if the society is not as such, given that the State is controlled by certain interests or interest groups, the State acts as executor in favor of these interests. This cooptation occurs in a continuously changing structure, where different interests prevail from time to time in a disorderly way. The cooptation of the State exists because the relationship between the different actors and the State is not addressed through adequate political processes. When the State becomes arbitrator of new inclusive political processes, the current nation-state becomes converted into a globalized nation-state. This is also the way to resolve the current State paradox, when the State simultaneously acts weak and strong in a heterogeneous and unpredictable manner.

The tools of intervention to be applied by the globalized nation-states differ according to their local specificities, necessities, and possibilities. On the other hand, these tools are defined by as much as they are defining the politicization process of the globalized societies in its local formation. Therefore, the function of the globalized nation-state is to internalize the fragmented private opinions as public.

The fragmented political power gives way in the long run to the re-establishing of natural social balances lost in the traditional nation-state. The globalized nation-state moves from being a coopted State to being a democratic State. Consequently, the role of the globalized nation-state, this way defined, is to provide the local space for the politicization process of the global societies. This politicization process requires the participation of all actors that aim to establish the new social status quo.

There have been major modifications included in Chapter 1 of the Peace Agreement titled “Towards a New Rural Colombia: Comprehensive Rural Reform (CRR)” after the negative vote received in the referendum. Most of these modifications are related to production structure and production scales. The Colombian Government continuously argued that the Peace Agreement does not negotiate the existing economic order. Nonetheless, the mere analyzes of only Chapter 1⁵ shows a different result. Since its early development, the negotiations with the FARC were highly criticized for leaving doubts about the possible co-existence of different production forms, especially the continuing development of large-scale production.⁶ Chapter

5 Ildikó Szegedy-Maszák, *Agricultural Public Policies in Colombia from the 1970s through the Uribe Government – The Story of Recurrent Unresolved Policy Issues*, 134 *Vniversitas*, 363-398 (2017).

6 Santaella, Héctor, *Acuerdo de Desarrollo Rural Integral y derecho agrario del posconflicto: mitos, verdades y desafíos de su materialización* (2017). Revista digital de Derecho Administrativo. file:///C:/Users/Ildiko/Downloads/4839-21591-1-PB.pdf
SAC, *Sociedad de Agricultores de Colombia, Minagricultura anunció política pública para febrero de 2017 a partir de iniciativa gremial de impulso al agro empresarial* (24 November, 2016). <http://www.sac.org.co/es/sala-de-prensa/553-minagricultura-anuncio-politica-publica-para-febrero-de-2017-a-partir-de-iniciativa-gremial-de-impulso-al-agro-empresarial.html>
El Espectador, *Uribismo amplió a 68 las ‘capitulaciones’ en contra del proceso de paz con las Farc* (20 October, 2014). <http://www.elespectador.com/noticias/politica/uribismo-amplio-68-capitulaciones-contra-del-proceso-de-articulo-523533>

1 of the Peace Agreement establishes that the purpose of CRR is to provide the basis for the structural transformation of rural areas, and to create well-being for the rural population. One of the major unresolved fundamental discrepancies between the Colombian Government and the FARC can already be observed in the Preamble of Chapter 1. The Government emphasizes that rural transformation must contribute to reversing the effects of the conflict and change the conditions that facilitated the persistence of violence. On the contrary, according to FARC, CRR should contribute to solve the historical causes of the conflict, such as the unresolved ownership over land (particularly land concentration), the exclusion of the farmers, and the backwardness of rural communities.

As of forms of agricultural production, the CRR recognizes the fundamental role of farmer economy, family farming, and community agriculture (Preamble of Chapter 1). There is an important difference at this point between the Cartagena and Bogota versions of the Peace Agreement. The Bogota version introduces a new definition of Comprehensive Rural Development, which reestablishes the balance between family farming and large scale farming/agro-industry. The Comprehensive Rural Development concept clearly states that rural development depends on 1) proper balance between the various existing forms of production-family farming, agro-industry, tourism, large-scale commercial agriculture; 2) competitiveness, the necessity to promote and encourage investment with business approach and productive aims; 3) promotion and development of equitable conditions, production chains to connect small scale production with other production models-vertical or horizontal and in different scales (Principles of Chapter 1). Production chains between small, medium, and large producers are further promoted in the also newly added definition of associations in Point 1.3.3.6 of Chapter 1 of the Bogota version. Farmer economy and family farming are considered prevalent to generate rural development. Although, the Bogota version of the Peace Agreement impedes interpretations, which might question the

existent Constitutional bases for agricultural policy making. Nevertheless, it is still not clear how public policy emphasis will be set for rural development.

On 1 March, 2017 the Ministry of Agriculture and Rural Development and the Ministry of Interior Affairs filed before the Senate, as part of the fast track process, the first of the five Laws to implement the commitments of the First Chapter of the Peace Agreement. This first initiative seeks to improve the provision of rural technical-assistance services.⁷ It creates coordination between municipalities, departments, and the central government.⁸ The second fast track regulatory project of the agricultural agenda of the Peace Agreement was presented on 6 March, 2017, regarding access to irrigation and drainage systems. The proposed Law creates a Commission that analyzes investment priorities. It also contemplates the legalization of already established irrigation systems, resolving the lack of clarity regarding property and management.⁹ The other two regulatory projects on agriculture to be discussed through fast track are 1) rural housing, and 2) granting of rural credits. It is still not clear, whether the Government is to present through fast track the most important and very probably the most controversial regulatory project on Comprehensive Rural Reform (*Reforma Rural Integral*).¹⁰

On the other hand, the government already launched in 2015 the program called Colombia Sows (*Colombia Siembra*), which resulted in an important increase of cropped area from 30 thousand new hectares per year to 240 thousand new hectares

7 Bitácora Fast Track, *Radican en el Congreso el primero de cinco proyectos sobre agro* (3 March, 2017). <http://www.congresovisible.org/agora/post/bitacora-fast-track-radican-en-el-congreso-el-primero-de-cinco-proyectos-sobre-agro/9816/>

8 El Espectador, *Radican proyecto de ley para mejorar la asistencia técnica en el país* (1 March, 2017). <http://www.elespectador.com/economia/radican-proyecto-de-ley-para-mejorar-la-asistencia-tecnica-en-el-pais-articulo-682540>

9 Ministerio de Agricultura y Desarrollo Rural, *MinAgricultura radica vía fast track proyecto de adecuación de tierras* (6 March, 2017). <http://www.lafm.com.co/nacional/minagricultura-radica-via-fast-track-proyecto-adequacion-tierras/>

10 Bitácora Fast Track, *Radican en el Congreso el primero de cinco proyectos sobre agro* (3 March, 2017). <http://www.congresovisible.org/agora/post/bitacora-fast-track-radican-en-el-congreso-el-primero-de-cinco-proyectos-sobre-agro/9816/>

in 2016. The Government also promotes the Zones of Interest of Rural Economic and Social Development (*Zonas de Interés de Desarrollo Rural Económico y Social – Zidres*) to increase agricultural production based on industrial agriculture in marginalized regions lacking basic infrastructure. *Zidres* will have a total extension of more than 7 million hectares (area similar in size to Ireland) in the regions of *Altiplanura*, *La Guajira*, *Urabá Chocoano*, and *La Mojana*.¹¹ *Zidres* generated vivid political debate in Colombia. According to President Santos the regulation of *Zidres* “is the boldest Law of our history to ensure rural development. We initiated our way to become the world’s food dispense.” On the contrary, Senator Jorge Robledo of the opposition party *Polo Democrático* criticized *Zidres* for its land concentration effect “in favour of local and foreign tycoons, in a country with one of the highest concentrations of land in the world.”¹²¹³

The recent agricultural public policy proposals of the Colombian Government continue presenting major contradictions.

