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# **Governing the Poor in Contemporary Colombia**

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## **Declaration**

I hereby declare that this thesis is my own work, except where acknowledgement is given to outside sources. It is submitted to the University of Warwick in support of my application for the degree of Doctor of Philosophy (PhD) in Law. It has been composed by myself and has not been submitted for a degree at another university.

## **Abstract**

This thesis sheds light on the complexities, particularities, contradictions, ruptures and continuities of the government of poverty in neoliberal times in Colombia. Drawing on the analytical perspective of governmentality and through a close reading of legal documents and policy papers, the thesis explores the ways in which poor populations are governed in neoliberal times. The inquiry is situated at the crossroad of debates about the strategies and effects of welfare reforms pursuant to neoliberal governmentality, discourses and mechanism of poverty alleviations spread in the Global South since the 1990s, and new directions of development discourses. The investigation is conducted through an examination of three distinct but inter-related scenarios of poverty regulation: a conditional cash transfers programme directly managed by the Colombian Presidency involved in counterinsurgent strategies, a constitutional amendment which entrenched austerity rules in the legal system with the aim of preventing the judicial enforceability of social and economic rights, and a general strike in the richest port but poorest city of Colombia (Buenaventura) where violence is deployed to neutralise the political agency of poor populations in order to enable the expansion of the port. The focus of attention is on the discourses, technologies, techniques and rationalities of government deployed in each instance, as well as the heterogeneous and sometimes contradictory subjectivities that programmes of government attempt to constitute. At the core of this thesis is the poverty-(in)security nexus. The chapters illustrate how managing and neutralising the agency of the poor has been central to securing the social, political and economic order that neoliberal governmentality seeks to create. The government of the poor is therefore a project of security: on the one hand, it endeavours to secure an order based on competition, stability and investor's security. On the other, the

management of the poor relies on a logic of security whereby coercive and non-coercive strategies are articulated. Yet coercive and authoritarian technologies prevail, confirming the authoritarian and coercive nature of neoliberalism. Hence, in contrast with the emancipatory language of current poverty alleviation discourses and their defence of ‘softer’ environmental technologies, in Colombia the government of poverty in recent decades has been intensely invasive and coercive. Overall, the thesis aims to ‘problematise’ the manner in which poverty is produced as a ‘problem’ in neoliberal development discourses and “denaturalise” our conceptions and assumptions about it.



## Abbreviations

AFRODES	Association of Displaced Afro-descendants ( <i>Asociación de Afrodescendientes Desplazados</i> )
Bacrim	Criminal Gangs ( <i>Bandas Criminales</i> )
Colpuertos	National Corporation Ports of Colombia ( <i>Empresa Puertos de Colombia</i> )
CONPES	National Council of Economic and Social Policy ( <i>Consejo Nacional de Política Económica y Social</i> )
ELN	National Liberation Army ( <i>Ejército de Liberación Nacional</i> )
ESMAD	Mobil Anti-riot Squad ( <i>Escuadrón Móvil Antidisturbios</i> )
FARC	Revolutionary Armed Forces of Colombia ( <i>Fuerzas Armadas Revolucionarias de Colombia</i> )
GAO	Organised Armed Groups ( <i>Grupos Armados Organizados</i> )
IMF	International Monetary Fund
OECD	Organization for Economic Co-operation and Development
PCN	Process of Black Communities ( <i>Proceso de Comunidades Negras</i> )
Pladeicop	Integrated Development Plan for the Pacific Cost ( <i>Plan de Desarrollo Integral para la Costa Pacífica</i> )
SISBEN	System of Selection of the Beneficiaries of Social Programmes ( <i>Sistema de Selección de Beneficiarios de Programas Sociales</i> )
SRM	Social Risk Management
UNICEF	United Nations International Children's Emergency Fund

## Introduction

The management of poverty is central to neoliberal governmentality. As Isabel Lorey and Maurizio Lazzarato have suggested, poverty is not only a by-product or an unintended consequence of neoliberalism. It is deeply implicated in how neoliberal governmentality operates. Poverty is a way to govern. For Lazzarato, it is associated with the strategies of insecurity, inequality and individualisation that neoliberalism relies upon to create an enterprise society.<sup>1</sup> Poverty and inequality enable competition. It is also implicated in creating the fear and insecurity which are the “affective base” of the enterprise society. Drawing on Deleuze and Guatari, Lazzarato describes neoliberal government as “micro-politics of insecurity”, for which the ultimate goal is to find “an acceptable equilibrium between different ‘normalities’, those of poverty, precarity or wealth” with the aim of fostering competition and neutralising civil unrest. Similarly, Lorey claims that neoliberalism actively produces poverty and precarity as instruments of government.<sup>2</sup> For her, in current times, “governing proceeds primarily through social insecurity, through regulating the minimum of assurance while simultaneously increasing instability.”<sup>3</sup> Neoliberal government is based on the greatest possible insecurity, but carefully calibrated to prevent insurrection.

It is true that the importance of policing and disciplining the poor for the functioning of capitalism is an old debate. In Marxist scholarship it has been argued for a long time that workers’ insecurity is of significant benefit to capitalism as it encourages wage labour, drives down real wages and neutralises resistance. Moreover, as Marx himself highlighted, the existence of surplus populations or the “industrial reserve army” is central to the functioning

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<sup>1</sup> Maurizio Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' (2009) 26 *Theory, Culture and Society* 109

<sup>2</sup> Isabell Lorey, *State of Insecurity. Government of the Precarious*. (First edn, Verso 2015)

<sup>3</sup> *ibid* 2

of capitalism as it acts as a pressure release on the demands of workers by lowering expectations and creating the threat that workers might be replaced by the unemployed. Yet, the “industrial reserve army” is also a threat to the system as it can become a “reservoir of agitated revolutionaries”. Hence, policing and police thinking has always been concerned with the question of how to discipline and neutralise poor populations.<sup>4</sup> Yet, Lazzarato and Lorey rightly point out that the management of poverty acquires different shades within neoliberal time: besides a return to reflections on how poverty by itself serves the purpose of creating insecurity and fear as means to steer the behaviours of the poor, neoliberal governmentality also relies upon poverty as a mean to foster competition. Neoliberal logic also conceives the management of poverty as an opportunity not only to impose waged labour but also to instil individual responsabilisation for poverty alleviation as well as an entrepreneurial ethos.

This thesis is situated in the midst of and contributes to these discussions. It is about the complex and heterogenous ways whereby poverty is governed pursuant to neoliberal governmental rationality in Colombia. With Lazzarato and Lorey, it shows that both creating poverty and neutralising the poor are central to creating and securing the social, political and economic order that neoliberal governmentality seeks to create: an order based on competition, competitiveness and individual responsibility for social reproduction and material wellbeing, among other factors. In this way, the thesis delves into the relationship between poverty and security, the latter understood in a broad sense as a series of strategies aimed at guaranteeing the functioning and maintenance of a particular type of order. Yet, pursuant neoliberal governmentality, these strategies are rather coercive and authoritarian, in particular when it comes to the poor. In line with these debates, the thesis contributes to

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<sup>4</sup> George S. Rigakos and Aysegul Ergul, 'The Pacification of the American Working Class: A Time Series Analysis' (2013) 9 *Socialist Studies* 167

the exploration of the authoritarian and coercive character of neoliberal rationality and practice as manifested in the management of poverty.

The research is located in Colombia as it offers a good scenario for the examination of the operation of neoliberalism and the government of poor populations pursuant to its logic. On the one hand, Colombia's government – in particular the central government - has been deeply influenced by neoliberal discourses, more than other countries in the region.<sup>5</sup> This is in part associated with Colombia's "consented subordination" to the United States as the Colombian international strategy has focused on deepening the economic and cultural ties with this country since the early 20<sup>th</sup> century.<sup>6</sup> Moreover, the central government is deeply committed to a competitiveness and investment-led model of development, as the national development plans attest to since the late 1980's.<sup>7</sup> On the other hand, the long-standing internal conflict rooted in high levels of inequality and poverty has made the question of neutralising and disciplining the poor central to constituting and securing a different type of order, a neoliberal order of competitiveness and investment-led growth. For more than 50 years, a fight between left-wing guerrilla forces, the state and military and paramilitary groups has affected millions of victims and displaced vast sections of the national population. Recent peace negotiations with the oldest guerrilla group *Revolutionary Armed Forces of Colombia* (FARC for its Spanish acronym) gave some hope that there might be an end to the conflict. However, the widespread assassination of social leaders that has

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<sup>5</sup> Jairo Estrada Álvarez, 'Orden neoliberal y reformas estructurales en la década de 1990. Un balance desde la experiencia colombiana.' (2006) *Ciencia Política* 141; Jairo Estrada Álvarez, *Construcción del modelo neoliberal en Colombia 1970-2004* (Primera edn, Ediciones Aurora 2004); Consuelo Ahumada, *El modelo neoliberal y su impacto en la sociedad colombiana* (Primera edn, El Áncora Editores 1996).

<sup>6</sup> Viviana Garzón Pinzón, *Cooperación y seguridad en la guerra contra las drogas: el Plan Colombia y la Iniciativa Mérida* (Universidad Nacional de Colombia 2015) 99

<sup>7</sup> Presidencia de la República de Colombia and Departamento Nacional de Planeación, *La revolución pacífica. Plan de desarrollo económico y social 1990-1994* (1991); Presidencia de la República de Colombia and Departamento Nacional de Planeación, *El salto social. Plan nacional de desarrollo. Ley de inversiones 1994-1998* (1995); Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2006-2010. "Estado comunitario: desarrollo para todos"*. (2007); Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010-2014 "Prosperidad para todos. Más empleo, menos pobreza y más seguridad"* (2010); Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2014-2018 "Todos por un nuevo país. Paz, equidad, educación"*. (2015)

taken place in the period after the peace agreement, and the recent break of the peace negotiations with the second largest guerrilla group *National Liberation Army* (ELN for its Spanish acronym), have proved the resilience of the conflict. There are many debates about the causes of the internal conflict, with explanations ranging from cultural characteristics and “failed” state-related theories to pure economic interests associated with drug trafficking and other illegal businesses. Nevertheless, most accounts recognise (albeit to different extents) that the conflict is associated with land claims, logics of extraction, inequality and ultimately poverty.<sup>8</sup> Social unrest and violence have increased since the 1990s in association with a number of different phenomena: in the 1980’s Colombia became the main producer and exporter of cocaine. As a result, the government of the United States began to exert greater pressure on the national government in order to trigger military operations against drug trafficking. In the same period, guerrilla groups found new sources of income in drug trafficking-related activities, a phenomenon which strengthened their military presence in the country.<sup>9</sup> Beginning in the 1980’s, Colombia also began to align with the Washington Consensus prescriptions, a process which consolidated in 1991 with the adoption of a new constitution which opened the door to trade and financial liberalisation, privatisation and other neoliberal-oriented reforms.<sup>10</sup> The 1990s also saw dramatic increases in levels of poverty and inequality, in particular following the financial crisis of 1998 which caused many people to lose their jobs and houses. Against this backdrop, the question of neutralising and taming the poor has become central to public and private agendas. Poverty is perceived as a risk for political and economic stability, recast in terms of fiscal discipline, sustainable budgets and competitiveness.

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<sup>8</sup> Lilian Yaffe, 'Conflicto armado en Colombia: análisis de las causas económicas, sociales e institucionales de la oposición violenta' (2011) 8 *Ciencias Sociales* 187

<sup>9</sup> Garzón Pinzón, *Cooperación y seguridad en la guerra contra las drogas: el Plan Colombia y la Iniciativa Mérida*

<sup>10</sup> Estrada Álvarez, *Construcción del modelo neoliberal en Colombia 1970-2004*

The thesis explores how poverty and the poor are governed in contemporary Colombia by focusing on three distinct but inter-related scenarios: a conditional cash transfers programme directly managed by the Colombian Presidency and connected to counterinsurgent strategies, a constitutional amendment which entrenched austerity rules in the legal system with the aim of preventing the judicial enforceability of social and economic rights, and a general strike in the richest port (but poorest city) in Colombia, Buenaventura, where violence is deployed to neutralise the political agency of poor populations in order to enable the expansion of the port. Drawing on the analytical framework of governmentality, it endeavours to unpack the rationalities, techniques, tactics, knowledges and types of subjectivities which compound the complex and heterogeneous regime of the government of poverty since the 1990s. My aim is to denaturalise poverty and show what is taken for granted and what is at stake in the operation of anti-poverty discourses and interventions. The research pays particular attention to the relationship between poverty and security, the latter understood as the maintenance of both public order and an economic order. In the context of this articulation of public and economic order, it is argued that the government of poverty in Colombia has been invasive, disciplinary and coercive.

Overall, the thesis demonstrates the continuity of the two questions that have marked the government of poverty within capitalism: how to harness the poor for economic purposes and how to neutralise them to prevent uprisings and insurrections. Yet, the thesis shows how the answers to these questions are contingent on power relations. In this sense, the research sheds light on localised articulations of the neoliberal government of poverty. Neoliberalism has created a world of great diversity. Neoliberal regimes of government are heterogeneous and hybrid. They combine rationales of government and varieties of means and tactics. Furthermore, they are contested and resisted in different ways depending on the contexts and tactical resources available. Hence, neoliberal regimes bring about different

realities.<sup>11</sup> The contribution of this thesis is to show different shades of neoliberal governmentality, with an emphasis on the government of poverty, by looking at particular interventions in the specific context of Colombia.

A comprehensive exploration of the government of poverty in different sites and scales has not been conducted in Colombia. Mainstream research on the management of poverty in Colombia focuses on policy design, measurement and assessment associated primarily with economic conceptions of poverty. In line with international “expertise” on poverty alleviation, books, articles and policy documents assess anti-poverty initiatives in terms of their efficiency, stressing design and implementation failures. The critical literature consists primarily of political economy analysis which focus on the connections at the level of actors and ideology between programmes and neoliberalism as a political project. Few works rely upon a governmentality analysis, and none of them look at the government of poverty along with other techniques of control. Usually they concentrate on the traditional realms of poverty alleviation: subsidies for the poor and welfare schemes. This thesis contributes to filling this gap by looking at the mentioned before three different sites where the neoliberal government of poverty manifest. Thinking about the government of poverty through these scenarios enables this work to unveil how the poverty-security nexus manifests itself on different scales and in different institutional forms. It allows us to grasp how the neutralisation and pacification of the poor remains a constant concern across scales and spaces.

Overall, this thesis stresses the close relationship between poverty and security within neoliberal governmentality. This connection is especially clear in the case of Colombia due to its long-lasting internal civil conflict and its central government’s strong alignment with

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<sup>11</sup> See James Ferguson, 'The Uses of Neoliberalism' (2009) 41 *Antipode* 166; Mathieu Hilgers, 'The Historicity of the Neoliberal State' (2012) 20 *Social Anthropology* 80; Ananya Roy, 'Introduction. The Aporias of Poverty' in Ananya Roy and Emma Shaw Crane (eds), *Territories of Poverty Rethinking North and South* (Territories of Poverty Rethinking North and South, The University of Georgia Press 2015)

orthodox neoliberal prescriptions. Far from the emancipatory language of current international poverty alleviation discourses, the articulation between poverty and security has resulted in a very intrusive and coercive regime of government. As Lucy Luccisano and Glenda Wall note, it seems that neoliberal interventions are less indirect and soft when it comes to the poor.<sup>12</sup> In this regard, the thesis also contributes to the exploration of the authoritarian and coercive features of neoliberal governmentality. Finally, law is an important tool through which a neoliberal order is pursued. Law emerges in different settings and is implicated in achieving diverse ends, from the criminalisation of the poor to the configuration of particular types of subjectivities. The thesis also sheds light on the role of law in governing the poor and securing a competitive environment. It illustrates how it articulates with other tactics and techniques in the context of neoliberal governmentality, and in this way, this thesis also shows law's transformations pursuant to neoliberal logic.

In short, the main argument proposed in this thesis is that under neoliberal governmentality, the government of poor populations, as within other rationalities of government aligned with capitalism, is central to the constitution and securing of a particular economic, social and political order. Harnessing and neutralising the poor is crucial for creating a competitive economic, social and political environment attractive to investors. Yet, the techniques and rationale of government in this regard have changed: the neoliberal government of the poor is more coercive, invasive and authoritarian. Colombia attests to these propositions. Disciplining and neutralising the poor is crucial for attracting investors to Colombia. This imperative has resulted in severe, coercive and invasive intervention to the point of criminalisation and militarisation of territories.

This introduction is organised in three sections. The first one looks at the methodology. This research draws on the analytical framework of governmentality as it

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<sup>12</sup> Lucy Luccisano and Glenda Wall, 'The Shaping of Motherhood through Social Investment in Children: Examples from Canada and Mexico' in Laura Macdonald and Arne Ruckert (eds), *Post-Neoliberalism in the Americas* (Post-Neoliberalism in the Americas, Palgrave Macmillan 2009)



allows for thinking about how poverty is administered and the processes through which the behaviour of the poor is steered in particular ways and towards certain ends. Section one describes this analytical grid, identifies its key concepts and provides a summary of the main discussions within the governmentality literature that inform this work: debates on neoliberalism as a governmentality, the government of the poor and development as an apparatus of government. Section two addresses the theoretical background, that is, the most important theoretical and conceptual conversations to which this thesis contributes. This section concentrates on two particular topics: changes in the welfare state and poverty alleviation brought about by neoliberalism, and new directions of development debates, particularly the emergence in the late 1990s of a new global “consensus” around poverty reduction. Section three contains a map to the thesis. It summarises the contents of each chapter and their central arguments.