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- 11 *Zidres* are regulated by Law 1776 of 2016. *Zidres* require high investments to develop integrated rural plans, strengthen environmental sustainability, and promote economic and social development. They increase the availability of land for agro-industrial development. Productive projects approved in the *Zidres* shall receive policy incentives, if implemented in association with small or medium size producers or landless farmers. These projects also are required to facilitate farmers and workers involved in its development to acquire their own lands. For this reason, *Zidres* are exempted from the limitations of Family Agriculture Unit (*Unidad Agrícola Familiar – UAF*) regulated by Law 160 of 1994. Presidencia de la República, *Lo que debe saber de la ley Zidres* (29 January, 2016). <http://es.presidencia.gov.co/noticia/Lo-que-debe-saber-de-la-ley-Zidres>
 - 12 *Semana*, *Diez puntos para entender la ley Zidres que sancionó Santos* (29 January, 2016). <http://www.semana.com/nacion/articulo/abece-de-la-ley-zidres-que-sancionan-santos/458494> Oxfam International also criticized the *Zidres* regulation for land concentration based on consultations with Colombian civil society actors such as *Codhes*, *Cinep Planeta Paz*, *Comisión Colombiana de Juristas*, *Mesa de Incidencia Política de Mujeres Rurales Colombianas*; *Cumbre Agraria*, *Campesina*, *Étnica y Popular* and *Dignidad Agropecuaria*. Oxfam International, *Colombia: las falacias detrás de ZIDRES, una ley de “subdesarrollo rural”* (2016). <https://www.oxfam.org/es/colombia-las-falacias-detras-de-zidres-una-ley-de-subdesarrollo-rural>
 - 13 The Constitutional Court gave the first boost to *Zidres* in February 2017, after more than two months of delays, and with certain conditions for its implementation. a) All the initiatives being developed with *Zidres* agricultural model must first pass the consultation process with local councils; b) All *Zidres* should be coordinated with the Municipal Development Plans; c) Small and medium producers cannot be required to associate in order to receive production subsidies. This latter condition was considered as an unnecessary extra burden to small farmers. *El Espectador*, *Corte Constitucional deja en firme Ley Zidres* (8 February, 2017). <http://www.elespectador.com/noticias/judicial/corte-constitucional-deja-en-firme-ley-zidres-articulo-678946>

The implementation of Chapter 1 of the Peace Agreement is a clear example of public policy contradictions. Only as a matter of example, the Comprehensive Rural Reform is the major stepping stone to define public policy paradigms. Nevertheless, this regulatory project is left last in order. Furthermore, agricultural public policies are already under implementation: Colombia Sows and *Zidres* lack any clarity on paradigms regarding agricultural production scales. Therefore, we maintain the question whether the agricultural policies of the Santos Government are a genuine intent to promote agricultural production based on the co-existence of different production structures such as small-, medium-size farms, and industrial production; or it is the result of the usual political game to merely satisfy instant political interests. As very probably the latter case is, this situation again can be considered as the manifestation of the State paradox, the coopted State acting weak and strong at the same time. The Peace Agreement is not the result of political debate with the participation of all society members. The proposed theory of the globalized nation-state clearly requires political debate to establish consensus on society level thus to eliminate co-optation of the State. If the implementation of the Peace Agreement suffers the same course of isolation from any political debate, it will only result in the modification of the existing structure of State cooptation, maintaining, and possibly even strengthening, this malfunctioning of the Colombian State.

It is argued throughout this article that there are severe problems of rulemaking in Colombia. The idea of the proposed globalized nation-state concept is to theorize the problems of rulemaking in the context of the economic and political processes of globalization of contemporary societies in Latin-America. The economic processes are described through a critical analysis of market liberalization, while the political processes are studies through the analysis of the State as key policy actor.

II. ECONOMIC PROCESSES – WAYS AND MEANS OF MARKET LIBERALIZATION

Joseph E. Stiglitz stated¹⁴ that market liberalization through trade in developing countries resulted in serious asymmetries compared to developed countries. While developing countries downscaled subsidies designed to protect growing sectors (including nascent industries), developed countries maintained their system of agricultural subsidies. In that sense, opening the markets “by itself would not “solve” the problem of poverty.” There is a need for more assistance and fairer trade.

Dani Rodrik¹⁵ further developed the idea of market liberalization. Liberalization is important to provide development possibilities. On the other hand, Rodrik argued¹⁶ that market liberalization alone does not generate sustained economic growth. Therefore, market liberalization must focus on physical and human capital creation and the promotion of technological development, which are strong growth factors.¹⁷ He also argued that successful economies have been investing in physical and human capital and managed to implement investment strategies for national economic actors. Therefore, Rodrik proposed¹⁸ an “alternative account of economic development”, whereas “domestic institutional innovation” has the main role, and trade and trade policy lose their centrality. According to this proposal, unconventional and orthodox elements of economic policies are combined to attend country-specific necessities based on local knowledge and experience. That way, the central question for policymakers is not whether trade is good or bad, but “what the correct sequencing of policies is and how much priority deep trade liberalization should receive in the reform process.”¹⁹

14 Joseph E. Stiglitz, *Making Globalization work*, 14 (W.W. Norton & Company, New York, 2007).

15 Dani Rodrik, *Cómo hacer que la apertura funcione: la nueva economía global y los países en desarrollo*, 19 (Tercer Mundo Editores, Bogotá, 2000).

16 Ibid., 8.

17 Ibid., 9.

18 Dani Rodrik, *One Economics, Many recipes. Globalization, Institutions, and Economic Growth*, 214 (Princeton University Press, Princeton, 2007).