## **1. Methodological Approach**

This thesis uses the analytics of governmentality as its methodological framework.<sup>13</sup> This framework draws on Michel Foucault’s turn towards the analytics of government in his late work. Foucault understood power as fluid. It always circulates, it is never simply ‘possessed’ by the state or individual, but flows through broader networks of agents and institutions. As he put it, “[i]t is never localized here or there, it is never in the hands of some, and it is never appropriated in the way that wealth or a commodity can be appropriated.”<sup>14</sup> When power is conceived in this way, attention shifts towards the mechanisms through which it flows. So, in analysing the emergence of biopower from this perspective in his 1977-1978 lectures, Foucault made a call to focus on “technologies of power”. This “entails going behind the institution” and, through a genealogical examination, paying attention to the “network of

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<sup>13</sup> Bal Sokhi-Bulley, *Governing (Through) Rights* (Bloomsbury 2016) 8

<sup>14</sup> Michel Foucault, *"Society Must Be Defended": Lectures at the Collège de France, 1975-1976* (Picador 2003) 29

alliances, communications, and points of support” implicated in their configuration.<sup>15</sup> In the 1977-1978 lectures, he proposed a strategic approach to the analysis of power relations which, as Castro Gómez notes, implies a shift from thinking about them as only marked by dominations, to a perspective whereby they are a “game of actions over actions” in which there is room for resistance and transformation.<sup>16</sup> The core of the approach is captured by his description of governmentality as a way of analysing biopower:

...the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, an apparatuses of security as its essential technical instrument.<sup>17</sup>

Generally, the governmentality framework or grid of analysis looks at the processes and ways of thinking about the government of our own or other people’s behaviours and actions.<sup>18</sup> Hence, it is about government understood as “the conduct of conduct.”<sup>19</sup> Mitchell Dean explains that the framework “is concerned with the means of calculation, both qualitative and quantitative, the type of governing authority or agency, the forms of knowledge,

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<sup>15</sup> Michel Foucault, *Security, Territory, Population. Lectures at the Collège de France, 1977-1978* (Palgrave Macmillan 2009) 117

<sup>16</sup> My own translation. Santiago Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault* (Siglo del Hombre Editores, Pontificia Universidad Javeriana - Instituto Pensar, Universidad Santo Tomás 2010) 27

<sup>17</sup> Foucault, *Security, Territory, Population. Lectures at the Collège de France, 1977-1978* 108

<sup>18</sup> Peter Miller and Nikolas Rose, 'Governing Economic Life' (1990) 19 *Economy and Society* 1; Thomas Lemke, 'Foucault, governmentality, and critique' (2002) 14 *Rethinking marxism* 49; Majia Holmer Nadesan, *Governmentality, biopower, and everyday life* (Routledge 2008); Nikolas Rose, Pat O'Malley and Mariana Valverde, 'Governmentality' *Legal Studies Research Paper*; Mitchell Dean, *Governmentality. Power and Rule in Modern Society* (Second edn, Sage 2010) 33; Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault* 27; Sokhi-Bulley, *Governing (Through) Rights* 9-10

<sup>19</sup> Colin Gordon, 'Governmental Rationality: An Introduction' in Graham Burchell, Collin Gordon and Peter Miller (eds), *The Foucault Effect Studies in Governmentality* (The Foucault Effect Studies in Governmentality, The University of Chicago Press 1991) 2

techniques and other means employed, the entity to be governed, and the ends sought and the outcomes and consequences.”<sup>20</sup> It interrogates how these “regimes of practice” “come into being, are maintained and are transformed.”<sup>21</sup> Therefore, the types of questions that this approach focuses on are, for instance, how social phenomena are framed as problems pursuant to particular types of discourse and knowledge, how at the same time they become the object of knowledge production, who decides what phenomena ought to be considered as problematic (e.g. agencies, authorities, institutions, experts, social movements), what means are used to govern conduct, what styles of reasoning or “mentalities” underpin those mechanisms, what types of subjectivities are constituted through these processes, what role knowledges play in programmes of government, and also what conflicts and resistances are advanced against governmentalities. Consequently, this approach allows for a thinking of power within and outside the state.<sup>22</sup> It gives an appreciation that different authorities and agents govern through different sites and in relation to different objectives. In this way, it is also helpful for thinking about ways to reverse power relations.

There are some key concepts to bear in mind within this grid of analysis. The first important concept is government, which Dean characterises as “any attempt to shape with some degree of deliberation aspects of our behavior according to particular sets of norms and for a variety of ends.”<sup>23</sup> Problematisations are the processes through which a situation or phenomenon is rendered and represented as a “problem” which government seeks to rectify.<sup>24</sup> Intertwined with particular knowledges, problematisations produce objects of intervention as well as subjects to be governed. They define the objectives of government

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<sup>20</sup> Dean, *Governmentality. Power and Rule in Modern Society* 18

<sup>21</sup> *ibid* 30

<sup>22</sup> Rose and Miller note: “..state becomes a particular form that government has taken”, but it does not exhaust the field. Miller and Rose, 'Governing Economic Life' 3

<sup>23</sup> Dean, *Governmentality. Power and Rule in Modern Society* 18 Colin Gordon’s explanation is also helpful: “a form of activity aiming to shape, guide or affect the conduct of some person or persons.” Gordon, 'Governmental Rationality: An Introduction' 2

<sup>24</sup> Carol Bacchi, 'The Turn to Problematization: Political Implications of Contrasting Interpretative and Poststructural Adaptations' (2015) 5 *Open Journal of Political Science* 1 5

and provide justification for governmental intervention. Discourse refers to systems of knowledge which are governed by rules and that define the limits of what is sayable and thinkable in a particular historic moment.<sup>25</sup> In turn, practices allude to what people actually do when they talk and act. They emerge in their performance, so there is nothing hidden behind them such as ideologies. Practices emerge in particular historic moments and are associated with particular power relations.<sup>26</sup> Dispositives, apparatuses or regimes of practices articulate discursive and non-discursive practices according to a set of rules. They have objectives, use calculated means to achieve them, and rely upon strategies to articulate means and ends efficiently, or to reformulate the ends in view of unexpected effects.<sup>27</sup> As Lazzarato explains, “non-discursive dispositifs or practices intervene on what one *does* (possible or probable action), whilst discursive practices or dispositifs intervene on what one *says* (possible or probable statements).”<sup>28</sup> Rationalities or mentalities of government are the logics or grammar that govern regimes of practices. They involve a more or less systematic ways of thinking about problems and of solving them.<sup>29</sup> Programmes are deliberate and systematic attempts to transform those practices.

Technologies are the means consciously and reflectively deployed towards particular ends. They make government operable. There are different types of technologies. These include, for example, technologies of production, which are implicated in transforming or manipulating things; technologies of power or domination, characterised by coercion and usually connected to disciplinary power; technologies of signification which refer to symbols and language; technologies of the self, that is, those that allow an individual by himself or

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<sup>25</sup> Michael Arribas-Ayllon and Valerie Walkerdine, 'Foucauldian Discourse Analysis' in Carla Willig and Wendy Rogers (eds), *The SAGE Handbook of Qualitative Research in Psychology* (SAGE Publications 2017) 114

<sup>26</sup> Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault* 28-29

<sup>27</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.'; Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault*

<sup>28</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 111

<sup>29</sup> Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault* 29

with the help of others to conduct operations over his body or “soul”; and technologies of government, a sort of combination of technologies of domination and of the self in the sense that they presuppose capacity to act (freedom), but are orientated toward ends that are not defined by the individual, but by an external rationality.<sup>30</sup> Technologies of government endeavour to align people’s self-regulation with their desires, aspirations and beliefs with the objectives of government. In this way, people come to perceive the lifestyle instilled by these technologies as good, desirable, and most importantly, as their own. In other words, technologies of government are about structuring the field of the possible actions of others. Techniques, as part of this wider technology, are the “mundane mechanisms”<sup>31</sup> of government, such as techniques of notation and calculation, procedures of examination and assessment; presentational forms such as tables, forms of training to inculcate habits, etc.

Finally, a governmentality framework is concerned with how human beings are made subjects. It entails an examination of “subject positions” within power relations, that is, “historical delimitations of what is sayable, thinkable and practicable.”<sup>32</sup> Subjects are a “multiplicity of positions which are contradictory and discontinuous.”<sup>33</sup> Therefore, to think about subject formation involves looking at how individual and collective subjects positions are constituted through discourses and techniques of power – processes of “subjugation” but also, in connection with technologies of the self, through processes of “subjectification” or self-formation. Furthermore, as subjectivities are open and unstable, they are sites of struggle. Consequently, a governmentality approach also pays attention to self-formation processes as forms of resistance and contestation.<sup>34</sup>

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<sup>30</sup> *ibid* 34-44.

<sup>31</sup> Miller and Rose, 'Governing Economic Life' 8.

<sup>32</sup> Arribas-Ayllon and Walkerdine, 'Foucauldian Discourse Analysis' 111.

<sup>33</sup> *ibid* 112.

<sup>34</sup> Paul Rabinow, 'Introduction' in Paul Rabinow (ed), *The Foucault Reader An introduction to Foucault's Thought* (Penguin Books 1991) 7-11; Sebastian Harrer, 'The Theme of Subjectivity in Foucault's Lecture Series *L'Herméneutique du Sujet*' (2005) 2 *Foucault Studies* 75: Andrés Fjeld, Laura Quintana and Etienne Tassin, 'Introducción' in Andrés Fjeld, Laura Quintana and Etienne Tassin (eds), *Movimientos sociales y subjetivaciones políticas* (Universidad de Los Andes 2016) 1.

Rose, O'Malley and Valverde warn against falling into the trap of thinking about governmentalities as sorts of grand narratives. There is a danger of essentialising programmes as simply neoliberal or liberal. They acknowledge that governmentalities such as liberalism or neoliberalism operate to a greater or lesser extent within shared problematisations and pursuant to shared rationalities. Nonetheless, a governmentality analysis must pay attention to the different rationalities and mechanisms that overlap in programmes of government and look at how they articulate and change. In this way, they stress that “rationalities are constantly undergoing modification in the face of some newly identified problem or solution, while retaining certain styles of thought and technological preferences.”<sup>35</sup> Moreover, to describe a family of programmes or technologies as neoliberal “should not be taken to imply a necessary or linear transformation of government nor (even more problematically) a change at the level of whole societies.”<sup>36</sup> Government is not the effect of “immanent social or economic forces or structures,” while it is difficult to find “pure” mechanisms or rationalities of government. Summarising, as they put it, one of the “cutting edges of governmentality” is its specificity in identifying how government operates, which entails being attentive to emerging elements or features, changes and new articulations of pre-existing mechanisms of government.

Three streams of governmentality analyses are of particular relevance to this thesis: governmentality approaches to neoliberalism, literature on the government of poverty, and post-structuralist critiques of development. The next section will provide an overview of their central discussions and their relevance to the thesis.

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<sup>35</sup> Rose, O'Malley and Valverde, 'Governmentality' 22.

<sup>36</sup> *ibid* 23.

### 1.1. Neoliberalism as Governmentality

Neoliberalism is a slippery concept. From an economic project to a hegemonic ideology, theorisations of neoliberalism proliferate across the social sciences.<sup>37</sup> In this thesis, neoliberalism is conceived as governmentality, that is, as a rationalisation of how to govern better, orientated toward specific objectives, and connected to particular types of knowledges, as well as discursive and non-discursive practices.<sup>38</sup> But neoliberalism should not be taken as singular or monolithic. Drawing on England and Ward, it is possible to talk about “neoliberalizations” to refer to the “sets of hybrid processes and situated meanings” that neoliberal government acquires.<sup>39</sup> Indeed, programmes and practices in line with neoliberalism share commonalities like the logic of interventions and types of techniques deployed, but as England and Ward explain, “neoliberalizations involve actually existing people engaged in situated, grounded practices and governmental technologies that produce particular places and particular outcomes in those places. By extension, neoliberalism is spatially varied, playing out differently in different places in articulation with the particular cultural, economic and political trajectories in those places.”<sup>40</sup> In the following paragraphs, I focus on some elements of its shared rationality as well as some common features of its modes of operation, without attempting to define neoliberalism as a singular and uniform theory. My intention is to highlight some rationales which are commonly found in programmes of government, particularly in relations to poverty, but that usually result in heterogeneous configurations and outcomes.

As Foucault highlighted, one of the main features of neoliberalism is that it takes competition as its foundational tenet. Conceived as the main regulative principle of society,

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<sup>37</sup> Ferguson, 'The Uses of Neoliberalism'.

<sup>38</sup> Michel Foucault, *The Birth of Biopolitics* (First edn, Palgrave Macmillan 2008) 319; Wendy Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* (First edn, Zone Books 2015) 30.

<sup>39</sup> Kim England and Kevin Ward, 'Theorizing Neoliberalization' in Simon Springer, Kean Birch and Julie MacLeavy (eds), *The Handbook of Neoliberalism* (First edn, Routledge 2016).

<sup>40</sup> Ibid. See also Hilgers, 'The Historicity of the Neoliberal State'.

competition is the model used to shape all sorts of human interactions and subjectivities. It is not a natural phenomenon. In spite of a 'state-phobia' discourse, neoliberal government makes the state responsible for enabling and nurturing competition pursuant to the ideal of an "enterprise society."<sup>41</sup> For Lazzarato, "neoliberal government must take over social processes to create the conditions inside them amenable for market mechanism."<sup>42</sup> The expansion of competition to traditionally non-economic spheres give rise to governable subjects who can be characterised as entrepreneurs of themselves. They are rational agents who think strategically about their own labour as a form of capital which can be managed to increase profitability.<sup>43</sup> This is the conceptualisation of human behaviour at the heart of discourses of human capital. Entrepreneurial subjectivity is then aligned with new ways of thinking about the economy, that is, through the lenses of competitiveness and marketisation. In this way, entrepreneurial subjects are constitutive of the competitive environments required for growth.

In connection with this new conceptualisation of human behaviour, Foucault observed the expansion of technologies which govern from a distance. Interventions in the environments in which people make decisions through behavioural techniques such as stimuli and reinforcement, together with technologies of self-control and self-improvement aimed at producing responsabilised subjects, are some of the most common governmental techniques of neoliberalism.<sup>44</sup> They usually rest on expertise, that is, according to Miller and Rose, "the social authority ascribed to particular agents and forms of judgement on the basis of their claims to possess specialized truths and rare powers."<sup>45</sup> As Castro Gómez notes, these types of environmental interventions produce the idea that every human can improve his or her human capital, even people at the margins, through creativity, innovation and

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<sup>41</sup> Foucault, *The Birth of Biopolitics* 116-120.

<sup>42</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 117.

<sup>43</sup> Foucault, *The Birth of Biopolitics* 148-149.

<sup>44</sup> Lemke, 'Foucault, governmentality, and critique' 59-60; Nadesan, *Governmentality, biopower, and everyday life* 3.

<sup>45</sup> Miller and Rose, 'Governing Economic Life' 2.



entrepreneurialism.<sup>46</sup> In this way, neoliberal government “instrumentalize the self-regulating propensities of individuals in order to ally them with socio-political objectives.”<sup>47</sup> However, the expansion of soft forms of power does not mean the disappearance of other techniques of power; they are combined and aligned in new productive ways.

## 1.2. *Governing the Poor*

This thesis also draws upon scholarship on the government of the poor. This literature analyses the ways in which the poor are constituted and governed, paying particular attention to discursive formations, technologies and techniques, and the role that poverty plays within governmentalities.<sup>48</sup> These works presuppose that poverty is a problematisation. It is not a social fact but rather a construction in accordance with particular knowledges and practices. The problematisation of poverty usually relies upon the attribution of negative features to the poor: laziness, inability, cultural backwardness, malnutrition, illiteracy, etc. These ways of thinking about poverty and the poor gives birth to interventions (public or private) which turn the poor into objects and inscribe them into particular relations of power. Thus, the state emerges in these studies not concerned with “solving” poverty but with managing and controlling it.<sup>49</sup> In this vein, Soss, Fording and Schram identify some objectives of the government of poverty which often come out within this literature: the inculcation of labour

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<sup>46</sup> Castro-Gómez, *Historia de la gubernamentalidad. Razón de Estado, liberalismo y neoliberalismo en Michael Foucault* 51.

<sup>47</sup> Miller and Rose, 'Governing Economic Life' 28.