19 Ibid., 220.

A. Trade and Protectionism and Agricultural Exceptionalism

The case for free trade was based on theories dating back to the 18th century. Adam Smith advocated for a system of economic liberty of people, being free to pursue their interests with a role of the government to establish the legal framework for commerce. In that sense, as free trade increases competition on the home market, it also restrains the power of local companies to offer high prices and poor services.²⁰ Smith argued that a country exports goods that it produces most efficiently and imports goods which other countries produce most efficiently.²¹ Additionally, the international exchange of goods can support a desired division and specialization of labor, which in turn enhances productivity.²² David Ricardo in the early 19th century further developed Smith's ideas through his theory of comparative advantage. According to Ricardo, to import a good is advantageous for a country, even if it can produce the same good. Hence international trade is led by opportunity costs of production and not by absolute costs²³. Notwithstanding, the absolute productive advantage for a country is positive, as it results in overall higher per capita income.²⁴ Later, in the middle of the 19th century, John Stuart Mill established the three principal gains from international trade²⁵ direct economic advantages (in the sense of Smith and Ricardo); 2) indirect effects (technology transfer resulting in increased competition, efficiency, and enhanced productivity); and 3) intellectual and moral effects (which surpass economic benefits of trade, such as tackling existing prejudices of the unknown or uncommon).²⁶ Nevertheless, trade protectionism has been subject to debate since the 19th century. As one of the

20 Douglas A. Irwin, *Free Trade under Fire*, 26 (Princeton University Press, Princeton, 2005).

21 Ibid., 28.

22 Ibid., 27.

23 Ibid., 9.

24 Ibid., 33.

25 Ibid., 34.

26 Ibid., 49.

first advocates of protectionism, Friedrich List argued for the protection of infant industries and commerce.²⁷

In Latin America between the 1930s and 1960s, the debate about trade and development gave rise to the implementation of certain protectionist policies, also known as import substitution.²⁸ Raúl Prebisch, one of the most important theorists of import substitution, argued for the transformation of peripheral capitalism. He stated that peripheral capitalism was subordinated to the center, whereas subordination was based on the differences of industrial development. According to Prebisch, the only way to improve the negative effects of the disparities in the elasticity-income of international commerce on the development possibilities of the periphery economies was through the implementation of import substitution systems. Import substitution was supposed to improve the difference in elasticity-income of demand between imports and exports.²⁹ He also argued that even if industrial costs were higher than import prices, it did not mean that the industry was uneconomic, because the real importance was the increase of income derived from the expansion of the industry.

Prebisch himself revised these ideas, in his later work of 1981. Prebisch recognized the exaggerated protectionism and asymmetry in the industrialization, which stimulated substitution without offering similar incentives to exports of manufactured goods. Furthermore, he admitted the failure of Cepal to tackle the problem of income distribution.³⁰ As to agriculture, he also acknowledged that Cepalian thinking recognized the question of land tenancy as a negative factor for technological progress and a reason for the big social inequality; but he did not go further in analysis and policy recommendations.³¹

27 Douglas A. Irwin, *Trade and Development: A Review of the Debate*, 3 (Yale Center for the Study of Globalization, 2003). http://www.ycsg.yale.edu/documents/taskForce_trade_papers.html

28 Douglas A. Irwin, *Trade and Development: A Review of the Debate*, Op. cit, 3.

29 Raul Prebisch, *Obras escogidas. Antología del Pensamiento Económico y Social de América Latina* 3, 300 (Plaza & Janés / Sociales, Bogotá, 1983).

30 Ibid., 523.

31 Ibid., 524.

A growing number of contemporary theorists³² argued for selective industrial policies accompanied by trade subsidies, licenses, credit and capital placement, price policies, and investment. That way, trade subsidies can be overall beneficial if properly used for development purposes. On the other hand, these trade theories also suggest that the “classic prisoner’s dilemma” applies when everyone subsidizes at the same time, which results in everybody being worse off, whereas everybody is better off if subsidies and other interventions can be limited by agreement.³³ Furthermore, McCulloch, Winters, and Cirera also argued³⁴ that “specific interventions in international trade, such as export subsidies, anti-dumping duties, and local content requirements, will rarely be for the advantage of the poor, who have too little power to prevent the transfers from being captured by other groups.” They also argued that the international trade policy of a given country is a political question, being the result of a political bargaining process with the participation of competing actors.³⁵

This relationship between trade and protectionism for agriculture was most widely illustrated through the theory of agricultural exceptionalism. Traditionally, agricultural exceptionalism was the guiding principle of agricultural public policies. The underlying reasons to maintain the privileges of the agricultural sector were the following: 1) farm income problem – low income elasticity of demand, and treadmill competition³⁶ resulting in specific needs of

32 Martin Kors, *The World Trading System and Development Concerns*. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 221 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

33 Jeffrey A. Frankel, *The World Trading System and the Implications of Opening*. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 186 (Oxford Scholarship Online, 2008) <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

34 Neil McCulloch, Alan Winters L. & Xavier Cirera, *Trade Liberalization and poverty*, 12 (A Handbook Centre for Economic Policy Research, London, 2002). http://vi.unctad.org/tapcd/papers_documents/mcculloch_winters_cirera_2001_trade_liberalization_poverty.pdf

35 Ibid., 30.

36 Product price treadmill theory was introduced by Cochrane in 1958. Treadmill is a situation when the first farmers adopting new technology result in extra profit. On the other hand, when more farmers do the same production increases, product prices fall, as well as obtainable profit. Nevertheless, average farmers are forced by lower product prices to adopt new technology and

farmers; 2) secure and safe food supply as national interests and 3) farmed landscapes, biodiversity, flood control, rural culture, and community preservation as cultural heritage.³⁷

Agricultural exceptionalism was based on theories applied in agricultural economics such as cobweb cycle and multifunctionality. The cobweb cycle describes the difficulty to achieve stable equilibrium between supply and demand in a market of long production cycles, high costs of product substitution, and variability of weather conditions. The multifunctionality argument reflects that agriculture is more than just food production, as it delivers public goods. Agriculture contributes cultural values to society such as local cuisine, family farm etc., which justifies subsidies.³⁸ Furthermore, protectionists in Europe also argue that farmers cannot be victims of world competition.

As opposed to agricultural exceptionalism, the market liberal policy paradigm argues that exceptionalism results in loss as a whole for society in terms of welfare, and gain for a small and defined group of farmers, landowners, and associated businesses. It can also distort international commerce because of protected non-competitive supply side markets, for example in the EU.³⁹

Notwithstanding, protectionism is still the norm in international trade of agricultural products. Protectionism is a manifestation of State intervention in the economy. The protectionism debate returns with strength at times of major economic downturns or crisis. Currently, there is a broad consensus that excessive protectionism only serves special interest groups. On the other hand, there is no such clear understanding that rapid market liberalization results in economic growth.⁴⁰

lower production costs, if they want to survive (Levins & Cochrane, 1996, 550).

37 Carsten Daugbjerg & Alan Swinbank, *Ideas, Institutions, and Trade - The WTO and the Curious Role of EU Farm Policy in Trade Liberalization*, 10 (Oxford University Press, Oxford, 2009).