<sup>48</sup> Some examples are Mitchell Dean, *The Constitution of Poverty. Toward a Genealogy of Liberal Governance* (First edn, Routledge 1991); Giovanna Procacci, 'Social Economy and the Government of Poverty' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault effect Studies in governmentality* (The University of Chicago Press 1991); Sonia Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' in Sonia Alvarez Leguizamón (ed), *Trabajo y producción de la pobreza en Latinoamérica y el Caribe: estructuras, discursos y actores* (Consejo Latinoamericano de Ciencias Sociales CLACSO 2005); Joe Soss, Richard C. Fording and Sanford F. Schram, 'Governing the Poor: The Rise of the Neoliberal Paternalist State' (Annual Meeting of the American Political Science Association); Loïc Wacquant, 'Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity' (2010) 25 Sociological Forum 197; Suzan Ilcan and Anita Lacey, *Governing the Poor: Exercises of Poverty Reduction, Practices of Global aid* (McGill-Queen's Press-MQUP 2011);

<sup>49</sup> Melisa Campana, 'Desarrollo humano, producción social de la pobreza y gobierno de la pobreza' (2014) 16 Trabajo Social 79.

discipline for instance through workfare schemes or the old workhouses on 19<sup>th</sup> century England, the social control of the poor through disciplinary and coercive mechanisms such as criminalisation and incarceration, civil incorporation through behavioural enforcement and the diffusion of new civic values, and the constitution of particular subjectivities such as that of the market actors.<sup>50</sup> Overall, these works denaturalise poverty and reveal it as the product of particular problematisations amidst specific relations of power. They also show the diversity of ways in which the poor are governed. Yet, most of them agree that since the rise of capitalism, regimes of government share the concern for rendering the poor helpful to the economy, while preventing civil conflict and insurrection.

An important group of works has focused on how poverty became a problem of liberal governmentality in the 19<sup>th</sup> century and the type of solutions it engendered – the social question. In this vein, Mitchell Dean and Giovanna Procacci argue that poverty was key to the formation of political economy and liberalism.<sup>51</sup> They discuss how in the context of European countries, poverty became a biopolitical problem in the 19<sup>th</sup> century, that is, a problem at the level of the population. In the 18<sup>th</sup> century, poverty was regarded as the opposite to wealth, a sort of “fact of nature impossible to control by direct intervention” and which ought to be managed by policing and charity.<sup>52</sup> In contrast, in the 19<sup>th</sup> century, the poor began to be perceived as part of the population to be regulated, as well as a source of labour to be “harnessed to the goals of the strength and wealth of the nation.”<sup>53</sup> Therefore, poverty was problematised as a social question to be addressed by state institutions in order to insert the poor into the circuits of production. In the 20<sup>th</sup> century the answer to poverty and the social question was the welfare state. As Lazzarato explains, social policy was crucial to the birth of liberalism as the answer to revolutionary politics. The welfare state was a way

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<sup>50</sup> Soss, Fording and Schram, 'Governing the Poor: The Rise of the Neoliberal Paternalist State'.

<sup>51</sup> Dean, *The Constitution of Poverty. Toward a Genealogy of Liberal Governance* ; Mitchell Dean, 'A Genealogy of the Government of Poverty' (1992) 21 *Economy and Society* 215.

<sup>52</sup> Procacci, 'Social Economy and the Government of Poverty' 154.

<sup>53</sup> Dean, 'A Genealogy of the Government of Poverty' 222.

of neutralising and depoliticising social conflict by means of extending welfare provisions and collectivising the costs of social reproduction, “whilst producing polarizations of power and income.”<sup>54</sup> In Latin America, welfarism gained momentum in the mid 20<sup>th</sup> century, but did not develop in the same way as in Europe and other places. In this region, the “scarce mercantilisation of social relations produced weak levels of salaried work.”<sup>55</sup> Furthermore, welfare relationships benefited in particular white populations, while servile relationships and forms of paternalism governed indigenous peoples and peasants. Social rights and attempts to build welfare states were limited. Social protection schemes for formal workers began to be implemented in the mid 20<sup>th</sup> century, but they never achieved full coverage. Social reproduction in the region has mainly relied upon philanthropy and charity, tutelage schemes and the informal economy.<sup>56</sup>

### *1.3. The Development Apparatus*

Finally, I am interested in the debates that emerged in the 1990s about development as a discourse and regime of practices of government. Arturo Escobar, James Ferguson, Rita Abrahamsen and others claim that development is a discourse and regime of practice which governs the Third World in ways which maintain unequal power relations with the so called “developed” North.<sup>57</sup> Ferguson stresses the depoliticising function of development. By rendering problems of land, wages and distribution as technical, it portrays them as responsive only to technical interventions, precluding political discussions about them.<sup>58</sup> In

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<sup>54</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 116

<sup>55</sup> My own translation Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' p. 249.

<sup>56</sup> *ibid* 249-250.

<sup>57</sup> Rita Abrahamsen, *Disciplining Democracy. Development Discourse and Good Governance in Africa* (Zed Books 2000) ix, xii; Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 2012); James Ferguson, *The Anti-Politics Machine. "Development," Depoliticization, and Bureaucratic Power in Lesotho* (Tenth edn, University of Minnesota Press 2014).

<sup>58</sup> Ferguson, *The Anti-Politics Machine. "Development," Depoliticization, and Bureaucratic Power in Lesotho* 270.

turn, Escobar notes how development homogenises the Third World and then subjects it to interventions in “underdeveloped countries,” shaping them to “fit a pre-existing model that embodies the structures and functions of modernity.”<sup>59</sup>

This scholarship also highlights the connections between development and particular types of knowledge. For instance, it points out how problems are represented according to particular types of expertise in order to make them manageable precisely through seemingly scientific knowledge. Development by itself became a discipline which organises and validates knowledge production. These works also unpack the ways in which the discourse operates: for instance, by focusing on absences and deficiencies, development homogenises and universalises its targeted subjects in order to render them susceptible to “one fits all” normalising interventions. It also shapes desires and aspirations, producing in this way particular types of subjectivities which are very effective in making the governed to think about themselves through development lenses. As a regime of practice, development operates through technical assessments, institutional arrangements, technical advice, knowledge diffusion, training of personnel, report and similar technologies. Development plans have been a key instrument in this since at least the 1940s, and although economic planning has been criticised in the context of market-oriented prescription, they retain central importance in the operation of development at the national level.

In his 1990 book on development in Lesotho, James Ferguson showed that poverty is a conceptual tool central to development as a discourse. Development constructs the poor as objects of inquiry and creates structures of knowledge around them which are portrayed as scientific and neutral. Poverty in turn is reduced to a technical problem in demand of expert solutions. In this way, development de-politicises issues of poverty.<sup>60</sup> Similarly, Escobar claims that poverty is a category central to the development apparatus. He suggests

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<sup>59</sup> Escobar, *Encountering Development: The Making and Unmaking of the Third World* 52.

<sup>60</sup> Ferguson, *The Anti-Politics Machine. "Development," Depoliticization, and Bureaucratic Power in Lesotho* 18-19.

that there have been two important breaks in the history of poverty: the rise of the social question following the intensification of poverty after the industrial revolution, and the emergence of development in the post-World War II period. Development emerged from a problematisation of poverty in the post-colonial era as the poor from the former colonies (including Latin American countries) came to be perceived as a threat to the developed world. In this way the poor became the target of control and management, as well as the object of new disciplines.<sup>61</sup> This was grounded on a particular construction of the poor as deficient and lacking, and thus in need of help and intervention. With the help of statistics and in the context of the re-emergence of development economics, poverty was also framed as an economic problem associated with lack of income. This facilitated the connection of poverty reduction to growth and other economic prescriptions such as industrialisation and technological transfers. The aim of development was to make poverty useful by inserting it into the apparatus of production that economic planning pursuant to modernisation theory set up. As Escobar puts it, “a completely utilitarian and functional conception of poverty emerged, linked inextricably to questions of labour and production.” In this way, “development technologies became a mechanism of social production.”<sup>62</sup>

#### *1.4. The Analytics of Governmentality in this Thesis*

Drawing on the analytics of governmentality as a methodological framework, this thesis focuses on the rationalities, technologies, techniques, discourses and subjectivities implicated in the government of the poor in each of the three scenarios under scrutiny. I found this approach helpful for the purposes of my research as it allowed me to understand the complexity of apparatuses of government whereby traits from different rationalities and regimes often emerge, combine and work together in productive ways. For instance, the

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<sup>61</sup> Escobar, *Encountering Development: The Making and Unmaking of the Third World* 22.

<sup>62</sup> *ibid* 89.

thesis reveals the convergence of disciplinary and biopolitical (environmental) techniques in the search for similar objectives, such as constituting poor entrepreneurial and responsible subjects. This is the basis for one of the central arguments of this work: despite a rhetoric of empowerment and agency, the government of poverty in contemporary Colombia is very coercive and disciplinary. The discussions on the government of the poor were particularly relevant to unpack how poverty is problematised and grasp continuities and differences across scales and periods of time. In this sense, the thesis shows a generalised perception that poverty is a problem of lack of human capital (a problematisation connected to the market rationality that underpins neoliberalism), but also illustrates how at particular conjunctions, theories of human capital entangle with other conceptualisations of poverty based on alternative rationalities, such as the idea that poverty is a problem of immoral behaviour or cultural backwardness. The debates on the government of the poor and development as an apparatus also provided me with useful tools to critically examine the objectives of government and reflect on how they articulate with broader political and economic projects. Against this backdrop, this thesis stresses how problematisations of poverty are connected with new ways of understanding development and growth, specifically, development as competitiveness on the grounds of the neoliberal logic of competition. I would like to highlight that I chose this analytical grid for its critical value. As Solki-Bulley notes, the governmentality lenses allow one to think strategically about government and, in this way, pay attention to “disruptions in its rhythms”, cracks and gaps which leave room for rupture and struggle.<sup>63</sup> In this sense, this thesis is also an invitation to think critically and strategically about government and to find means of resistance and struggle.

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<sup>63</sup> Sokhi-Bulley, *Governing (Through) Rights* 12.

## 2. Situating the Thesis

This thesis' inquiry is situated at the crossroad of debates on the strategies and effects of welfare reforms pursuant to neoliberal governmentality, and discourses and mechanism of poverty alleviation spread in the Global South since the 1990s along with new directions of development discourses.

### *2.1. Neoliberalism, Welfare Reform and the Government of Poverty*

In the last decades, many works have been dedicated to illustrating the effects of neoliberalism on social welfare arrangements and anti-poverty programmes. Some works have focused on documenting welfare cuts and their impacts on the lives of the poor. Other have addressed how reductions in development and international aid funding have impacted poor populations in the Global South. Political economy analyses have looked at the actors and mechanisms implicated in reforming the welfare state. In this section, I am particularly interested in the discussions which emerge from governmentality-oriented works.

Foucault understood that entrepreneurialism and competition, as the principles underpinning neoliberal rationality, require the cultivation of inequalities. Hence, he recognised neoliberal government as mainly concerned with “an optimization of systems of difference.”<sup>64</sup> In the words of Maurizio Lazzarato, neoliberalism relies upon a “differential management of inequalities” aimed at structuring competition. They must be created, identified and maintained within a context of constant uncertainty with the aim of encouraging rivalries.<sup>65</sup> In this context disciplinary techniques of exclusion, disaffiliation and marginalisation acquire a new purpose. Instead of the unity of the included and the harmonisation of the conflicting forces of society (as objectives of the welfare state) they

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<sup>64</sup> Foucault, *The Birth of Biopolitics* 259-260.

<sup>65</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 119.

seek to “introduce degrees of insecurity, instability, uncertainty, economic and existential precarity into the lives of individuals.”<sup>66</sup> They emerge as governmental techniques to incentivise competition and entrepreneurialism. Against this background, poverty is no longer a problem of lack of development and growth, but rather, as Lazzarato stresses, “it arises from a political will.”<sup>67</sup> Neoliberal government is about seeking “an acceptable equilibrium between different ‘normalities’, those of poverty, precarity or wealth.”<sup>68</sup> That is why absolute poverty, rather than relative poverty, is the new focus of attention as it “prevents the individual from playing the game of competition”.<sup>69</sup> Thus, the management of poverty is about defining a threshold (the vital minimum) which prevents death, ensures that people can become enterprises and neutralises civil unrest.<sup>70</sup>

Isabell Lorey goes further to argue that neoliberalism is about governmental precarisation, that is, about governing through the normalisation of precarity and the production of subjects living in a permanent state of insecurity.<sup>71</sup> Lorey claims that government is always implicated in the creation and distribution of precariousness; the result of this process is precarity. Therefore, precarity “denotes the striation and distribution of precariousness in relation of inequality.”<sup>72</sup> While in the welfare state, government was performed by promising security and rendering the precarious just a marginal minority, in neoliberal government insecurity is intensified and normalised across wider sectors of the population. The normalisation of precarity is a governmental technique which she names precarisation; “precarization is transformed in neoliberalism into a normalizing political-economic instrument.”<sup>73</sup> It does not mean that the safeguards of the old welfare state have

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<sup>66</sup> *ibid* 119.

<sup>67</sup> *ibid* 128.

<sup>68</sup> *ibid* 128.

<sup>69</sup> Foucault, *The Birth of Biopolitics* 205; Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 128.

<sup>70</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 128.

<sup>71</sup> Lorey, *State of Insecurity. Government of the Precarious*. 2.

<sup>72</sup> *ibid* 12.

<sup>73</sup> *ibid* 39.



disappeared. With Lazzarato, she notes that they are reduced to a minimum threshold located where the risk of civil war begins, “a threshold of a social vulnerability that is still just tolerable.”<sup>74</sup> Safety nets based on minimum thresholds and which target extreme poverty are then complemented by the self-regulating forces of the market.

This literature also discusses the processes of individualisation and responsabilisation that neoliberal government rests upon. Pursuant to the logic of competition and in rejection of distributive interventions, Lazzarato notes that social policy is used to individualise, that is “to constitute an economic space in which individuals *individually* [not collectively as in the welfare state type of government] take upon themselves and confront risks.”<sup>75</sup> Similarly, Nikolas Rose explains how the logic of entrepreneurialism focuses on discourses of autonomy and self-sufficiency with the aim of producing responsible subjects who internalise the costs of social reproduction. By means of individualisation and responsabilisation, as Brown notes, individuals are morally burdened with the tasks of “discerning and undertaking the correct strategies of self-investment and entrepreneurship for thriving and surviving.”<sup>76</sup> Citizenship is then redefined along these lines. Virtuous citizens are described as active and responsible rather than dependent and passive (features rejected as negative consequences of the welfare state). In this context agency is equated with the possibility of making choices in the marketplace, whilst responsibility refers to individual ability to fend for oneself and one’s family.<sup>77</sup> The post-2008 debates about austerity and debt made evident another feature of the type of responsibility which neoliberal government inculcates. As Wendy Brown argues, in austerity times virtuous citizenship is also defined as sacrificial. Citizens are requested to renounce social rights and other welfare entitlements and bear a life of precarity in the name of competitiveness and growth as the new collective

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<sup>74</sup> *ibid* 66.

<sup>75</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 118.

<sup>76</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 132-133.

<sup>77</sup> Miller and Rose, 'Governing Economic Life' 24.

objectives.<sup>78</sup> In reflecting about recent uprisings, Judith Butler notes the contradiction of neoliberal responsabilisation in a context of normalised precarity. Entrepreneurial subjects are demanded to “become self-sufficient under conditions that undermine all prospects of self-sufficiency” as neoliberalism extends precarity and destroys the possibilities of better living standards. Therefore, “we are morally pushed to become precisely the kind of subjects who are structurally foreclosed from realizing the norm.” For her, this contradiction reveals the logic of disposability at the heart of neoliberal government: “the minute one proves oneself to be incapable of conforming to the norm of self-sufficiency ... one becomes potentially disposable.”<sup>79</sup>

The transformation of welfare institutions and managerial practices is another central topic of these discussions. Competition has been extended the realms of “the social” and, in this way, welfare provision has been subjected to privatisation and competitive schemes.<sup>80</sup> Additionally, amidst the shift towards a financialised economy, financial rationality has been entrenched in welfare institutions by means of, for instance, the privatisation of pension funds and their opening to financial speculation. For Lazzarato, “[t]his mobilization for stock market investment has one precise goal: that of eliminating the separation between labour and capital implicit in Fordism, by binding workers’ savings with capitalist restructuring.”<sup>81</sup> De-proletarianisation is then achieved by linking workers’ fates (their savings) to financial fluctuations in which interest rates are dependent upon macroeconomic stability, national credit rating and other variables related to welfare cuts.

Other works concentrate on the punitive and coercive orientation that welfare programmes have acquired, epitomised in the systems of workfare that have emerged in many countries of the Global North. Lazzarato explains how these systems combine

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<sup>78</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 216.

<sup>79</sup> Judith Butler, *Notes Toward a Performative Theory of Assembly* (Harvard University Press 2015) 15.

<sup>80</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 121.

<sup>81</sup> *ibid* 125.

disciplinary (e.g. monitoring and sanctions) and security mechanisms (individualised modulation of subjectivities) with the objective of controlling and modulating the conduct of welfare recipients, “who are induced to be available for work and obliged to work upon themselves to be ready to accept any kind of work, under any conditions, in the framework of a ‘precarious’ full employment.”<sup>82</sup> From another angle, Loïc Wacquant argues that the minimisation of social protections is accompanied by an increase in discourses and practices of the police and the military aimed at neutralising social unrest.<sup>83</sup> In the context of the United States, he illustrates how the reorganisation of the state in neoliberal times has also meant the expansion of its punitive apparatus, not just by means of swelling the criminal system, but also through the articulation of punitive welfare policies. This shift is a political strategy constitutive of the neoliberal state which seeks to govern social insecurity and discontent produced by the dismantlement of welfare protections, the precarisation of labour and the loss of prospects of social mobility, in particular among the lower ranks of society.<sup>84</sup> This strategy is also about restating the sovereignty of the state in times when it does not provide social protection – the old paradigm that legitimised the welfare state. Mathieu Hilgers contends that Wacquant’s thesis does not seem applicable to African countries, where, for instance, incarceration figures are very different to those of the United States. For him, Wacquant’s findings epitomise something else. “[T]he generalization of the penal effect that he observes in some contexts is actually the epiphenomenon of a deeper reality: beneath its apparent apology of freedom, neoliberalism produces a specific state that reinforces control and coercion.”<sup>85</sup> Some voices alert us about the essentialisation of neoliberal punitivism and the monolithic image of the neoliberal state that emerges from

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<sup>82</sup> Ibid.

<sup>83</sup> Lorey, *State of Insecurity. Government of the Precarious*. 64-66.

<sup>84</sup> Wacquant, 'Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity' 208.

<sup>85</sup> Hilgers, 'The Historicity of the Neoliberal State' 89.

these accounts.<sup>86</sup> Nevertheless, these scholars do not question the punitive tilt of penal and welfare practices in the particular case of the United States and other specific countries.

At a more general level, combining governmentality and Marxist approaches, Mark Neocleous argues that security has always been a technology of government aimed at constituting and maintaining particular social and economic types of order. The logic of security involves both coercive – e.g. violence, criminalisation and policing - and non-coercive techniques - like social policy or behavioural techniques. Against this backdrop, he proposes to look at the concept of pacification to understand the relationship between the deployment of coercive and non-coercive techniques against the poor and the constitution of a neoliberal order. War and policing are means to discipline the poor and impose a new order, as has always been the case in capitalism.<sup>87</sup>

However, reflections on neoliberalism also offer some hope. Lorey and Butler, for instance, see emancipatory possibilities. For them, precarity is a site where alliances are forged. Lorey stresses that power relations are reversible and that other forms of self-conduct can be the exodus from the neoliberal governmental mode and capitalisable self-government. She also points out that processes of precarisations can be productive in creating new relationships and other notions of community which have a “potentiality of constituting” that is, to restructure power relations.<sup>88</sup> As for Butler, the precarity produced by neoliberalism “is operating, as a site of alliance among groups of people who do not otherwise find much in common and between whom there is sometimes suspicion and antagonism.”<sup>89</sup> It has become the political galvanising event for many recent instances of social mobilisation.

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<sup>86</sup> Mariana Valverde, 'Comment on Loïc Wacquant's 'Theoretical Coda' to Punishing the Poor' (2010) 14 *Theoretical Criminology* 117; Pat O'Malley, 'Prisons, neoliberalism and neoliberal states: Reading Loïc Wacquant and Prisons of Poverty' (2014) 122 *Thesis Eleven* 89.

<sup>87</sup> Mark Neocleous, *Critique of Security* (Edinburgh University Press 2008); Mark Neocleous, 'La lógica de la pacificación: guerra- policía - acumulación.' (2016) 16 *Athenea Digital* 9.

<sup>88</sup> Lorey, *State of Insecurity. Government of the Precarious* 107.

<sup>89</sup> Butler, *Notes Toward a Performative Theory of Assembly* 27.

## 2.2. *From Structural Adjustment to the Post-Washington Consensus*

The second group of discussions addresses models of development and in particular the ascendance of a new rationale of poverty alleviation in the early 1990s that was targeted to the Global South and promoted by the World Bank as well as other international development institutions. In the 1980s, the World Bank and other development agencies imposed structural adjustment policies on most of the Global South with the aim of boosting growth and securing debt payments in the aftermath of the early 1980s balance of payments crisis. These structural adjustments were anti-inflationary “supply-side” economic programmes adapted to the developing world<sup>90</sup> which included many of the policy prescriptions grouped under the term the Washington Consensus, that is to say, tax and budget cuts, privatisation, and trade and financial liberalisation.<sup>91</sup> Poverty was not a topic within this agenda as anti-poverty efforts were perceived as market distortions and it was assumed that living standard would improve by means of growth. As Paul Mosley explains, poverty made its appearance in international development discourses in the 1970s with Robert McNamara’s nomination as the President of the World Bank, but by 1979 the anti-poverty drive had ended as economic circumstances changed and new elected governments in the Global North shifted their attention to neoliberal prescriptions.<sup>92</sup> The effects of structural adjustment in levels of poverty and inequality became notorious in the late 1980s, leading some United Nations agencies and civil society organisations to call into question the agenda in view of its human costs. For instance, in the 1987 report “Adjustment with a

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<sup>90</sup> Paul Mosley, *The Politics of Poverty Reduction* (Oxford University Press 2012) 28-29

<sup>91</sup>The economist John Williamson coined this expression to group a set of policies that he argued were agreed at the time by the US government and development agencies as necessary to prompt economic recovery in Latin America in the aftermath of the 1980s debt crisis. See John Williamson, 'What Washington Means by Policy Reform' in John Williamson (ed), *Latin American Adjustment: How Much has Happened* (Institute for International Economics 1990).

<sup>92</sup> Mosley, *The Politics of Poverty Reduction* 17-26.

Human Face”, UNICEF documented the “human costs” of the global recession and stressed that the expenditure cuts imposed by structural adjustments had fallen particularly hard on the most vulnerable groups.<sup>93</sup> After experimenting with temporal emergency funds, compensatory cash support programs and some labour-intensive investment projects in the areas of health and education,<sup>94</sup> in the 1990 World Development Report the World Bank brought poverty to the foreground.<sup>95</sup> Without abandoning the claim that structural adjustment-led growth is the best possible social policy, the bank began to talk about safety nets, targeted and temporary cash transfers, human capital building and other market-based solutions to poverty.

By 1997 a sort of new consensus had built around poverty alleviation among financial institutions and the development industry. Named in different ways (the Post-Washington Consensus, inclusive neoliberalism, the Third Way or the New New Deal)<sup>96</sup> it was basically a new development orientation aimed at mitigating the dislocating effects of market expansion and structural adjustments, but without altering the orthodox neoliberal economic recipes.<sup>97</sup> James Wolfensohn, appointed President of the World Bank in 1995, began a revision of the development agenda to make it more inclusive and balanced. As part of this process, in 1997, he appointed Joseph E. Stiglitz as Chief Economist of the bank. Stiglitz was a strong critic of structural adjustments. As a result, the Bank reformulated its approach to development and made a call for the return of the state (albeit an efficient state) to complement the market. In broad terms, the Post Washington Consensus promotes the return of the state to the developmental enterprise in order to perform at least three

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<sup>93</sup> *ibid* 30-31.

<sup>94</sup> *ibid* 31.

<sup>95</sup> World Bank, *World Development Report 1990 "Poverty"* (World Bank 1990).

<sup>96</sup> Richard Ballard, 'Geographies of Development II: Cash Transfers and the Reinvention of Development for the Poor' (2012) 37 *Progress in Human Geography* 811-813.

<sup>97</sup> *ibid* 813. See also Kerry Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' (2004) 26 *Mich J Int'l L* 199 David Craig and Doug Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy*. (Routledge, 2006).

functions: to support market transactions and foster competition; to promote social investments instead of social spending (that is, the allocation of public funds in programmes which support innovation, human capital and other types of investments for the future); and to provide basic protection against market failure (like safety nets) using strategies which involve private actors and market mechanisms.<sup>98</sup> During the following years new topics entered the agenda, such as human rights, institutions and good governance, empowerment, security, risk management and participation. For instance, the pillars of the 2000 World Development Report were opportunity, empowerment and security. The latter was conceived in a broad sense to include everything from food to military security.<sup>99</sup> The so-called new consensus manifested itself in different initiatives such as the World Bank Comprehensive Development Framework. This was presented to the international community in 1999 as an attempt to direct development aid to poverty reduction using participatory processes. Equally, the United Nations Millennium Development Goals and the Poverty Reduction Strategy Papers' framework introduced in 1999 by the IMF the World Bank sought to encourage countries to design their own social policy, but in accordance with standards and indicators set by those international institutions.<sup>100</sup>

In the context of this thesis, two types of interventions are of particular relevance: targeting and market-based solutions. Targeting entails the allocation of social expenditure to programmes that focus on people living in extreme poverty.<sup>101</sup> It is the opposite of

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<sup>98</sup> See Craig and Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy* 60-61; Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' 233; Jane Jenson, 'Diffusing Ideas for After Neoliberalism. The Social Investment Perspective in Europe and Latin America' (2010) 10 *Global Social Policy* 59 61-63.

<sup>99</sup> World Bank, *World Development Report 2000/2001. Attacking Poverty*, (2000).

<sup>100</sup> See Craig and Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy* 2; David M Trubek and Alvaro Santos, 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in David M Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006) 1.

<sup>101</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' 239.

universal provision, which is accused of being inefficient, expensive and paternalistic.<sup>102</sup> In turn, market-based solutions are strategies and techniques which endeavour to instil market rationality into the provision of what used to be known as social services,<sup>103</sup> as well as transforming the poor into customers and entrepreneurs. They envision poor people as resilient and creative entrepreneurs who only need some help to overcome the barriers that separate them from market opportunities. Besides privatisation, these solutions include human capital building schemes and other forms of investments in human productivity.

The late 1990s anti-poverty consensus has been the object of critiques from a number of different viewpoints. For some, it entails an adaptative strategy of neoliberalism or, more generally, of capitalism. Craig and Porter suggest that it constitutes a “re-embedding” of the market through an enabling state.<sup>104</sup> Toby Carroll describes it as a new phase of neoliberalism characterised by its attempt to entrench a utopian market society,<sup>105</sup> while Paul Cammack concludes it is a deeper commitment to neoliberalism aimed at the “proletarianisation of the world’s poor.”<sup>106</sup> From a different angle, the new consensus is

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<sup>102</sup> It was argued that universal systems are not an efficient policy for developing countries because they are expensive and demand large bureaucratic apparatuses that cannot be afforded by weak national economies; are usually funded through extensive taxation which hampers competitiveness; and encourage the concentration of social spending in small influential middle income groups linked to nation-building or industrialisation processes, in contexts of corruption and concentration of power. Thandika Mkandawire, 'Targeting and Universalism in Poverty Reduction' (2005) United Nations Research Institute for Social Development Social Policy and Development Programme Paper No 23 2.

<sup>103</sup> C. K. Prahalad, one of the main campaigners of the base of the pyramid approach, argues that given the amount of poor people that live in the world, they represent an important potential market that should be explored. He proposes the design of business models that, on the one hand, allow multinational corporations to benefit from the huge market that the poor represent, and, on the other hand, allow poor consumers to have access to goods and services that they cannot afford. He claims that solutions to poverty can be co-created in this way, empowering the poor by giving them the opportunity to choose and encouraging self-esteem. Coimbatore Krishna Prahalad, *The Fortune at the Bottom of the Pyramid: Eradicating Poverty through Profits* (Wharton School Publishing 2005) 3-21.

<sup>104</sup> Along these lines, Craig and Porter, drawing on Polanyi, argue that “inclusive neoliberalism” entails a re-embedding of the market by means of an enabling state which regarding the poor is in charge of activating their capacities to habilitate them for the market Craig and Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy*.

<sup>105</sup> Toby Carroll claims that the Post Washington Consensus entails a qualitative departure from the Washington Consensus in that it is centrally oriented upon implementing a market society in the name of poverty reduction. Toby Carroll, *Delusions of Development: The World Bank and the Post-Washington Consensus in Southeast Asia* (Palgrave Macmillan 2010) 35-37.

<sup>106</sup> Paul Cammack, 'What the World Bank means by poverty reduction, and why it matters' (2004) 9 *New Political Economy* 189 190, 209.



considered to signal a move towards a new form of development or poverty governmentality. Kerry Rittich contends that the social turn has meant the enhancement of the regulatory power of the development project, along with the re-inscription of precisely those social concerns that were included:<sup>107</sup> poverty, human rights, participation, etc., have been redefined in ways amenable to market rationality. Similarly, Celine Tan claims that the new approach with its emphasis on ownership and partnerships has given birth to a sort of international “biopolitical’ power in which the objects of power (societies or states) reproduce these norms and seek to insert themselves into the very relationship of power.”<sup>108</sup> The Post-Washington Consensus then entails a new type of international governmentality whereby both developing states and poor people are governed from a distance but at the same time in a more intrusive manner. For Suzan Ilcan and Anita Lacey, these changes reinforced the global governmentality of poverty which began to take shape in the 1980s. This governmentality “shape[s] ways of thinking about, problematizing, and reforming the poor.” For instance, it promotes similar tactics (e.g. responsabilisation, empowerment, market expansion, partnership initiatives, racial biopolitics and the securitization of the poor) with the aim of transforming the poor in line with market prescriptions and enabling them to participate in the marketplace. It also “operates within, across, and beyond the nation state.”<sup>109</sup> It has a “distinguishing capacity for decontextualization and recontextualization” which facilitates movement across various social, cultural, and political situations and spaces.<sup>110</sup>

In the search for alternatives to the orthodox approaches to development and poverty alleviation, the case of the left-wing governments elected in a number of Latin

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<sup>107</sup> Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' 232.

<sup>108</sup> Celine Tan, *Governance through Development: Poverty Reduction Strategies, International Law and the Disciplining of Third World States* (Routledge 2011) 13.

<sup>109</sup> Ilcan and Lacey, *Governing the Poor: Exercises of Poverty Reduction, Practices of Global aid* 5.

<sup>110</sup> *ibid* 22.

American countries in the 2000s (Argentina, Bolivia, Brazil, Ecuador and Venezuela) was broadly discussed. For some these governments introduced a new hybrid model of development which combines a market economy with a strong state in charge of mobilising resources, stimulating investment, promoting innovation, restructuring industry and fighting poverty.<sup>111</sup> However, for others, to the extent that their fight against poverty relied upon the extraction and export of natural resources and their anti-poverty schemes were designed in line with targeting, cash transfers and other neoliberal technologies, the development models advanced by these governments were reformulations of old strategies.<sup>112</sup> A more radical critique accused this “post-neoliberal” rhetoric of being an attempt to “demobilize the mass movements, promote economic recovery and secure political and social stability” in the benefit of both international and domestic investors.<sup>113</sup>

The 2008 financial crisis could be considered as a break with the antipoverity consensus of the late 1990s and early 2000s. Although debates about austerity took place especially in Europe and the International Monetary Fund’s austerity conditionalities were imposed on European countries, those debates brought about a renewed global commitment to fiscal discipline and structural adjustments. Encouraged by international organisations such as the OECD and the World Bank, countries such as Colombia and Brazil have adopted constitutional reforms aimed at introducing austerity frameworks within their fiscal and budgetary systems. These reforms rely upon what Blyth refers to as the “expansionary austerity theory” of growth, which claims that by creating confidence through austerity reforms, states can attract investors and bring about growth.<sup>114</sup>

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<sup>111</sup> David M. Trubek, 'Law, State, and the New Developmentalism' in David M. Trubek and others (eds), *Law and the New Developmental State* (Cambridge University Press 2013).

<sup>112</sup> Eduardo Gudynas, Rubén Guevara and Francisco Roque (eds), *Heterodoxos. Tensiones y posibilidades de las políticas sociales en los gobiernos progresistas de América del Sur* (Centro Latinoamericano de Ecología Social 2008).

<sup>113</sup> James F Petras and Henry Veltmeyer, *Beyond neoliberalism: A world to win* (Ashgate Publishing, Ltd. 2011) 83.

<sup>114</sup> Mark Blyth, *Austerity. The History of a Dangerous Idea* (First edn, Oxford University Press 2013).

The post-development literature points towards alternatives to development born out of social movements, such as *Buen Vivir*, a philosophical approach developed by indigenous peoples and social movements from the Andean region which advocate for a biocentric understanding of collective flourishing. As Escobar notes, aside from critiquing development and capitalism, many of these proposals rely upon relational ontologies which reject the discontinuity between human and nonhuman domains which characterises modernity, and advocate for autonomous communal forms of government.

### 3. On Methods

This thesis focuses primarily on policy papers and legal documents and examines them through a Foucauldian style discourse analysis. As Kate Bedford notes, “policy documents are central ways in which social reality is shaped.”<sup>115</sup> These texts are elements of the discursive practice of power, and as such they can help to elucidate the rationalities and knowledges that underpin programmes of government. They problematise phenomena in particular ways, are involved in knowledge production by means of developing concepts and categories, and craft solutions pursuant to internal governmental logics. As elements of regimes of government, policy papers (and the same applies to legal documents) are implicated in shaping subjectivities, institutions and other types of relationships, and hence, in distributing flows of power. They are a language of programmes of government and, as such, as Miller and Rose note, they provide “a mechanism for rendering reality amenable to certain kinds of action.”<sup>116</sup> Lazzarato also highlights how as elements of discursive practices, these documents are implicated in determining the problems of a particular society: “on the

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<sup>115</sup> Kate Bedford, *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank* (University of Minnesota Press 2009) xxvi. See also Andrés García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina', Pontificia Universidad Javeriana 2009) 10.