38 Wyn Grant, Economic patriotism in European agriculture. *Journal of European Public Policy*, 423, 19:3, 420-434 (2012). <http://dx.doi.org/10.1080/13501763.2011.640797>

39 Carsten Daugbjerg & Alan Swinbank, Op. cit., 10.

40 Joseph E. Stiglitz, Is there a Post-Washington Consensus Consensus? In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 55 (Oxford Scholarship Online, 2008) <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

B. Economic regulation after the Washington Consensus

Neo-liberal economic policies proposed market liberalization, which in Latin America was implemented as a result of the Washington Consensus in the 1980s. Trade and capital market liberalization were the central issues of the Washington Consensus, launched by multilateral agencies such as the International Monetary Fund and the World Bank. Market liberalization was accompanied by a set of complementing actions such as privatization, deregulation, and downsizing of government. The market fundamentalism of the Washington Consensus was based on a theory of market economy that assumed perfect information, perfect competition, and perfect risk markets.⁴¹

The failures of the Washington Consensus were clear at a very early stage of its implementation. The liberalization of capital markets resulted in volatility of international capital markets. Macro stability policies based mostly on price stability brought stagnation of economic growth. Applying one-size-fits-all policy patterns through shrinking public administration weakened government institutions. Ignoring distribution concerns resulted in growing inequality.⁴² Means were confused with ends as was the case of privatization and liberalization.⁴³

As stated by Stiglitz, the post-Washington Consensus is equal to a lack of consensus.⁴⁴ A growing number of scholars and policymakers agreed on the necessity to consider equity and long-term sustainable growth as broader goals for macro-economic policy. They proposed to balance the role of market and government; widen the range of economic policy tools and

41 Joseph E. Stiglitz, *Making Globalization work*, Op. cit. 28.

42 John Williamson, who originally wrote down the list of ten reforms, in his paper "What Washington Means by Policy Reform", which constituted the base document of the latter called Washington Consensus, did not include monetarism, supply-side economics, neither minimal government in his concept. John Williamson, *A Short History of the Washington Consensus*. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 17 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

43 Joseph E. Stiglitz, *Is there a Post-Washington Consensus Consensus?* Op. cit., 42-54.

44 *Ibid.*, 42.

advocate for prudential regulation; and propose democratic global governance.⁴⁵⁴⁶

For Latin America, José Antonio Ocampo identified three major issues to be considered in relation to contemporary economic policies: social equity, State construction, and democracy building. Ocampo recognized that the implementation of economic policies based on the Washington Consensus revived the historic tensions between liberty of enterprise and social equity. Therefore, a new policy paradigm became necessary to offer real solutions to the problem of social inequity, the “principle historical debt” of public policies in Latin America. The fragile process of State construction has also been jeopardized by the implementation of neo-liberal economic policies, which promoted a minimum State.⁴⁷ According to Ocampo, the construction of democracy in contemporary Latin America depends on the possibility to bring together an “economy that respects elections and democratic control” and a “democracy that does not forget about the economic rules.”⁴⁸

This affirmation analyzed the relationship between economy and regulation. It was widely accepted that policy decisions affect the welfare of agents as well as their behavior.⁴⁹ The neo-classical theories of regulation, such as the normative-rational of regulation, supposed that government intervenes when market fails to maintain unrestricted competition. On the other hand, the

45 Narcís Serra, Shari Spiegel & Joseph E. Stiglitz, Introduction: From the Washington Consensus Towards a New Global Governance. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 12 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

46 These principles were included in the Barcelona Development Agenda signed by a group of economists from developing and developed countries including: Paul Krugman, Deepak Nayyar, José Antonio Ocampo, Dani Rodrik, Jeffrey D. Sachs, and Joseph E. Stiglitz. Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 54 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

47 José A. Ocampo, Los paradigmas del desarrollo en la historia latinoamericana. In Machinea, José Luis, Iglesias, Enrique y Altimir, Óscar (Eds.) *Hacia la Renovación de los Paradigmas del Desarrollo en América Latina*, 25 (Cepal-Segib, Santiago, 2008).

48 Ibid., 26.

49 Viscousi W. Kip, Joseph E. Harrington & John M. Vernon, *Economics of Regulation and Antitrust*, 357 (MIT Press, Boston, 2005).

Stigler/Peltzman model supposed that regulation redistributes wealth in a system where interest groups compete to influence regulators, who in turn are interested in remaining in office.⁵⁰ Picciotto argued that the result of globalization is a corporatist economy, as opposed to the classical understanding of a market economy. That way, regulation takes place in a system where State and economy are “intricately interrelated”, especially in the “definition and allocation of property rights” and through the “extensive state support and interventions in determining investment and profit rates.”⁵¹

According to the central thesis of Stiglitz,⁵² markets alone are not efficient. He raised the question whether government actions can improve this situation. He argued that the State must be balanced, in order to complement markets. In economically successful countries, the State is not a minimum State but it takes up an ample set of roles becoming a “developmental state.”⁵³ The concept of “developmental state” is the result of a “comprehensive approach to development” based on “the right mix of government and market.”⁵⁴ This balance must be found separately for each country at its particular stage of development. There is a general agreement that governments need to be involved in providing “basic education, legal frameworks, infrastructure, and some elements of a social safety net, and in regulating competition, banks, and environmental impacts.”⁵⁵ On the other hand, it is in the discretion of each State to get involved in additional activities if necessary. Stiglitz also emphasized, that it is the “responsibility of the countries” to take advantage of their own resources and opportunities. That way, he stated that the major decisive factor in how well a country can progress depends on its private and public institutions, which is

50 Ibid., 382.

51 Sol Picciotto, *Regulating Global Corporate Capitalism (International Corporate Law and Financial Market Regulation)*, 441(Cambridge University Press, Cambridge, 2011).

52 Joseph E. Stiglitz, *Making Globalization work*, Op.cit., 29.

53 Joseph E. Stiglitz, Is there a Post-Washington Consensus? Op. cit., 55.

54 Joseph E. Stiglitz, *Making Globalization work*, Op.cit., 48.

55 Ibid., 49.

closely related to how decisions are made and in whose interests, which Stiglitz also defined as “governance.”⁵⁶

C. Trade, Inequality and Poverty

As stated before, the Washington Consensus did not consider the topic of inequality. There was a general belief that macro-economic stability and economic growth will spread income in the society.⁵⁷ Trade liberalization was expected to have an equalizing effect in developing countries, “because labor-abundant countries would export labor-intensive goods and import capital-intensive goods, raising wages while depressing returns on other factors.”⁵⁸

Krugman argued⁵⁹ that there is a huge difference on the level of inequality between newly industrialized economies in Asia (European levels of inequality) and Latin American countries. The level of inequality is so high in Latin America that a “modest degree of redistribution could produce large percentage income gains at the bottom.” Answering the question why trade-related market liberalization did not result in more equilibrated economic growth, he applied a Heckscher-Ohlin analysis, and argued that import-substituting industrialization did not shift factors from labor-intensive exports to capital-intensive import competing industries. But it shifted factors from resource-intensive export industries and nontrade goods to labor-intensive import competing industries. It had some income distribution equalizing effect before market liberalization but resulted un-equalizing once markets were open.⁶⁰ He concluded that the solution is not

56 Ibid., 54-55.

57 Paul Krugman, Inequality and Redistribution. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 32 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

58 Ibid., 28.

59 Ibid., 33.

60 Ibid., 39.

“inward-looking import-substituting policies” but “deliberate policies to help the poor, not a reversal of liberalization.”⁶¹

Inequality is not the same as poverty, although both phenomena are simultaneously present in Latin American societies. Inequality describes the gap between income groups; poverty describes the situation of the lowest income or without income groups. As McCulloch, Winters, and Cirera argued⁶² poverty is not the direct result of international trade. The underlying direct reasons of poverty are the “lack of assets, poor access to communal resources and public services, geographical isolation, poor health and education, powerlessness, and vulnerability.” The recommendation of the authors was to carry out “sequenced” trade liberalization in order to mitigate possible adverse effects on poverty. It can even require “complementary and sometimes compensatory policies” dealing with “transport and communications infrastructure, market facilitation, competition, education, and governance.” It is important to make sure that the aggregate gains of trade liberalization can be used to benefit the poor. The recommendation of the authors was “to protect social expenditure and ensure appropriate targeting of the poor”, “without undermining their incentives to adjust.”⁶³ Finally, Khor also argued⁶⁴ that in most developing countries, terms of trade decline; as these countries are major exporters of primary commodities with declining prices, measured against manufactured product prices. That way, the problem of developing countries is not their lack of integration into the world trade system, but how they participate in international trade relations, which contributes to preserve poverty in these countries.