<sup>116</sup> Miller and Rose, 'Governing Economic Life' 7.

one hand, they delimit what is possible, and, on the other hand, they prevent statements appearing that do not conform to the dominant regime of statements.”<sup>117</sup> Even though there might be differences in what is planned and what is actually implemented, policy and legal documents offer a key point of entry into the rationality and practices of governmentalities.

On the other hand, discourse analysis as a method provides tools to analyse the functioning of power through discursive formations. It attempts to make explicit power relationships that run across diverse discursive instances. This type of analysis requires us to pay attention to language, arguments and ways of framing problems and discussions. Borrowing from Rose and Miller, it involves paying attention to “the particular languages within which its objects and objectives [of programmes] are construed, the grammar of analyses and prescriptions, the vocabularies of programmes, the terms in which the legitimacy of government is established.”<sup>118</sup> There is not a consistent or customary set of rules to be attentive to according to this method. It is quite an open way of studying documents and other manifestations of discourses which refuses formalisation.<sup>119</sup> However, there are some questions and focal points which often emerge in scholarship that embraces this approach.<sup>120</sup> One of them is how discourse samples problematise objects or phenomena. It involves looking at how they are constructed over time paying attention to changes and continuities, what features are attributed to them, how they are described, what sort of solutions or interventions are suggested, what functions particular objects’ constructions have and what type of relationship they have with other constructions. A second type of inquiry is what type of technologies can be perceived in discourse samples. Techniques can have material and discursive elements which are displayed through discursive instances. Discourse analysis also looks at subject positions understood as the location and constructed

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<sup>117</sup> Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' 112.

<sup>118</sup> Miller and Rose, 'Governing Economic Life' 8.

<sup>119</sup> Arribas-Ayllon and Walkerdine, 'Foucauldian Discourse Analysis' 110.

<sup>120</sup> *ibid*; Nicole Van Ness and others, 'Embracing our Eroticism: A Foucauldian Discourse Analysis of Women's Eroticism' (2017) 29 *Journal of Feminist Family Therapy* 103.

vantage point from which actors talk. It suggests exploration of “what roles subjects take, what and how they are able (or unable) to speak about an object, and the relative positions they take regarding the discourse.”<sup>121</sup> Similarly, this method invites one to observe processes of subject formation, paying attention to the technologies at play and the processes of self-formation. It involves, for instance, taking notice of subjects’ thoughts, feelings and other experiences. Overall, this way of delving into discourse samples aims to enable us to “establish a critical relation to the present, and discompose certainties,” of our time.<sup>122</sup>

This research has relied, in particular, on the critical tools offered by what some feminist scholars have named problematisation analysis.<sup>123</sup> This framework invites one to critically interrogate assumptions, presumptions and styles of reasoning which underpin processes of problematisation, the type of struggles they are inserted in, their effects and repercussions, as well as how issues could be thought about differently. Since assumptions and presumptions are usually not explicit, Carol Bacchi suggests beginning with the interrogation of the proposed solutions in order to “inquire into the problematizations that render these answers intelligible;” in other words, to work backwards.<sup>124</sup> She then invites researchers to ask the following questions of policies and legal regulations that are understood as “solutions”:

1. What’s the ‘problem’ (e.g. of ‘problem gamblers’, domestic violence, pay inequity, health inequalities, etc.) represented to be in a specific policy?

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<sup>121</sup> Van Ness and others, 'Embracing our Eroticism: A Foucauldian Discourse Analysis of Women's Eroticism' 111.

<sup>122</sup> Arribas-Ayllon and Walkerdine, 'Foucauldian Discourse Analysis' 116.

<sup>123</sup> Bacchi, 'The Turn to Problematization: Political Implications of Contrasting Interpretative and Poststructural Adaptations'

<sup>124</sup> *ibid* Carol Bacchi and Joan Eveline, 'Approaches to Gender Mainstreaming: What’s the Problem Represented to be?' in Carol Bacchi and Joan Eveline (eds), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (Mainstreaming Politics: Gendering Practices and Feminist Theory, First edn, University of Adelaide Press 2010) 114

2. What presuppositions or assumptions underpin this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the ‘problem’? Consider three kinds of interconnected effects: discursive effects, subjectification effects, lived effects.
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?<sup>125</sup>

The research relied primarily upon policy documents, legal regulations and secondary literature. In the case of legal and policy documents, the analysis of each scenario led me to different scales, jurisdictions and types of regulations. In the case of *Familias en Acción*, the research took me to minor legal regulations (operative manuals) and policy documents issued at the national level as it is there where the idealised operation of the programme is best portrayed. The constitutional amendment which introduced austerity rules took me to the realms of congressional and judicial politics. In Chapter 2 I concentrate on proposed bills, congressional debates and judicial decisions as these types of documents offer a window into the rationalities and strategies underpinning law reform. The study of Buenaventura’s general strike posed bigger challenges to me in terms of the materials to be scrutinised, as understanding the strike and the governmental response to it demanded looking at local and

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<sup>125</sup> Carol Bacchi, 'Foucault, Policy and Rule: Challenging the Problem-Solving Paradigm.' Feminist Research Center in Aalborg 7.

national policies and regulations, as well as materials outside these realms. Hence, in Chapter 3 I look at a huge diversity of policy and legal regulations, ranging from national military plans and police manuals, to human rights reports drafted by local authorities, newspapers and press releases. It is noteworthy that national development plans appear in all the chapters. They were an important source of data to me because in their attempt to rationalise and justify development, they shed light on problematisations and the rationalities that form the basis of governmental solutions.

Discourse and problematisation analysis provided me with tool to critically interrogate these materials. I scrutinised the documents in light of the questions suggested by these methods. I found the questions helpful to delve into the categories and type of analysis proposed by the governmentality framework. The questions led me to identify themes and styles of argumentations within the documents, and to contrasts how similar topics unfold in different directions across different materials.

#### **4. Map of the Thesis**

Chapter 1 begins the exploration of the government of poverty in Colombia by looking at *Familias en Acción*, a conditional cash transfer programme created in 2000 and managed directly by the Colombian President. Its stated objective is to provide for the basic needs of families in extreme poverty and give them the tools with which to build human capital and develop capabilities to cope with risk. The chapter explores the discursive constructions of poverty that the programme relies upon, the types of subjectivities it endeavours to fabricate, the techniques it deploys and the bureaucratic logic that underpins the intervention. It argues that *Familias en Acción* has been effective in depoliticising poverty in two ways: on the one hand, the programme conceptualises poverty in manners which focus on individual failures and deficits. This individualised representation of poverty detaches it from economic and political structures and shifts the responsibility for poverty from political and economic

institutions to poor individuals. On the other hand, the programme portrays poverty as a technical and individual problem which demands managerial solutions based on technical expertise rather than largescale social or political change. The chapter pays particular attention to the combination of techniques at play: incentives as a way to govern from a distance on the one hand, and very invasive and coercive mechanisms such as sanctions, surveillance and compulsory training on the other. It also unpacks the type of subjects the programme seeks to constitute: entrepreneurial and resilient subjects and responsible mothers. And finally underlines the articulation of the social programme with military plans and counterinsurgency strategies.

While Chapter 1 concentrates on an administrative scheme, Chapter 2 shifts the focus of attention to constitutional and judicial politics. A decade ago, Colombia gained attention because of the mass of case law on social and economic rights issued by its Constitutional Court. This jurisprudence was celebrated as progressive as it provided some material relief to the poor and posed obstacles to privatisation, labour flexibilisation and other neoliberal reforms. This chapter is concerned with how austerity rules were introduced into the Constitution of Colombia to discipline and neutralise this jurisprudence and prevent progressive uses of social and economic rights. The chapter observes the discourses and techniques (particularly rights) used for those ends. The central argument advanced in this chapter is that rights as the language of the state was hollowed out and manipulated to domesticate more radical uses of rights mobilised in the name of the poor. In this way, Chapter 2 explores the use of the juridical logic and rights as techniques of government to domesticate the poor. Whilst chapter 1 talks about entrepreneurial and resilient poor subjects, Chapter 2 stresses the responsabilised and sacrificial poor citizen that the constitutional amendment and the new jurisprudence of the Constitutional Court endeavours to constitute.



While Chapters 1 and 2 look at discourses and techniques deployed at the national level, chapter 3 moves to a particular local event: a general strike that took place in the port-city of Buenaventura, the richest port and the poorest city in the country. By looking at this particular event, the chapter reveals new shades of the entanglements of poverty, political subjectivity and security. It presents a different genealogy of neoliberal governmentality in Colombia in which new topics emerge: popular politicisation of development, histories of colonialism that structure the racial dynamics of space, the concrete and embodied violence of neoliberal development and different forms of action and resistance. In this chapter the relationship between poverty and security (suggested in Chapter 1) becomes clearer as well as the possibilities of challenging the order of neoliberalism (a topic discussed in Chapter 2). The central argument here is that violence, coercion and punitivism have been central techniques to harnessing the local poor population in accordance with the logic of extraction and the needs of the port as the emblem of neoliberal development. Violence and coercion underpinned by a logic of security have been instrumental to the constitution of docile poor subjects. However, the strike allows us to see that precarity and physical violence have resulted in a politically active population and in sophisticated levels of mobilisation which have managed to stop neoliberal development, at least for a short period of time.

The conclusion insists on the complexity of the government of poverty and the impossibility of reducing it to a single rationality or identifying it with a sole objective. In this spirit, the conclusion elaborates on the main topics that traverse and link the three main chapters of this thesis focusing on their complexity and hybridity: the different ways in which the relation between poverty and security is problematised and intervened, the combination of technologies and techniques of power implicated in governing the poor in contemporary Colombia, and the complex and paradoxical subjectivities that are produced by government but that also exceed and resist it. The thesis identifies many elements akin to neoliberalism, such as the concern for constituting entrepreneurial subjects and aligning them with the new

development model based on austerity and competitiveness. However, the conclusion makes clear that many other rationalities and techniques are at work.

This thesis is an attempt to denaturalise poverty and critically examine how the poor are constituted and governed in our times. It is written as a refusal of the technical and narrow representations of poverty which plague policy documents, legal regulations, newspapers and everyday discussions as means to normalise inequality and ultimately injustice. Yet, this work is also a window into what exceeds government, an invitation to think strategically and politically about government, and to search for alternative lenses (different to poverty) to frame our analysis of and discontent with social and economic injustice.

## Chapter One: Constituting Entrepreneurial and Resilient Subjects. The Conditional Cash Transfers Programme *Familias en Acción*

### 1. Introduction

*Familias en Acción* is a conditional cash transfers programme, a type of social welfare scheme which operates under the direct supervision of the Colombian President. It delivers cash subsidies to families living in extreme poverty. But unlike universal ‘safety-net’ social welfare schemes, the programme only targets particular parts of the poor. Its stated objective is to provide for the basic needs of families and give them the tools with which to build human capital and develop capabilities to cope with risk. However, such targeted programmes focus only on the poor who can be instilled with particular types of behaviours and moral attitudes. Sonia Alvarez refers to this sort of governmentality as ‘*focuspolitique*’<sup>126</sup>, that is, focalised, relief-oriented and disciplinary mechanisms which reproduce life at the basic minimum. Subjects must demonstrate their responsibility: parents (specifically mothers) are expected to participate in training sessions aimed at teaching them to make better decisions which might lead the household out of poverty, and their cash transfers are made dependent on evidence of maintaining their children’s’ nutrition, health and schooling.

*Familias en Acción* was created in the year 2000 as a temporal programme to mitigate the social effects of the late 1990s economic crisis and the structural adjustment reforms in place since the late 1980s. However, it also formed a part of the broader anti-guerrilla and anti-narco-trafficking ‘*Plan Colombia*’. This was an ostensibly military plan promoted by the United States and supported with their military resources. The plan included often less

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<sup>126</sup> See Sonia Álvarez Leguizamón, 'Biopolíticas neoliberales y fopolítica en América Latina, los programas de transferencias condicionadas' (ALACIP).

remarked upon elements that sought to resolve underlying social and economic tensions. Under the stewardship of President Álvaro Uribe's administrations (2002-2010 and 2006-2010), the temporary interventions of *Familias en Acción* were given permanence. Uribe made the scheme a prominent part of his government's programme, explicitly premising it on the "social risks management" framework promoted by the World Bank. In this framework, it was claimed that poverty was the result of people's inability to cope with the growing risks of our uncertain, globalised world. It also drew on human capital discourses which advanced the idea that poverty could be ended by helping the poor to develop the right skills for market inclusion. During Uribe's presidency, the programme was combined with counterinsurgent strategies and used as a means to turn people into allies of the military. This chapter explores *Familias en Acción* as a technology of government and power.<sup>127</sup> Based on a close reading of official documents and legal regulations, the chapter analyses the programme's strategies, tools, rationalities and the type of subjects it endeavours to constitute.<sup>128</sup> I argue that this conditional cash transfers programme rather than governing from a distance (as it is argued conditional cash transfers work), rests upon very coercive and disciplinary mechanisms. It relies upon very coercive and disciplinary devices such as sanctions, accountability mechanisms based on follow-up visits and indicators of performance. As Ruckert puts it, conditional cash transfers like *Familias en Acción* amount to "new forms of policing the poor".<sup>129</sup> It epitomises what Mahon and Macdonald have termed

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<sup>127</sup> See the discussion about technologies of government in the introduction.

<sup>128</sup> I am aware that the objectives stated in the official documentation are not necessarily what the programme is producing. Programmes like this one usually have unexpected and instrumental consequences as some studies have already proven with regard to *Familias en Acción* (See García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina', Claudia Pulido Buitrago, 'Los programas de transferencias monetarias condicionadas en América Latina. El caso de Familias en Acción', Universidad Nacional de Colombia 2013). However, I think it is important to look at the official documents and legal regulations in my attempt to understand how neoliberal dispositives for the government of poverty have operated in Colombia in recent years. These materials offer important insights into the assumptions the programme is premised upon, the discursive formations which circulate within it, the logics which orient decision-making within the scheme, and well as the strategies deployed, even if in the field additional strategies are put to work. Hence, policy papers and legal regulations are helpful sites to chart how the poor are governed, at least from the perspective of the state apparatus.

<sup>129</sup> Arne Ruckert, 'The Forgotten Dimension of Social Reproduction: The World Bank and the Poverty Reduction Strategy Paradigm' (2010) 17 *Review of International Political Economy* 816-832.

“intrusive neoliberalism”,<sup>130</sup> but also the coercive tendencies of neoliberalism in spite of its rhetoric of soft governance.

Furthermore, this chapter claims that *Familias en Acción* endeavours to disconnect poverty from political contestation, depoliticising issues of poverty and inequality. Two strategies have been important to this last end: Firstly, the programme conceptualises poverty in manners which focus on individual failures and deficits. Combining discourses of human capital, social risk management, empowerment and cultural backwardness, poor subjects are conceived as failures in the eyes of the market. But at the same time they are conceived as possessors of an inherent potential that has to be unleashed by means of market techniques to help them to overcome their poverty. Consequently, to solve poverty, *Familias en Acción* attempts to fix poor individuals by fabricating entrepreneurial and resilient poor subjects who internalise the costs of neoliberal policy – namely poverty. Poverty itself is seen as a quasi-natural phenomena, an unavoidable risk to which the poor have to adapt. The programme is also grounded upon a particular understanding of poor women. To the extent that the income support is delivered to mothers who are required to attend training sessions aimed at improving their care practices and lifestyles, the programme burdens women with the responsibility of breaking the cycle of poverty. Consequently, it reinforces the traditional liberal division of productive and reproductive work, naturalises women as care givers, and (by assigning them more reproductive work) continues the history of women’s labour exploitation. A new conceptualisation of the deserving poor is produced by the programme. Deploying the techniques of targeting and responsabilisation, the deserving poor are redefined as those in extreme poverty who are willing to transform themselves by subjecting themselves to the new work ethic of entrepreneurialism. This individual-based representation of poverty detaches it from economic and political structures. It tends to

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<sup>130</sup> Quoted by Ruckert *ibid* 824.

represent poverty as an unavoidable phenomenon which the national-state cannot prevent with any efficiency. Instead it shifts the responsibility for poverty from political and economic institutions to the poor individuals.