61 Ibid., 40.

62 Neil McCulloch, Alan Winters L. & Xavie Cirera, Op. cit., 6.

63 Ibid., 12.

64 Khor described the tendency of primary commodities as declining. On the other hand, currently the tendency of primary commodity prices can be better described as fluctuating. Martin Khor, *The World Trading System and Development Concerns*. In Stiglitz, Joseph E. (Ed.) *The Washington Consensus Reconsidered: Towards a New Global Governance*, 218 (Oxford Scholarship Online, 2008). <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199534081.001.0001/acprof-9780199534081>

III. POLITICAL PROCESSES – STATE AS KEY POLICY ACTOR

The above-explained economic processes analyzed theories applicable to describe the broader economic framework of Colombian trade-related market liberalization. On the other hand, this economic framework is interlinked with the political processes of contemporary societies. In a globalized world, all actors, as well as their social spheres, are multilinked. Nevertheless, it is difficult to point out precisely the actual dimensions and effects of these ties. The theories here presented describe these relations, with special interest to rescue the State as key policy actor of contemporary societies.

A. World risk society

Ulrich Beck⁶⁵ identified modern societies as world risk societies. Modern society “is increasingly occupied with debating, preventing, and managing risks that it itself has produced.” According to Beck, the new world risk society can be understood only through a cosmopolitan narrative. Cosmopolitan social science must break up with the “national mystification of societies and political order” (which is equal to methodological nationalism).⁶⁶ Ulrich Beck distinguished between first and second ages of modernity. The first age of modernity is based on the “coincidence” of society and State, the nation-state being a “container” of society. These “state-social identities” are transformed as a result of the globalization in the second age of modernity. In the new “world society” there are new power and social spaces, where the traditional links of politics and the society are modified⁶⁷ suggest-

65 Ulrich Beck, Living in the world risk society. A Hobhouse Memorial Public Lecture given on Wednesday 15 February 2006 at the London School of Economics. *Economy and Society*, 35, 332, 3, 329-345 (2006). <http://hudson2.skidmore.edu/~rscarce/Soc-Th-Env/Env%20Theory%20PDFs/Beck--WorldRisk.pdf>

66 Ulrich Beck, Toward a New Critical Theory with a Cosmopolitan Intent. *Constellations*, 10, 4 (Blackwell Publishing Ltd. 2003). <http://www.public.iastate.edu/~carlos/607/readings/beck.pdf>

67 Ulrich Beck, *Qué es la globalización. Falacias del globalismo, respuestas a la globalización*, 99-100 (Paidós, Buenos Aires, 2004).

ing that “cosmopolitan real politik” is a political alternative for the globalized world. Cosmopolitan political realism is based on five basic principles: 1) no nation can master its problems alone; 2) global problems give rise to transnational commonalities; 3) international organizations are different to national politics; 4) there is a global division of power with global public consensus; and 5) no uneconomic unilateralism.⁶⁸

B. Denationalized State as Institutional Domain and the Global Social Actors

Saskia Sassen shared the rejection of Beck of a nation-state perspective for the study of globalization,⁶⁹ although she emphasized the importance of considering national institutions. Sassen⁷⁰ proposed a research agenda for the sociology of globalization where “global –whether an institution, a process, a discursive practice, an imaginary both transcend the exclusive framing of national States, and also partly emerges and operates within that framework.” She further argued that global and national are not exclusive concepts. According to Sassen, national institutions can become at least partly “denationalized” as a result of the globalization process. It is the “incipient de-nationalizing” of national institutions when they become “home of the operational rules of the global economic system.”⁷¹ That way, the State is a “strategic institutional domain” where the globalization process takes place in human societies, resulting in significant changes to the State itself. Notwithstanding, in the analysis of Sassen, the nation-state is not declining but it is rather transformed.

68 Ulrich Beck, *Critical Theory of World Risk Society: A Cosmopolitan Vision. Constellations*, 16, 1, 18-19. (2009). <http://www.ulrichbeck.net-build.net/uploads/constellations.pdf>

69 Ulrich Beck, *Qué es la globalización. Falacias del globalismo, respuestas a la globalización*, Op. cit.

70 Saskia Sassen, *The global inside the national. A research agenda for sociology*, 1 (2010). <http://www.saskiasassen.com/PDFs/publications/the-global-inside-the-national.pdf>

71 Saskia Sassen, Excavating Power, in search of Frontier Zones and New Actors. *Theory, Culture & Society*, 165, 17(1), 163-170 (2000a). <http://www.saskiasassen.com/PDFs/publications/Excavating-Power.pdf>

The possibility of interaction of the nation-state with the global economy has deep political implications.⁷² According to Sassen, the nation-state has negotiating capacities with the global actors. The nation-states are not obliged to subject their agendas to the will of the global actors. The question Sassen⁷³ asked was about how to recover the zone of action for the nation-state. To answer this question, it is essential to open the discussion about actors in the globalization process. Globalization results in global social actors. Yet, these global social actors have growing influence on the globalization process. Multinational enterprises, global non-governmental organizations (NGO), are new global social actors, whereas multilateral organizations have a changing global role. In the Westphalian political system, political actors were defined by a democracy concept based on the system of sovereign nation-states. As argued by Saskia Sassen,⁷⁴ in the classical nation-state set-up citizens through direct and indirect representation participated in the national political agenda setting. In the globalized world society, globalized actors influence transnational agendas, which result in de-nationalized agendas. Furthermore, Sassen also analyzed the political possibilities of local resource-poor organizations and individuals, and drew the attention to the “multi-scalar politics of the local”, whereas local actors develop direct relationship with other local actors in the same country or across borders. It is a new political space created by the globalization process, where the networks of disfavored social groups strengthen their political representation.⁷⁵

72 Ibid., 164.

73 Ibid., 166.

74 Saskia Sassen, The state and economic globalization: Any implications for international law? *Chicago Journal of International Law*, 1, Research Library, 113, 109 (2000b). <http://www.columbia.edu/~sjs2/PDFs/state.econgloalztzn.internatlaw.2000.pdf>

75 Saskia Sassen, Globalization or denationalization? Editor's Note. *Review of International Political Economy*, 10-11, 10:1, 1-22 (2003b). <http://www.saskiasassen.com/PDFs/publications/Globalization-or-Denationalization.pdf>

C. Reflexive Justice

Globalization is Janus faced. It generated economic growth, while it also resulted in deepening social inequality between developed and developing countries, and within societies.⁷⁶ As Amartya Sen argued:⁷⁷

A crucial question concerns the sharing of the potential gains from globalization [...]. It is not sufficient to understand that the poor of the world need globalization as much as the rich do; it is also important to make sure that they actually get what they need.