Secondly, *Familias en Acción* portrays poverty as a technical problem which demands solutions based on technical expertise. The experts called on to do the job are not only economists, but also psychosocial professionals who are in charge of fixing individuals and making them suitable to play the game of the market. In other words, the programme subtracts poverty from what can be discussed on the political stage. Instead, given its inevitability, poverty is constructed from the bottom up as a problem of the individual. Thus, it only requires technical and managerial solutions, rather than largescale social or political change. This is reinforced by a tendency to frame income support as a ‘subsidy’ rather than a right. *Familias en Acción* is represented as a temporary subvention. It depends upon the agency’s discretionary powers exercised through individual assessments. By depoliticising poverty, *Familias en Acción* functions to legitimise the neoliberal political and economic order. On one hand, it pushes the poor to accept and internalise the new explanations of poverty and behave accordingly. On the other hand, as García Trujillo has illustrated,<sup>131</sup> the programme has been crucial in building support for the national government (namely the Executive) in spite of the other social and economic policies it promotes which are detrimental to the poor.

This chapter is structured in four parts. The first section looks at how the programme emerged, the national and international dynamics at the basis of its creation and continuity, and its effects in terms of the configuration of executive power. Section two looks at the conceptualisations of poverty the programme relies upon. I argue that the point of commonality of the theories the programme rests on is the depiction of poverty as a problem

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<sup>131</sup> García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina.

with roots in the level of the individual. Impoverishment is ascribed to individuals' inability to make good decisions about lifestyles and their failure to cope with risks. Then, the section charts the type of subjectivities *Familias en Accion* endeavours to produce to fix the problem. I claim that the programme seeks to fabricate entrepreneurial and resilient poor individuals who move out of poverty by investing in their human capital and learning to cope with the adverse effects of risks. Section three draws attention to the gender dimensions of the scheme. It is argued that by making mothers responsible for receiving and administering the stipends, and also for fulfilling the duties attached to them, the liberal division of productive and reproductive work is reinforced, while women are essentialised as care givers and their labour further exploited. In section four I move to the techniques through which *Familias en Acción* endeavours to "fix" the poor. Here I put forward the argument that besides governing from a distance, the programme rests upon coercive and disciplinary mechanisms. The final section concentrates on how depoliticisation is attained by means of, on the one hand, detaching poverty from political deliberation and, on the other, representing poverty as a problem which demands technical expertise.

## **2. The Origins of Familias en Acción**

It is important to understand the context from which *Familias en Acción* emerges. The chapter begins by looking at the anti-poverty interventions promoted by multilateral institutions in the 1980s and 1990s, along with changes in legal arrangements, development models, and the macroeconomic adjustments that took place in Colombia in the same period. Targeted poverty programmes were created as a means to ameliorate the social crisis produced by the fiscal reforms imposed to most Latin American countries by multilateral institutions after the 1980's debt crisis. Higher levels of poverty<sup>132</sup> coupled with social discontent led to a

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<sup>132</sup> In Colombia, according to data provided by García Trujillo, between 1995 and 1999 - the years which preceded de introduction of *Familias en Acción*, poverty rates increased from 49,5% to 57,5%, while extreme poverty raised from 17,2% to 25,4%. See *ibid* 78.

return to the “social question” in the state reform agenda. This shift has been labelled in different ways: inclusive neoliberalism, Post-Washington Consensus, the Third Way, the New New deal, etc. It basically refers to “realignment[s] away from market orthodoxy”<sup>133</sup> (that prevailed in the 1980s) with the aim of mitigating the dislocating effects of market expansion (namely, poverty). In this context, following the first wave of temporary emergency aid relief-style policies which targeted extreme poverty, in the late 1990s conditional cash transfers emerged as central programmes in the fight against poverty. They were promoted by the World Bank and the Inter-American Development Bank as cheap, egalitarian and highly efficient programmes. The argument was that by only targeting the extremely poor and incentivising them to improve their human capital, conditional cash transfers were effective in eradicating the root causes of poverty while saving money for governments and fostering economic growth by improving employability and fiscal stability.<sup>134</sup> *Familias en Acción* was introduced in this context following the example of other Latin American countries. However, it cannot be interpreted as simply the result of a model imposed from above. As this section illustrates, *Familias en Acción* has played important roles in legitimising security projects articulated in the contexts of the ongoing internal civil conflict, as well as in building support for an executive branch which continues expanding its powers. The section explains how *Familias en Acción* was introduced in Colombia, explores the local and international dynamics underneath it, as well as the political functions it has played beyond the aim of fighting poverty.

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<sup>133</sup> Ballard, 'Geographies of Development II: Cash Transfers and the Reinvention of Development for the Poor' 813. See also Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' Craig and Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy*.

<sup>134</sup> See García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina 30-58.



### 2.1. *The International Context*

Until the mid 1980s, a paradigm of development based on state-led import-substitution and internal industrialisation dominated the country. Drawing on full employment theories, poverty alleviation was sought mainly through the expansion of the labour market by means of industrialisation, redistribution of idle land, promotion of migration to the cities and an active engagement of the state in economically productive activities.<sup>135</sup> This strategy was combined with social security benefits for formal workers, regulations on minimum wages, and some nutrition programmes.<sup>136</sup> Consequently, poverty was mainly understood as a problem of unemployment due to weak industrialisation, which demanded mainly macroeconomic intervention.<sup>137</sup> As in many other places, poverty was not the main concern of social policy; its most important aim was to provide social security to reproduce the labour force.

In the mid 1980s, hand in hand with the World Bank, Colombia began to steer towards trade liberalisation and other policies in line with what would later be termed the Washington Consensus.<sup>138</sup> In 1985, President Belisario Betancourt, in power between 1982 and 1986, implemented a programme of liberalisation and austerity similar to the adjustment programmes put in place in other regions, in order to obtain a special loan from the World Bank. The national government requested the loan arguing unsatisfactory export performance and shortfalls in private funding due to the effects of the early 1980s debt

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<sup>135</sup> See Helena Alviar García, 'Social Policy and the New Development State. The Case of Colombia.' in David M. Trubek and others (eds), *Law and the New Developmental State The Brazilian Experience in Latin America Context* (Law and the New Developmental State The Brazilian Experience in Latin America Context, Cambridge University Press 2013) 365. Jairo Nuñez M and Laura Cuesta, 'Evolución de las políticas contra la pobreza: de la previsión social a las transferencias condicionadas' Documento Cede, 9.

<sup>136</sup> Nuñez M and Cuesta, 'Evolución de las políticas contra la pobreza: de la previsión social a las transferencias condicionadas.'

<sup>137</sup> Alviar García, 'Social Policy and the New Development State. The Case of Colombia.'

<sup>138</sup> The Washington Consensus refers to a set of economic reforms that John Williamson - who coined the term - thought were necessary for Latin America and could be implemented with a high level of consensus in Washington. Those reforms can be summarised as follows: fiscal austerity and discipline, expenditure reduction, trade and financial liberalisation, privatisation, deregulation and protection of property rights. Williamson, 'What Washington Means by Policy Reform.'

crisis.<sup>139</sup> Although President Virgilio Barco, who came into power in 1986, promised a return to a 'social economy', that is, policies oriented towards industrialisation and the creation of a sort of welfare state, in 1990 he also abandoned that model and reoriented his development plan towards liberalisation, fiscal austerity, privatisation and labour flexibilisation.<sup>140</sup>

As Colombia welcomed the Washington Consensus, its social policy began to align with the type of anti-poverty policies the World Bank and other development agencies had begun to prescribe. Referred to as the Post-Washington Consensus, inclusive neoliberalism, the Third Way or the New New Deal,<sup>141</sup> this is basically a new social policy orientation aimed at mitigating the dislocating effects of market expansion and structural adjustments from the 1980s (namely poverty) without altering the orthodox neoliberal economic recipes.<sup>142</sup> This trend began in the early 1990s when, following a decade of structural adjustments in which cuts in social spending and the privatisation of previous social services were actively advocated, the World Bank and the other development institutions were confronted with the massification of poverty. In response to the critiques of this approach, a first wave of minimalist and market-friendly anti-poverty measures was embraced. Without abandoning the claim that structural adjustment-led growth was the best possible social policy, in the 1990 World Development Report, the World Bank began to promote a sort of social policy based on labour flexibilisation, investments in human capital, incentives for the efficient use of the assets owned by the poor, and temporary and targeted cash transfers combined with safety nets for the people unable to work or who fell under the poverty line due to

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<sup>139</sup> Devesh Kapur, John Lewis and Richard Webb, 'The World Bank: Its First Half-Century, Volume I: History (Washington DC: Brookings Institution).', eds (1997b)' (1997) 2 'The World Bank: Its First Half-Century 570 Juan Luis Londoño and Guillermo Perry, 'El Banco Mundial, el Fondo Monetario Internacional y Colombia: análisis crítico de sus relaciones' in Sistema Económico Latinoamericano (ed), *El FMI, el Banco Mundial y la crisis latinoamericana* (Siglo Veintiuno Editores 1986) 240.

<sup>140</sup> See Jairo Estrada Álvarez, 'Orden neoliberal y reformas estructurales en la década de 1990. Un balance desde la experiencia colombiana.' (2006) *Ciencia Política* 141-146.

<sup>141</sup> Ballard, 'Geographies of Development II: Cash Transfers and the Reinvention of Development for the Poor' 813.

<sup>142</sup> *ibid* 813. See also Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' Craig and Porter, *Development beyond neoliberalism. Governance, poverty reduction and political economy*.

macroeconomic shocks.<sup>143</sup> Cash transfers and safety nets were premised on the theory that poor people are more vulnerable to income loss during shocks and adjustments, so national governments should provide minimum and temporary assistance to them until such adjustments translated into fresh growth.<sup>144</sup> These programmes were administered by states and NGOs, and funded by development aid in most developing countries.<sup>145</sup>

As the 1990s progressed, the World Bank and its allies such as the IMF and the Inter-American Development Bank introduced new concerns into the social oriented development agenda. James Wolfensohn, appointed President of the World Bank in 1995, began a revision of the development agenda with the aim of making it more inclusive and balanced. As part of this process, he appointed Joseph E. Stiglitz, a strong critic of structural adjustments, as Chief Economist in 1997. As a result, in what Stiglitz denominated the Post-Washington Consensus, the World Bank reformulated its approach to development and made a call for the return of the state (an efficient state) to complement the market. Among other objectives, Stiglitz claimed that the nation-state plays an important role in creating competitive and efficient markets by such means as providing social protection and building human capital.<sup>146</sup> Along with poverty, the bank began to introduce in its development discourse terms like human rights, gender equality, participation, empowerment, ownership and good institutions, giving rise to a second wave of social oriented reforms.<sup>147</sup> Overall, the Post Washington Consensus promotes the return of the state to the developmental

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<sup>143</sup> Regarding cash transfers and safety nets, the bank advocated for food subsidies (preferable food stamps because they target the poor better and can be combined with incentives), transfers or subsidies through health systems, employment schemes in particular in rural areas and cash transfers for the elder, disable and children. World Bank, *World Development Report 1990 "Poverty"* 100-101.

<sup>144</sup> *ibid* 103.

<sup>145</sup> Armando Barrientos and David Hulme, 'Social Protection for the Poor and Poorest in Developing Countries: Reflections on a Quiet Revolution' (2008) Brooks World Poverty Institute Working Paper 30 9; Jenson, 'Diffusing Ideas for After Neoliberalism. The Social Investment Perspective in Europe and Latin America' 62.

<sup>146</sup> Joseph E. Stiglitz, 'More Instruments and Broader Goals: Moving Towards the Post-Washington Consensus' (WIDER Annual Lectures 2) 25-26.

<sup>147</sup> For instance, the 2000 World Development Report emphasised the importance of complementing the 1990s' approach to poverty with interventions to address issues of vulnerability, powerlessness and inequality in terms of gender, race and ethnicity. World Bank, *World Development Report 2000/2001. Attacking Poverty*) 32-33.

enterprise to perform at least three functions: To support market transactions and foster competition; to promote social investment (instead of social spending), that is the allocation of public funds to programmes which support innovation, human capital and other types of investments for the future; and to provide basic protection against market failure (such as safety nets) using strategies which involve private actors and market mechanisms.<sup>148</sup> The “new consensus” manifested in different initiatives such as the World Bank Comprehensive Development Framework presented to the international community in 1999 as an attempt to direct development aid to poverty reduction using participatory processes, the United Nations Millennium Development Goals and the Poverty Reduction Strategy Papers’ framework introduced in 1999 by the IMF and the World Bank seeking country ownership (instead of conditionalities) regarding anti-poverty and development policy.<sup>149</sup>

The new anti-poverty consensus has been the object of critiques from a number of different viewpoints: For some, it entails an adaptive strategy of neoliberalism or, more generally, of capitalism. For instance, for Craig and Porter it constitute a “re-embedding” of the market through an enabling state,<sup>150</sup> Toby Carroll describes it as a new phase of neoliberalism characterised for its attempt to entrench an utopian market society,<sup>151</sup> while Paul Cammack concludes that it represents a deeper commitment to neoliberalism aimed at the “proletarianisation of the world’s poor.”<sup>152</sup> From another angle, it is considered to signal a move towards a new form of development governmentality. Kerry Rittich comments that the social turn has meant the enhancement of the regulatory power of the project of development, along with the reinscription of precisely those social concerns that were

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<sup>148</sup> See Craig and Porter, *Development beyond Neoliberalism. Governance, Poverty Reduction and Political Economy* 60-61; Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' 233; Jenson, 'Diffusing Ideas for After Neoliberalism. The Social Investment Perspective in Europe and Latin America' 61-63.

<sup>149</sup> See Craig and Porter, *Development beyond Neoliberalism. Governance, Poverty Reduction and Political Economy* 2; Trubek and Santos, 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' 1.

<sup>150</sup> Craig and Porter, *Development beyond Neoliberalism. Governance, Poverty Reduction and Political Economy*.

<sup>151</sup> Carroll, *Delusions of Development: The World Bank and the Post-Washington Consensus in Southeast Asia* 35-37

<sup>152</sup> Cammack, 'What the World Bank means by poverty reduction, and why it matters', 190, 209.

introduced.<sup>153</sup> Poverty, human rights, participation, etc. have been redefined in ways amenable to market rationality. Similarly, Celine Tan claims that the new approach with its emphasis on ownership and partnerships has given birth to a sort of international “biopolitical” power in which the objects of power (societies or states) reproduce these norms and seek to insert themselves into the very relationship of power.”<sup>154</sup> For Suzan Ilcan and Anita Lacey, these changes reinforce the global governmentality of poverty which began to take shape in the 1980s and which seeks to transform the poor in line with market prescriptions.<sup>155</sup> The Post-Washington Consensus then entails a new type of international governmentality whereby both developing states and poor peoples are governed from a distance but at the same time in a more intrusive manner.

## 2.2. *Governing Poverty in the New Consensus*

Targeting and market-based solutions to poverty are the main strategies of social policy under the Post-Washington Consensus. Targeting entails the allocation of public social expenditure to programmes that focus on people living in extreme poverty with the aim of satisfying their basic needs.<sup>156</sup> It is the opposite of universal provision, which was accused of being inefficient, expensive and paternalistic.<sup>157</sup> This approach to social intervention has its roots in a particular interpretation of Rawl’s theory of justice. According to it, Rawl’s theory prescribes the maximization of the welfare of those most in need, but without affecting in

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<sup>153</sup> Rittich, 'Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, The' 232.

<sup>154</sup> Tan, *Governance through Development: Poverty Reduction Strategies, International Law and the Disciplining of Third World States* 13.

<sup>155</sup> Ilcan and Lacey, *Governing the Poor: Exercises of Poverty Reduction, Practices of Global Aid* 5.

<sup>156</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' 239

<sup>157</sup> It was argued that universal systems are not an efficient policy for developing countries because are expensive and demand large bureaucratic apparatuses that cannot be afforded by weak national economies; are usually funded through extensive taxation which hampers competitiveness; and encourage the concentration of social spending in small influential middle income groups linked to nation-building or industrialisation processes, in contexts of corruption and concentration of power. Mkandawire, 'Targeting and Universalism in Poverty Reduction'

other ways the distribution effected by the market.<sup>158</sup> Targeting also draws on the 1970s theory of unsatisfied basic needs promoted by the World Bank, Amartya Sen's theory of capabilities and, more recently, the human development approach formulated by the United Nations Development Program, among others.<sup>159</sup> These theories attempt to find objective measurements of what is the minimum required to maintain life, which in turn is conceived as the precondition for market inclusion and the exercise of freedom and citizenship. Sonia Alvarez refers to this discursive formation as a new type of humanitarianism, which even though it laments poverty, does not enquire about the justice of the economic system and instead takes poverty and inequality for granted. Consequently, it responds to them merely in terms of amelioration.<sup>160</sup>

Market-based solutions to poverty promote “markets for social ends and... [encourage] market-oriented behaviour in the poor”.<sup>161</sup> These are strategies and techniques which endeavour to instil market rationality into the provision of what used to be known as social services. For instance, they involve private parties in poverty alleviation efforts through Corporate Social Responsibility or create new markets around the satisfaction of the needs of the poor through “bottom of the pyramid” initiatives which seek to provide goods and services to the poor in ways that they can afford,<sup>162</sup> transforming them into customers and entrepreneurs. Market based solutions are premised upon the belief that participation in the market can improve the living conditions of the population. They

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<sup>158</sup> See García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina' 63.

<sup>159</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' 251-263.

<sup>160</sup> *ibid* 250.

<sup>161</sup> Kate Cooney and Trina R Williams Shanks, 'New Approaches to Old Problems: Market-Based Strategies for Poverty Alleviation' (2010) 84 *Social Service Review* 29, 29.

<sup>162</sup> C. K. Prahalad, one of the main campaigners of the base of the pyramid approach, argues that given the amount of poor people that live in the world, they represent an important potential market that should be explored. He proposes the design of business models that, on the one hand, allow multinational corporations to benefit from the huge market that the poor represent and, on the other hand, allow poor consumers to have access to goods and services that usually they cannot afford. He claims that solutions to poverty can be co-created in this way, empowering the poor by giving them the opportunity to choose and encouraging self-esteem. Prahalad, *The Fortune at the Bottom of the Pyramid: Eradicating Poverty through Profits* 3-21.

envision poor people as resilient and creative entrepreneurs who only need some help to overcome the barriers that separate them from market opportunities. They also rely upon the assumption that the poor do not participate in the market because “non poor business actors lack familiarity with the unique externalities of the low-income environment and because low-income population are unable to exert steady demand signals”.<sup>163</sup> Some of the key terms we find in literature on market-based solutions are inclusive markets, human capital, microfinance and social entrepreneurship.

Targeting and market-based solutions to poverty fit the governing rationality underlying the Washington Consensus for several reasons: They share the belief in the market as the most efficient tool to achieve social prosperity. However, the market is not conceived of as a natural phenomenon. Dean observes that for some versions of neoliberal rationality – the Ordoliberal – the market is a reality to be organised and secured by appropriate institutional, juridical and cultural frameworks. In other words, the market has to be structured and the state (in this case through social policy) plays an important role in this regard.<sup>164</sup> Additionally, to the extent that market-based solutions endeavour not only to create markets for the provision of previous social services, but also to effect cultural changes by shaping the poor as consumers, it reflects a neoliberal concern for restructuring new realms according to market rationality. These mechanisms are also consistent with efforts to restructure the state, which is accused of allocating resources inefficiently and creating obstacles to the proper functioning of the market. Targeting and market-based solutions to poverty are claimed to ameliorate state-created distortions by minimising redistributive efforts and making social spending more efficient through privatisation and managerial schemes which set specific objectives and indicators of progress. Efficiency, continues the

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<sup>163</sup> Cooney and Shanks, 'New Approaches to Old Problems: Market-Based Strategies for Poverty Alleviation' 30. See also Aneel Karnani, *Fighting Poverty Together: Rethinking Strategies for Business, Governments, and Civil Society to Reduce Poverty* (Palgrave Macmillan 2011) 23-24.

<sup>164</sup> Dean, *Governmentality. Power and Rule in Modern Society* 71.

argument, enables cuts in social spending, reducing in this way interferences in the distribution effected by the market. They also articulate perfectly well with neoliberals' preference for individual explanations of social phenomena. As will be explained in more detail in the following section, they attribute poverty to problems rooted in the level of the individual – inability to take advantage of market opportunities, ill preparation to cope with risks, bad choices when it comes to human capital development, etc. Finally, these solutions are amenable to financialisation to the extent that they create new markets attractive to financial capital and make social security resources available for financial speculation – e.g. pension funds. Clients and consumers are the new subjects of social policy rather than right-bearers, while the notion of public service has been radically transformed in line with privatisation, decentralisation and financial standards of efficiency.

During the 2000s, conditional cash transfers condensed this new orientation of social policy and became the neoliberal “default setting of antipoverty reforms.” Sometimes imposed,<sup>165</sup> in other instances promoted as best practice,<sup>166</sup> and certainly coproduced by the multilateral development agencies, this type of programme was championed around the world as the cheapest and most efficient way of addressing poverty. Drawing on concepts from behavioural economics and motivational psychology, the schemes delivered modest cash transfers to means-tested targeted poor families in order to nudge them to accumulate human capital focusing on children. Peck and Theodore rightly describe them as follows:

The CCT [Conditional Cash Transfers] model encapsulates a new logic of social assistance, transnational in reach and quite different from welfare-state rationalities of need-based entitlements and universal coverage, most of which

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<sup>165</sup> See Ruckert, 'The Forgotten Dimension of Social Reproduction: The World Bank and the Poverty Reduction Strategy Paradigm'.

<sup>166</sup> Jamie Peck and Nik Theodore, 'Paying for Good Behavior: Cash Transfers Policies in the Wild' in Ananya Roy and Emma Shaw Crane (eds), *Territories of Poverty Rethinking North and South* (The University of Georgia Press 2015) 103.



were anchored in national citizenship regimes and nation-state delivery systems; it emphasizes socioeconomic promotion over social protection and long-term human capital investment over temporary relief; it advances notions like reciprocal obligation and ‘co-responsibility’ over universal human rights or top-down forms of social responsibility; and it inculcates active engagement over passive benefit receipt, an approach captured in the phrase ‘paying for good behaviour’.<sup>167</sup>

Hence, the functions of the transfers are twofold: they ensure basic levels of consumption in the present, while at the same time promote long term human capital accumulation, which is claimed to be crucial for breaking the intergenerational transmission of poverty as well as for boosting growth. Their minimalistic nature and orientation towards human capital building make them a perfect complement to other neoliberal-oriented interventions as they do not interfere with market distribution and do not create significant pressures on national budgets.

The shift towards this new way of dealing with poverty officially began in Colombia with the new Constitution adopted in 1991 as it prescribed the decentralisation and privatisation of social services.<sup>168</sup> Although the new Constitution introduced a long list of fundamental rights which included social and economic rights, the latter were not clearly defined and were subjected to privatisation and market rationality. Consequently, in the early 1990s, new systems of higher education, healthcare and social security were put in place

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<sup>167</sup> *ibid* 104.

<sup>168</sup> Article 48: “Social Security may be provided by public or private entities, in accordance with the law”. Article 49: “It is the responsibility of the state (...) to establish policies for the provision of health services by private entities and to exercise supervision and control over them.” Article 68: “individuals may create educational institutions. The law will establish the conditions for their creation and management.” Article 365: “Public services will be subject to the juridical regime determined by the law, may be provided by the state directly or indirectly, by organised communities, or by individuals.” *Constitución de la República de Colombia*.

allowing the participation of private providers.<sup>169</sup> These legal reforms also involved a transformation of the way public subsidies were delivered: from focusing on the supply side, they were redesigned to respond to the demand side.<sup>170</sup> It meant that rather than allocating the subsidies through universal schemes relying upon public education or public healthcare, they began to be distributed according to the number of people in need of the services, usually through private intermediaries or public-private partnerships. Hence, statistics on poverty and the characterisations of the poor became crucial inputs to the new way of delivering social assistance.

The shift towards demand-based subsidies was effected through the creation of a system for the selection of the beneficiaries of social programs, named System of Selection of the Beneficiaries of Social Programmes (SISBEN for its Spanish acronym). Introduced in 1994<sup>171</sup> by the National Council of Economic and Social Policy (CONPES)<sup>172</sup>, SISBEN is based on a multidimensional poverty index which provides indicators for the identification of people in extreme poverty who deserve state support; it is the selection system necessary for targeting. The system operates on the basis of questionnaires which attempt to measure the living standards of the population. It has undergone three major changes so far: the first design emphasised income deprivation, while the second and third designs, drawing on Amartya Sen's theory of capabilities, focused on a broader set of variables related to housing, access to utilities, schooling and employment.<sup>173</sup>

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<sup>169</sup> Law 30 of 1992 on higher education and Law 100 of 1993 on healthcare and social security (mainly pensions).

<sup>170</sup> See Law 100 of 1993, Law 617 of 2000, Constitutional Amendment 01 of 2001 and Law 715 of 2001.

<sup>171</sup> The SISBEN was created in fulfilment of the 1993 Law 60.

<sup>172</sup> See CONPES, *Documento Conpes 022 de 1994. Focalización del gasto social en las entidades territoriales* (1994). The CONPES is subordinated to the National Department of Planning and the Ministry of Finance. It is a technical body which since the early 1960s has played a central role in the design and implementation of development and social policies. Its decisions are contained in CONPES documents, which in spite of their advisory nature (they are policy documents), have an enormous regulatory power. For instance, *Familias en Acción* was created and operated on the basis of CONPES documents until 2012, when legislation was passed in order to make the programme permanent. However, CONPES documents are not subjected to judicial review.

<sup>173</sup> Departamento Nacional de Planeación, *Diseño del índice Sisben en su tercera versión. Sisben III. Resumen ejecutivo* (2008) 3.

### 2.3. The Creation of *Familias en Acción*

*Familias en Acción* was created in 2000 as a conditional cash transfers programme aimed at families in extreme poverty as categorised by SISBEN (initially level 1 out of 4). It delivers income support (a sum far below the monthly minimum wage) to households with children who do not benefit from other social programmes. In return, families must comply with requirements related to children's schooling and attendance at nutrition and health check-ups.<sup>174</sup> At its outset, the programme focused on the people who fell into extreme poverty due to the economic crisis of the late 1990s and the fiscal adjustments taken in response to it. Consequently, it was originally conceived as a temporary programme with a sort of compensatory nature.<sup>175</sup>

The World Bank, the IMF and the inter-American Development Bank played crucial roles in bringing *Familias en Acción* into life. They brought the idea of a conditional cash transfers programme to the country and provided technical support for its implementation, monitoring and evaluation. In the mid 1980s the World Bank began to experiment with anti-poverty programmes to ameliorate the effects of structural adjustments. Extreme poverty, instead of inequality or other social goals, became the main target of social policy as interpreted by the institution. Safety nets were the type of interventions privileged by the World Bank in the 1990s as part of structural adjustment conditionalities. Premised on the assumption that the employment elasticity of growth would diminish poverty levels in the medium term, they were conceived as temporary programmes designed to provide basic income support to those most affected by the austerity measures imposed by the Breton Woods institutions.<sup>176</sup> Therefore, safety nets were initially attached to the rationality of aid

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<sup>174</sup> CONPES, *Documento Conpes 3081 de 2000. Plan Colombia. Red de Apoyo Social: Programas de subsidios condicionados y capacitación laboral de jóvenes desempleados de bajos recursos.* (2000) 2.

<sup>175</sup> *ibid* 10.

<sup>176</sup> Mkandawire, 'Targeting and Universalism in Poverty Reduction' 4.

relief programmes, a sort of post-disaster humanitarian aid aimed at maintaining basic level of consumption.

As the World Bank realised that structural adjustments were not improving the living standards of those most in need, safety nets were redesigned and turned into conditional cash transfers grounded upon ideas of targeting and human capital building.<sup>177</sup> Soon after conditional cash transfers were rationalised as elements of social protection schemes,<sup>178</sup> premised on the idea that populations are increasingly exposed to different types of risks. In part this was due to the economic interdependency created by economic globalisation and the perception that poverty was a result of people's inability to cope with those risks.<sup>179</sup> Social protection borrows from the theory of social risk management (SRM) advocated by experts from the World Bank. It claims that nowadays individuals, families and communities are vulnerable to multiple and unpredictable risks, ranging from environmental degradation to economic recessions. When these risks transform into catastrophes, their consequences affect disproportionately the lower ranks of society, making them more vulnerable to fall into poverty or to deepen their situation of impoverishment. Consequently, the solution is to provide the poor with devices to cope with risk in order to reduce their vulnerability to those adverse outcomes. Social protection was claimed to help people to move out of poverty by inculcating resilience in vulnerable households.<sup>180</sup> Conditional cash transfers, by means of

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<sup>177</sup> *ibid* 4.

<sup>178</sup> Barrientos and Hulme, 'Social Protection for the Poor and Poorest in Developing Countries: Reflections on a Quiet Revolution' 3. According to the World Bank, the elements of social protection schemes are threefold: Social assistance, which covers in-kind assistance and cash transfers programmes aimed at guaranteeing basic levels of consumption to poor families; social insurance, which refers to contributory schemes that protect workers against the financial consequences of risks such as old age, disability, unemployment and sickness; and labour market regulations which seek minimum standards of protection for workers. There are other approaches to social protection, such as the human rights-based approach advanced by the International Labour Organisation, and the United Nations' basic need approach. However, the World Bank's risk social protection approach is the most diffused. See Barrientos and Hulme, 'Social Protection for the Poor and Poorest in Developing Countries: Reflections on a Quiet Revolution'.

<sup>179</sup> Barrientos and Hulme, 'Social Protection for the Poor and Poorest in Developing Countries: Reflections on a Quiet Revolution' 7-8.

<sup>180</sup> Meg Elkins, 'Embedding the Vulnerable into the Millennium Development Goals: Social Protection in Poverty Reduction Strategy Papers' (2014) 26 *International Development* 853, 855-856.

conditionalities and basic income support, were presented as efficient tools to instil resilience into poor households.

In 1999, Colombia requested a loan from the IMF with the aim of ameliorating the effects of the late 1990s economic crisis. The Colombian government was then requested to adopt a macroeconomic programme which included reforms to the financial sector and measures aimed at reducing fiscal deficit. One of the articles of the agreement demanded that 0.3% of GDP be expended in funding a “social assistance network” aimed at providing some income relief to the low-income victims of the crisis for a period of four years. The IMF advised the Colombian government to request financial support from the World Bank and the Inter-American Development Bank.<sup>181</sup> It complied, and in 2000 following the World Bank’s technical advice, *Familias en Acción* was implemented as part of a network of social protection.

In 2001, drawing on SRM theory, the national government created a System of Social Risk, with the objective of preventing and mitigating the adverse effects that economic crises have on vulnerable populations.<sup>182</sup> The system was premised on the assumption that recessions lead to human capital losses, impairing people’s wellbeing and economic growth. Hence, social policy was reconceptualised as aiming to mitigate the effects of market failure and helping people to cope with risks that can lead to poverty.<sup>183</sup> *Familias en Acción* was integrated into the system as a mitigation mechanism in the face of crises.

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<sup>181</sup> García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina' 79.

<sup>182</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3144 de 2001 "Creación del Sistema Social del Riesgo y Fondo de Protección Social"* (2001) 2.

<sup>183</sup> Agencia Presidencial para la Acción Social y la Cooperación Internacional, *El camino recorrido. Diez años Familias en Acción* (Agencia Presidencial para la Acción Social y la Cooperación Internacional y Departamento Nacional de Planeación 2010) 70.

#### 2.4. Security & Social Transformation

Another important aspect which might help to understand the configuration of the programme is that it emerged as part of *Plan Colombia*, a US-sponsored military plan aimed at supporting the Colombian government, economically and technically, in fighting guerrilla groups and drug trafficking. The plan was initially criticised for lacking a social component, an issue which was interpreted as denying the social dimensions of the Colombian internal armed conflict. Hence, simultaneously, in order to get financial support from other international entities, especially the European Union,<sup>184</sup> and drawing on counterinsurgency tactics, the plan was reformulated to include an economic and social recovery component. *Familias en Acción* was a key part of this counter-insurgency strategy.<sup>185</sup> Much of the funding for *Familias en Acción* came from multilateral credit schemes, as we have seen. But it was also funded by *Plan Colombia* grants and other sources of international development aid. These were initially managed by a Peace Fund supervised directly by the President.<sup>186</sup> Although the program emerged during Andrés Pastrana's Presidency (1998-2002), it was the right-wing Alvaro Uribe's Presidency (2002-2006 and 2006-2010) that made *Familias en Acción* the emblem of the central government's social agenda. The counter-insurgency element was central for his administration. The possibilities of using its targeted interventions to change perceptions of the government among poor populations were understood. In 2003, early in Uribe's Presidency, the programme went through a technical evaluation and was prolonged for a further three year period. It was also expanded to new rural areas.<sup>187</sup> In 2005, its administration was delegated to *Acción Social*. This was an agency created under the direct

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<sup>184</sup> See García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina 80-81.

<sup>185</sup> CONPES, *Documento Conpes 3081 de 2000. Plan Colombia. Red de Apoyo Social: Programas de subsidios condicionados y capacitación laboral de jóvenes desempleados de bajos recursos* 2.

<sup>186</sup> *ibid* 3.

<sup>187</sup> See Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3359 de 2005. "Autorización a la Nación para contratar un empréstito externo con la banca multilateral hasta por US \$86,4 millones, con el fin de financiar parcialmente el programa Familias en Acción y el fortalecimiento de la información y del sistema de monitoreo y evaluación del sector de la protección social"* (2005) 2.

supervision of President Uribe with the objective of coordinating all social programmes run directly by the national government. Uribe won the 2002 presidential election promising “democratic security”. This promise was translated into a military-based strategy for fighting guerrilla forces. His strategy was criticised for prioritising security over social issues. By giving continuity to *Familias en Acción* and claiming the end poverty to be a priority of his government, he not only responded to his critics, but benefited from its counterinsurgent effect as well as the popularity the programme acquired among poorer populations. It has been suggested that *Familias en Acción* was crucial for his re-election in 2006 to the extent that it helped him to be perceived as a pro-poor President and granted legitimacy to his “democratic security” strategy.<sup>188</sup>

At the outset of Uribe’s second term, the conditional cash transfer scheme gained momentum as the central component of his strategy for social integration *Red Juntos*.<sup>189</sup> Drawing on the experience of *Chile Solidario*, *Red Juntos* was conceived as a social protection network for families in extreme poverty or victims of forced displacement. Its goal was to coordinate the activities of all social programmes focused on these households in order to address different dimensions of their poverty.<sup>190</sup> The network emphasised two areas considered crucial for helping families to move out of poverty: human capital and the development of capacities to manage risks. *Familias en Acción* was positioned as central to the achievement of these goals. I will elaborate on *Red Juntos* in the next section, but now I would

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<sup>188</sup> This argument was initially proposed by Alejandro Gaviria, an orthodox economist who later on joined Juan Manuel Santos’ administration (2010-2014 and 2014-2018) as Ministry of Health. Cited in García Trujillo, ‘Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina’ 116. García Trujillo argues that *Familias en Acción* has been instrumental in legitimising Uribe’s government even though he not only gave continuity to the neoliberal reforms initiated in the 1980s but made them tougher on the poor. *ibid.* See also Pulido Buitrago, ‘Los programas de transferencias monetarias condicionadas en América Latina. El caso de Familias en Acción.’