Sen raised the question of global justice. According to him, the central issue of the debate is not the globalization or the use of the market as an institution, but rather “the inequity in the overall balance of institutional arrangements, which produces very unequal sharing of the benefits of globalization.”⁷⁸ Sen stated that the social, political, and economic opportunities of a person limit and restrict his/her “liberty of agency.” Therefore, individual liberty must be understood as a social commitment, whereas fundamental instrumental liberties are the economic opportunities, political liberties, social services, guaranties of transparency, and protective security.⁷⁹ Therefore, the focal point of development must be liberty.⁸⁰ There is a reciprocal relationship between deprivation or lack of economic liberty and social/political liberty.⁸¹ As argued by Sen, the importance of political liberty is the opportunity to discuss and debate, and participate in the choice of the underlying values to establish priorities.⁸² Democracy must be conceived as the creation of opportunities. Democracy is not a remedy that directly cures the

76 Joseph E. Stiglitz, *Making Globalization work*, Op. cit. Chapter 1.

77 Amartya Sen, *How to judge Globalism. The American Prospect. Globalism and Poverty*, A4 (2002). <http://prospect.org/article/how-judge-globalism>

78 Ibid., A6.

79 Amartya Sen, *Desarrollo y libertad*, 16 (Planeta, Bogotá, 2000).

80 Ibid., 21.

81 Ibid., 25.

82 Amartya Sen, *Desarrollo y libertad*, Op. cit., 49.

problems. Democracy provides the opportunities, which must be used positively to receive the desired effects.⁸³

Nancy Fraser further discussed the question of justice and globalization. She titled⁸⁴ this debate as “abnormal justice”, considering that in the globalized world the nation-state as an ordering factor lost its influence. She identified rival conceptions regarding the three dimensions of justice; what, who, and how: 1) regarding what is justice? It can be redistribution, recognition, or representation; 2) regarding who defines justice? Concepts can be applied such as Westphalian order, local-community, or global-cosmopolitan based vision; and 3) regarding how to define justice? She analyzed ways through hegemonic, elitist, popular, and democratic means.⁸⁵ To address these questions, Fraser proposed⁸⁶ the theory of reflexive justice. According to Fraser, the normative general principle of justice must be the parity of participation. According to this principle, justice requires social pacts, where all human beings participate as peers in social life. Yet, the challenge is to abolish the institutional obstacles that impede this participation on equal bases.

D. Participation and Public Sphere

The theory of reflexive justice raised the question of decision-making and participation. Traditionally, John Rawls divided the decision-making arena in two: 1) public political forum, and 2) background culture, which is equal to the division between state and civil society. Legitimate law is created in a process of representative democracy. According to Rawls,⁸⁷ the legitimacy of law was linked to public reason: “on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason”; and “all reasonable citizens

83 Ibid., 194.

84 Nancy Fraser, *Escalas de justicia*, 100 (Herder, Barcelona, 2008).

85 Ibid., 110-111.

86 Ibid., 117, 139.

87 John Rawls, The Idea of Public Reason Revisited. *The University of Chicago Law Review*, 768, 64, 3, 765-807 (1997). <http://www.jstor.org/stable/pdfplus/1600311.pdf>

think of themselves ideally as if they were legislators following public reason.” Legitimate law is “the legal enactment expressing the opinion of the majority.” Nevertheless, Rawls was also clear that something that is legitimate “may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such.” In that sense, one of the weak points of Rawl’s theory on public reason was that citizens were well-informed observers and/or supervisors of State institutions. That way, the State still remained separated from society.

The discussions about public sphere referred back to the problem of the participation of citizens in the decision-making process. The theory of public sphere was developed in a nation-state context by Jürgen Habermas⁸⁸ who also discussed the changes of this public sphere related to the modifications of the nation-state itself.⁸⁹ Habermas advocated⁹⁰ that modern societies maintain their cohesion based on money, administrative power, and solidarity. Solidarity is the “every-day communicative action”, “routines of understanding”, “orientation by values and norms”, and “possibly argumentation-based discussions, which are produced in the public sphere.” Solidarity cannot be “conserved in legal structures” but it must be “self-generated from contexts of the life-world.”⁹¹ The “imperative” of Habermas was to create “relations honorable to men” where “a tolerable and acceptable balance can be established between money, power, and solidarity.” The liberal public sphere needed a “web of free

88 Jürgen Habermas explained the theory of public sphere in his 1962 book titled *The Structural Transformation of the Public Sphere*, which was further developed in his landmark publications of *The Theory of Communicative Action* (1981) and *Between Facts and Norms* (1992).

89 Jürgen Habermas, *A Berliner Republic* (1995), in Spanish translation *Más allá del Estado nacional* (1997).

90 Jürgen Habermas, *Más allá del Estado nacional*, 114 (Editorial Trotta, Madrid, 1997).

91 Habermas developed the concept of “life-world” in his text *Theory of Communicative Action*. As analyzed in a comparative manner by Baxter, “communicative action, he (Habermas) acknowledges, takes place within a social context - a context that he, following Schutz and phenomenological sociology, calls the “life-world.” The phenomenological tradition has conceived of the life-world as the “horizon” within which individuals seek to realize their projected ends.” Hugh Baxter, *System and Life-World in Habermas “Theory of Communicative Action.”* *Theory and Society*, 46, 16, 1, 39-86 (1987). <http://www.jstor.org/stable/pdfplus/657078.pdf?acceptTC=true>. That way, the “life-world” is the social background of the communicative action.

associations”, “a domesticated media power”, “political culture of people accustomed to freedom”, and a “possibly rational representation of the life-world.”⁹² Nancy Fraser further developed the concept of public sphere in the globalized world. She argued that⁹³ the public sphere is much more than a “description of communication flows.” It is a contribution to the critical theory of democracy. The public sphere is a place designed for the “communicative formulation of public opinion.” The organized public opinion becomes a political force in the public sphere. The “publicity” of the opinion of the civil society obliges public authorities to respond and guarantee that the actions of the State express the desire of the citizens. These two elements provide the “normative legitimacy” and “political efficacy” of the public sphere. Fraser⁹⁴ raised the question of how to understand the functioning of the public sphere in the globalization, where the national limits of the elements of a public sphere, as identified by Habermas –citizens, nation-states, national economies, national media, common language are blurred. She concluded⁹⁵ that the guiding principle of the public sphere in a globalized world is the “all-subjected principle.” That way, a group of people become members of a public sphere, not because of their shared citizenship, but of “being subjected to the same governing structure”, which determines the “rules of their interaction.” As regards participation, Ronald Dworkin analyzed the possibility of a new political debate to construct public argument starting from the common ground of a distinct philosophical level: the “twin principle of human dignity.”⁹⁶ He differentiated between majoritarian and partnership views of democracy. Democracy is a substantial ideal under the partnership concept, whereas the majoritarian democracy is a “mere weight of numbers” that “contributes nothing of value to a political decision.” The pro-

92 Jürgen Habermas, *Más allá del Estado nacional*, 156 (Editorial Trotta, Madrid, 1997).

93 Nancy Fraser, Op. cit, 146.

94 Ibid., 150-151.

95 Ibid., 179.

96 Ronald Dworkin, *Is Democracy Possible Here? Principles for a new political debate*, 127 (Princeton University Press, Princeton and Oxford, 2006).

cedural implications of partnership democracy require political institutions based on two basic principles: equal concern and self-government. He also stated that there is a need for a “more elaborate account that tells us what conditions must be met and protected in a political community before majority rule is appropriate for that community.”⁹⁷ In this line of ideas, Amartya Sen analyzed the content of democracy through the concept of “government by discussions.”⁹⁸ He also got to the conclusion that “economic performance, social opportunity, political voice, and public reasoning are all deeply interrelated.” Therefore, in current democracies, in fields where political and social voice is more firmly used, there are important signs of social change.⁹⁹

E. The State as policy actor in Latin America

The final point of reference in the present explanation of contemporary development of society as a political process is about the State as policy actor. The analytical approach of the present article is that the responsible policy actor is the State in Latin America. The State must be understood in its relationship with the other policy actors. In general, the State is democratic, when it can act as an arbitrator to balance different interests and interest groups in a rather homogenous political structure. On the other hand, the State is coopted¹⁰⁰ when certain interests or interest groups manage to dominate the State, which is the case in most Latin American countries, including Colombia. This cooptation of the State enhances the State paradox; this is to say, in certain issues the State acts strongly and in others weakly in a heterogeneous way. As argued by Fernando Henrique Cardoso and Enzo Folleto, the sociological problem of development in Latin America at the beginning of the new republics after their independence was that for the establishing of the nation-state,

97 Ibid., 143.

98 Amartya Sen, *The idea of justice*, 324 (The Belknap Press of Harvard University Press. Cambridge, Massachusetts, 2009).

99 Ibid., 350.

100 The coopted State is also called as oligarchic State in the literature.

the political centers needed to achieve certain autonomy from the traditional markets, which maintained colonial relations with respect to the foreign markets.¹⁰¹ According to Manuel Castells, the State was historically weak in Latin America, and was built on an alliance between urban sectors and organized labor through populist or democratic but always clientelistic States (Colombia is the example of the latter). The policies of Cepal were adjusted to the requirements of this developmental, national-popular State.¹⁰² Therefore, the State gained importance in the import-substitution system as it transferred profits from the export sectors towards national industry and directly participated in the economy through public investment.¹⁰³

The political clientelism in Colombia is explained by Edgar Revéz as the peculiar relationship between the State and other political actors. According to Revéz, certain “ethical values” such as concession, war, public works, reliable payer, and cooptation created and consolidated a “contractual relationship” between fractions of the State and certain economic and social groups and forces.¹⁰⁴ The competition for privileges in Colombia between defined groups, that normally represent certain regional interests, resulted in “meso-contracts” with fractions of a divided State. These meso-contracts are ad-hoc and provide a “privileged access” to instruments of economic and social policies, which result in a coopted economy.¹⁰⁵ This fragile system was interrupted by the 1970s with the boost of sub-cultures such as the guerrilla groups,¹⁰⁶ whereas the violence in Colombia was also the result of the meso-contracts.¹⁰⁷ Therefore, the cooptation of

101 Fernando E. Cardoso y Enzo Falleto, *Dependencia y desarrollo en América Latina: ensayo de interpretación sociológica*, 29(Siglo XXI Editores, México, 1986).

102 Manuel Castells, *Globalización, identidad y Estado en América Latina*, 13 (PNUD Temas de Desarrollo Humano Sustentable, Santiago de Chile, 1999). <http://www.desarrollohumano.cl/otraspub/Pub01/Idyest.pdf>

103 Fernando E. Cardoso y Enzo Falleto, Op. cit., 104.

104 Édgar Revéz, *Democratizar para sobrevivir*, XI (Poligrupo Comunicación, Bogotá, 1989).

105 Ibid., X.

106 Ibid., XI.

107 Ibid., 2.

the State was simultaneously the result and the generating cause of a weak State.

Luis Jorge Garay further analyzed the topic of cooptation and introduced the concept of Coopted Reconfiguration of the State. According to Garay, in Colombia illegal groups aimed not only to coopt certain economic sectors (in the sense of Revéiz) but intended to control the State as such.¹⁰⁸ On the other hand, the State is such a complex system that Coopted Reconfiguration of the State seems to be impossible; notwithstanding, these illegal intents result in corruption and the deterioration of the fragile State institutions.¹⁰⁹ As argued by Castells, the State in the 1990s took the role of agent of globalization and detached from its traditional (corporatist) social bases.¹¹⁰ Once the State took the role of modernizer in the 1990s, it used its traditional supports to break the privileges of exactly these traditional sectors. Castells considered that the situation was somewhat different in Colombia, where the influential sectors were strong enough to stop liberalization, which resulted in a chaotic situation of formally liberalized economy directed towards foreign consumption with the maintenance of corporatist interests. For this reason, the political class was in a swing between liberalization and the preserving of the traditional State that resulted in a decomposition of the Colombian State itself.¹¹¹

Other authors, such as Cesar Attilio Ferrari, argued that the market liberalization implemented by the Colombian State in the 1990s was the answer to the pressure of middle classes that wanted access to manufactured goods at international prices, in a context where all other Latin American countries were opening and liberalizing their markets. Nonetheless, this liberalization process remained unfinished regarding fiscal discipline, public

108 Luis J. Garay Salamanca; Eduardo Salcedo Albarán; Isaac de León-Beltrán y Bernardo Guerrero, *La captura y reconfiguración cooptada del Estado en Colombia*, 94-95 (Grupo Método Transparencia por Colombia Fundación Avina, Bogotá, 2008). http://moe.org.co/home/doc/moe_mre/CD/Otros%20mapas%20y%20documentos/Captura%20y%20Reconfiguraci%F3n%20Cooptada%20del%20Estado%20Colombiano.pdf

109 Ibid., 78.

110 Manuel Castells, Op. cit. 12.

111 Ibid., 14.

expenditure (health care, education, and infrastructure), tax reform, and the liberalization of services, especially telecommunications and the financial sector, which remained protected from foreign suppliers. The latter, resulted in high financial costs and high prices for other crucial services for the whole economy, being one of the strongest impediments of contemporary economic development.¹¹² The former is transparent through the huge profits that are generated in these sectors, an expression of economic uncompetitive rents. In this respect, Ferrari also argued that the main motive for the development of economic theories has been always the fight against rentism in society¹¹³. Luis Javier Orjuela described the Colombian State in the 1990s as a weak State. He considered that the Colombian State was pre-modern, based on clientelism, resulting in a dysfunctional public administration. The State was weak because it did not even exercise a legitimate monopoly in the national territory, therefore, it was incapable to mediate or channel conflicts in the society.¹¹⁴ According to Orjuela, in the 1990s there were two conflicting State projects present in Colombia. One was represented by the Constitutional Assembly, which was based on an ample social concept, and required to strengthen the State and to increase public expenditure. The other, the neo-liberal State concept was represented by the National Development Plan of the Gaviria government, which intended to reduce the State. Furthermore, Orjuela observed that in Colombia political and economic elites were fragmented, therefore, there was no social agreement between these social forces. In this situation, Orjuela

112 César A. Ferrari, *Finanzas y microfinanzas para el desarrollo. Libros de desarrollo económico*, 23 (Alcaldía Mayor de Bogotá D. C. Secretaría de Desarrollo Económico, Dirección de Estudios Socioeconómicos y Regulatorios, Bogotá, 2012).

113 César A. Ferrari, Años de turbulencia: crisis global, consecuencias múltiples. In Cante, Freddy, Franco Beatriz (Eds.) *Renovadas formas de hacer oposición*, 40 (Editorial Universidad del Rosario, 2013).

114 Luis J. Orjuela Escobar, El Estado Colombiano en los noventa: entre la legitimidad y la eficiencia. *Revista de Estudios Sociales*, 1, 2 (1998). <http://res.uniandes.edu.co/view.php/28/index.php?id=28>

proposed that the Colombian State had to regain its political character as opposed to the ongoing privatization of the State.¹¹⁵

Furthermore, in Colombia the development of the State in the last 50 years had to be understood within the context of the armed conflict. As argued by Fernán Enrique González González, the lack of general economic opportunities worsened by the lack of institutions to regulate transformations resulted in the “informalization of social relations.”¹¹⁶ Therefore, the surging new violence from the 1970s (aggravated by the illicit drug economy), “erased the borderline between political and non-political violence”, making violence even more difficult to erase or even tackle.¹¹⁷ In that sense, Ana María Bejarano and Eduardo Pizarro described the Colombian State as the co-existence of “proto-states” led by left wing guerrilla and right wing auto-defense groups, resulting in a partially collapsed central State.¹¹⁸

Guillermo O'Donnell argued for a strong and wide State based on citizens with conscience and organized civil society to balance the negative consequences of the globalized market and to sustain democracy.¹¹⁹ On the other hand, this type of State does not exist in Latin America, while the globalization is deeply affecting these societies without a State to “domesticate” globalization. In this situation possibilities are low to achieve such a strong and wide State. That way, the role of the State is limited to adjust minor technical details of market functioning. In such a system there is no place for politics, which would be the search through dialog and conflict to approach acceptable and respectable versions of the common good.

Boaventura de Sousa Santos went further in this analysis. He explained that at the time of reformism (from the beginning of

¹¹⁵ Ibid., 5.

¹¹⁶ Fernán E. González, *Para leer la política. Ensayos de historia política colombiana*, 68 (Cinep, Bogotá, 1997).

¹¹⁷ Ibid., 69.

¹¹⁸ Luis J. Orjuela Escobar (Ed.), *El Estado en Colombia*, 392 (Universidad de los Andes, Bogotá, 2010).

¹¹⁹ Fernando Carrillo Flórez (Ed.), *Democracia en déficit. Gobernabilidad y desarrollo en América Latina y el Caribe*, 108 (Banco Interamericano de Desarrollo, Washington D. C., 2001).

the 20th century), social forces used the State as a tool to introduce social transformation (through the welfare state and developmental state). The reformism articulated the three strategies of the State: accumulation, hegemony, and confidence. On the other hand, the Washington Consensus proposed a weak State. Nonetheless, this new State is weak only in its strategies of hegemony and confidence, while it is strong on its central strategy of accumulation, attending the interests of global capitalism.¹²⁰ In addition, the weak State is not a secondary effect of the globalization. It is the result of a political process that intends to adjust the role of the State to the necessities of the globalization. Currently, the question is again the reform of the State. De Sousa Santos called this period as the “reinvention of the State”, which includes two opposing concepts: the “State-as-business” and the “State as new social movement.” The “State-as-business” concept is based on the privatization of all non-exclusive functions of the State.¹²¹ The opposing concept of “State as new social movement” was developed by de Sousa Santos, based on the necessity to attend non-commercial interests in the society. For this reason, the democratic forces must fight for a redistributing democracy and convert the State into a component of the non-state public space.¹²² In this participatory democracy, the State is an “articulator”, which lost the monopoly of governance but conserves the monopoly of meta-governance, the articulation of the new political organization.¹²³

Finally, looking at the contemporary State in Latin America, José Antonio Ocampo argued that it is necessary to find a new equilibrium between market and public interest.¹²⁴ Ocampo divided the functions of the State in two groups: 1) that guarantees

120 Boaventura de Sousa Santos, *La caída del Angelus Novus ensayos para una nueva teoría social y una nueva práctica política*, 247 (Universidad Nacional de Colombia, ILSA, Bogotá, 2003).

121 Ibid., 263.

122 Boaventura de Sousa Santos, *Reinventar la democracia. Reinventar el Estado*, 49 (Ediciones Abya-Yala: Instituto Latinoamericano de Investigaciones Sociales-ILDIS: Friedrich Ebert Stiftung, Quito, 2004).

123 Ibid., 50.

124 José A. Ocampo, *Reconstruir el futuro. Globalización, desarrollo y democracia en América Latina*, 167 (Grupo Editorial Norma, Bogotá, 2004).

the appropriate functioning of the market, and 2) that guarantees the consistency between the functioning of the market and social cohesion, the latter having its essential function to provide adequate participation in decision-making processes.¹²⁵ In that sense, public policies are more than actions of the State. Public policies are all organized action in order to achieve objectives of common interest. That way, public is rather the meeting point of common interests than the sole activity of the State. Nevertheless, in public policies the natural leadership is of the State.¹²⁶

125 Boaventura de Sousa Santos, *Reinventar la democracia reinventar el Estado*, Op. cit., 169-170.

126 Ibid., 171.

CONCLUSIONS

As demonstrated in the present article the failures of rulemaking in Colombia are rooted in economic and political processes. At the same time, these economic and political processes are a lot in common in contemporary societies, especially in Latin-America. Mismanaged market liberalization and the resulting weak State impede the development of democratic rulemaking. There is an urgent need to resolve the crisis of the co-opted State, which pushes the society towards an even deeper crisis of democratic rulemaking. The proposed theory of the globalized nation-state proposes a solution based on the participation of all policy actors in rulemaking. The implementation of the Peace Agreement is the precise political moment in Colombia to demonstrate that it is possible. Moreover, it is very possible that missing out this opportunity can impede finding the way towards the pacification of the Colombian society.

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