<sup>189</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 “Red de protección social contra la extrema pobreza”* (2006).

<sup>190</sup> The dimensions addressed by the network were: registration and identification before the State, income and labour (focusing on entrepreneurial skills), education, healthcare, housing (focusing on ownership through credit), nutrition, family dynamics (focusing on the prevention of violence and sexual and reproductive health), access to the financial system and insurance schemes and legal aid. *ibid* 16-17.

like to highlight that the integration of *Familias en Acción* into *Red Juntos* prompted its expansion to urban and indigenous households. By 2007 the programme had reached almost 1,500,000 families and Uribe promised to increase the number to 3,000,000 by 2010.<sup>191</sup>

Juan Manuel Santos, former Ministry of Defence during Uribe's administration, was elected President in 2010. He committed to continuing most of Uribe's strategies, including *Red Juntos* and *Familias en Acción*; but he also announced a number of changes aimed at improving targeting and exit criteria.<sup>192</sup> During Santos' administration, *Red Juntos* was transformed into *Red Unidos* as part of a redesign purposed to move the programme "from social assistance to social protection." The redesign defined clear exit criteria to avoid dependency and ensure its fiscal sustainability. Another important fact worth mentioning is that during Santos' administration, the programme was granted legal protection by Congress. Up to 2012, *Familias en Acción* had been regulated entirely through policy documents and administrative manuals. In order to ensure the continuity of the subsidies, in 2011 a Senator from Uribe's political party brought a bill before the Congress with the aim of giving it legislative recognition.<sup>193</sup> The Congress approved the bill without major changes (Law 1532) and made the programme permanent. It also entrusted its management to the recently created agency Administrative Department for Social Prosperity, also subordinated to the Office of the President.<sup>194</sup>

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<sup>191</sup> García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina 93. Uribe did not reach this number and by 2014 the programme has just expanded to 2'676.386 million families. In any case, it is still the biggest social programme in the country.

<sup>192</sup> See Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010-2014 "Prosperidad para todos. Más empleo, menos pobreza y más seguridad"* (2010) 323.

<sup>193</sup> Juan Lozano, *Proyecto de ley número 220 de 2011 Senado "por medio del cual se regula el funcionamiento del Programa Familias en Acción"* (Gaceta del Congreso No. 46 2011).

<sup>194</sup> Congreso de la República de Colombia, *Ley 1532 de 2012. Por medio de la cual se adoptan medidas de política y se regula el funcionamiento del Programa Familias en Acción* (2012).



### 2.5. Conclusion

Overall, *Familias en Acción* has strengthened Presidential power over public expenditure. As mentioned in previous paragraphs, since its inception, the programme has been run by agencies subordinated directly to the Office of the President. The expansion of the scheme at the same time that privatisation of social services and cuts in other lines of social expenditure were taking place, meant that the Office of the President was gaining greater control over social expenditure. Actually, legal reforms promoted by the executive during Uribe's administration claimed precisely that cuts in other lines of social expenditure, especially those managed by local governments, were necessary to liberate resources for the expansion of *Familias en Acción*.<sup>195</sup> As stated by García Trujillo, the re-centralisation of social policy is aligned with recent requirements of institutions such as the World Bank who perceived the decentralization of social services promoted in the early 1990s as a failure, as it resulted in higher fiscal deficits and facilitated corruption by granting higher power to local elites.<sup>196</sup> The growth of presidential control over social policy has been interpreted, at least in the case of Uribe, as part of his strategy to create hegemony by means of representing himself as the pro-poor President.<sup>197</sup>

### 3. Individualising the Causes of Poverty, Constituting Neoliberal Subjects

During the lifetime of *Familias en Acción* there have been four main ways of conceptualising poverty. These have been articulated in different and sometimes contradictory ways: Poverty has been explained in terms deficits of human capital, as the consequence of higher vulnerability due to individual difficulties to cope with risk (the vulnerability explanation), as a problem of cultural and moral backwardness and, finally, as lack of agency and

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<sup>195</sup> García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina 129.

<sup>196</sup> *ibid* 126.

<sup>197</sup> *ibid* 123.

powerlessness. The intention of this section is to analyse how these approaches have emerged within the discursive formation of the programme, what sort of solutions they have engendered, and their implications in terms of the constitution of the subjectivities of the poor. My contention in this section is that *Familias en Acción* attempts to fabricate neoliberal subjects, that is, active entrepreneurial and resilient individuals who invest responsibly in improving their human capital, engage in productive enterprises to defeat poverty, adapt to the adverse circumstances of their environment, and responsibly prevent and minimise risks. The constitution of this neoliberal poor subject involves the individualisation of the causes of poverty. This leads to the responsabilisation of the poor for their own fate, which in turn effects a depoliticisation of poverty and inequality.

### *3.1. Poverty as a Deficit of Human Capital*

Since its creation, *Familias en Acción* has been premised upon the theory of human capital. This theory conceives human labour as a form of capital that can be enhanced through investments in areas such as education, training, healthcare and nutrition.<sup>198</sup> Individuals are regarded as capitalists who can accumulate and enhance their human capital over time through better investments and choices. The returns of investing in oneself are measured in terms of income but also in terms of well-being and personal satisfaction.<sup>199</sup> According to this way of understanding labour, the notion of salary is replaced by the notion of investment returns. In turn, expenditure on training, education or health are no longer conceptualised as consumption but rather as investments. The theory initially concentrated on health of education, but hand in hand with science and technology, the list of factors that improve income prospects has expanded to include innate factors such as genetic predispositions and

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<sup>198</sup> Gary S Becker, 'Investment in Human Capital: A Theoretical Analysis' (1962) 70 *The Journal of Political Economy* 9, 9.

<sup>199</sup> Theodore W. Schultz, 'Investment in Human Capital' (1961) 51 *The American Economic Review* 1, 3-4.

contextual factor like psychological health.<sup>200</sup> In this way, the theory has become a comprehensive explanation of factors which may lead people to prosperity and success. When poverty is seen through these lenses, the solution lies in assisting people to develop their human capital through access to education, healthcare and other goods and services crucial for market inclusion. But these investments do not necessarily have to be state-led. Within human capital theory there remain debates about whether states should intervene in human capital development. While for some streams of the theory states should invest in services like education and health to the extent that human capital is a factor of growth, for others these investments should be a private responsibility as individuals are the main beneficiaries of the returns. Furthermore, the latter insist that the absence of public provision can incentivise individuals to make better choices.<sup>201</sup>

Human capital is a central element of neoliberal governmentality. As Foucault notes in his 1979 lectures, it is the basis for conceiving subjects as enterprises in accordance with the neoliberal redefinition of the market as a game of competition. In the lectures on the *Birth of Biopolitics*, Foucault points out a shift in neoliberal thinking regarding how the market ought to be understood. Instead of a game of exchanges (the traditional liberal approach), for the neoliberals from the early and mid 20<sup>th</sup> century, the market is a game of competition. But competition is not a natural institution, it is rather an artificial reality. Firstly, it necessitates inequality as it incentivises rivalries. Competition as an objective of government also demands state intervention, vigilance and active engagement.<sup>202</sup> In a society structured by competition, Foucault continues, the sought-after subject is neither the man of exchange nor the consumer (the liberal *homo economicus*), but rather the individual who can adjust to the model of the enterprise.<sup>203</sup> Neoliberal rationality expects everyone to be “an enterprise for

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<sup>200</sup> Sydney Calkin, *Human Capital in Gender and Development* (First edn, Routledge 2018) 45.

<sup>201</sup> *ibid* 46.

<sup>202</sup> Foucault, *The Birth of Biopolitics* 120-121.

<sup>203</sup> *ibid* 148.

himself and for his family”.<sup>204</sup> The notion of the “the enterprise for himself” is grounded on Schultz and Becker’s theory of human capital as “a conception of capital-ability, which according to diverse variables, receives a certain income”.<sup>205</sup> Thereby, individuals can improve their income by behaving as enterprises of themselves: “being for himself his own capital, being for himself his own producer, being for himself the source of his earnings”.<sup>206</sup>

The neoliberal enthroneing of the market as the principle, form and model of the state and everything else, has a number of consequences on how social policy ought to be structured. First of all, if competition and inequality require enactment, social policy cannot be concerned with equalising access to consumer goods or compensating for the negative effects of the economy.<sup>207</sup> To put it differently, social policy cannot counterbalance inequality in a significant manner without risking market disruption. Consequently, redistributive efforts must be kept to the minimum. Social security is also redefined as a rule of non-exclusion, that is, as a “safety clause” for those players who otherwise would fall behind and get excluded from the game of the market.<sup>208</sup> It is done through the provision of basic income support to those who cannot provide for themselves through market mechanisms either for temporary or permanent reasons. Put differently, the *absolutely* poor. Foucault then observes in his 1979 lectures, the neoliberal shifts towards targeted and minimised social policy.

Secondly, the construction of a society of entrepreneurs faces the challenge of constituting the competing entrepreneurs. The Ordoliberal analysed by Foucault advocated for a form of state intervention aimed precisely at constituting entrepreneurs through the logic of human capital.<sup>209</sup> For instance, as Dean notes, the Ordoliberal Alexander Rostow argued in favour of a state-led cultural transformation: the market as an artificial game of

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<sup>204</sup> *ibid* 206.

<sup>205</sup> *ibid* 225.

<sup>206</sup> *ibid* 226.

<sup>207</sup> *ibid* 141.

<sup>208</sup> *ibid* 199-200.

<sup>209</sup> See Michel Feher, 'Self-Appreciation; or The Aspirations of Human Capital' (2009) 21 *Public Culture* 21 32.

competition should be matched by culture, a culture in which all aspects of social life are structured in accordance with the ethos of the enterprise.<sup>210</sup> On the other hand, the Chicago School (the American pioneers of neoliberalism) agreed with the idea that market freedom requires a cultural reformation, but claimed that the best way to achieve it is through the creation of markets, for instance within the realms of what previously were social services. In other words, for the Chicago boys the best way of learning market behaviour is by participating in markets.<sup>211</sup> Finally, as Foucault also observes, the notion of human capital engendered a new theory of economic development to be applied in the so called “Third World”.<sup>212</sup> According to this theory, it is in the interest of the state to invest in human capital as it prompts growth.

Drawing on Foucault’s analysis of human capital, Michel Feher contends that a defining feature of neoliberalism is indeed the replacement of the liberal free labourer with the new subjectivity of human capital, in his words: “the rise of human capital as a dominant subjective form.”<sup>213</sup> However, human capital takes a different form in the context of our current globalised and financialised world. Like corporations, “human capital is less concerned with maximising the returns of his or her investments – whether monetary or psychic – than with appreciating, that is, increasing the stock value of the capital to which he or she is identified.”<sup>214</sup> Individuals are “conceived as the managers of a portfolio of conducts pertaining to all aspects of their lives”<sup>215</sup> with the aim of enhancing their self-appreciation and self-esteem. Therefore, approaching neoliberal subjects as investors in themselves supposes erasing the borderline between productive and reproductive, public and private, or professional and domestic realms. “The various things I do, in any existential

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<sup>210</sup> Dean, *Governmentality. Power and Rule in Modern Society* 71, 185.

<sup>211</sup> *ibid* 201.

<sup>212</sup> Foucault, *The Birth of Biopolitics* 232.

<sup>213</sup> Feher, 'Self-Appreciation; or The Aspirations of Human Capital' 24.

<sup>214</sup> *ibid* 27.

<sup>215</sup> *ibid* 30.

domain (dietary, erotic, religious, etc.) all contribute to either appreciating or depreciating the human capital that is me.”<sup>216</sup> As Feher notes, this reconfiguration of human capital opens the door to interventions in new domains of both social and individual life, many of which were considered private or domestic and, therefore, realms subtracted from the powers of the state according to liberal rationality.

In a similar vein, Wendy Brown remarks that nowadays individuals are indeed taken to mean bits of capital, but in financialised times, their “project is to self-invest in ways that enhance [their] value to attract investors through constant attention to [their] actual or figurative credit rating, and to do this across every sphere of [their] existence.”<sup>217</sup> Hence, reduced to bits of capital, individuals are expected to “maximize their capital value in the present and enhance their future value ... through practices of entrepreneurialism, self-investment, and/or attracting investors.”<sup>218</sup> In this way, she characterises the neoliberal subject as a portfolio manager whose “sphere of activity is mainly financial and investment capital, and not only productive or entrepreneurial capital”.<sup>219</sup> Her contribution to this conversation is her observation that to behave as portfolio manager has become normative, that is, an individual responsibility. Indeed, in the current stage of capitalism, growth is understood as prompted by competitiveness. Enhancing countries’ competitive position has been turned into national projects, a superior end, a synonym of the health of the state. As competitiveness is constructed as a bottom-up problem and defined by levels of human capital, the fabrication of responsabilised entrepreneurial subjects become an imperative.<sup>220</sup>

As Sydney Calkin notes, along with idealised pictures of market subjects, human capital provides “policymakers with a set of categories to identify economically productive

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<sup>216</sup> *ibid* 30.

<sup>217</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 33.

<sup>218</sup> *ibid* 34.

<sup>219</sup> *ibid* 22.

<sup>220</sup> *ibid* 83.

subjects and to prescribe a range of interventions to shape the behavior of those subjects.”<sup>221</sup> The theory creates a grid of intelligibility of human skills and abilities and provides tools for their quantification and association with growth goals.<sup>222</sup> To this extent, it has revitalised the categories of the development discourse:<sup>223</sup> human capital theory has provided new tools to conceptualise and measure development and underdevelopment, and the same could be said regarding poverty and the distinctions between deserving and undeserving poor.

Human capital-based explanations of poverty have been formulated in different ways along the history of *Familias en Acción*. Besides education and health, new elements constitutive of human capital – such as financial inclusion - have been added along the way. As the following paragraphs illustrate, the discourse of human capital that cuts across *Familias en Acción* conceives the end of poverty as the constitution of subjects who responsibly invest in and manage their skills and abilities; in other words, enterprises of themselves. More recently, these entrepreneurs have been reconceptualised as portfolio managers hand in hand with financial educations and other projects of financial inclusion, resembling the neoliberal subject described by Brown and Feher.

### 3.2. Human Capital in *Familias en Acción*

The 2000 CONPES document 3081 which created the programme claimed that its main objective was to maintain human capital levels within the households most affected by the fiscal adjustment and economic crisis from the late 1990s. The explanation at this point was that crises and fiscal adjustments have a disproportionate effect on the poor. They are the ones whose income is most affected given their precarious position in the market. Hence, they are the ones more prone to lose accumulated human capital as, for instance, they have to resort to child labour and are unable to maintain adequate levels of food consumption.

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<sup>221</sup> Calkin, *Human Capital in Gender and Development* 9.

<sup>222</sup> *ibid* 42.

<sup>223</sup> *ibid* 47-48.

The transfers were then claimed to be aimed at helping families to maintain and improve human capital levels in the aftermath of crises.<sup>224</sup> The idea was that through targeted income support, families would not only keep their children in school and maintain basic food consumption, but also learn the importance of investing in health and education as a means to improve their income in the future. Therefore, since its creation, the programme has been about constituting subjects who see themselves as human capital and, consequently, learn to make the right decisions thinking about the future. In this way, the poor are made responsible for their own fate, while the state emerges as a mere facilitator.

When *Familias en Acción* was included in the system of Social Protection created in 2002, the language of human capital mutated into the language of capabilities and entitlements. This language resembles the theory of capabilities elaborated by Amartya Sen and Martha Nussbaum, who put forward the idea that poverty is a problem of deprivation of essential capabilities, that is, of the minimum freedoms necessary to lead the type of life people have reasons to value.<sup>225</sup> These freedoms result from combinations of aspects such as personal traits, resources, institutions, cultural arrangements, environment, security, markets, power, etc. Even though the theory looks beyond human capital, to the extent that within the 2002 regulations of *Familias en Acción* good choices and investments in education and health care remained central to their depiction of poverty, the language of capabilities was just an adaptation of the human capital perspective.

After Alvaro Uribe's re-election in 2006, *Familias en Acción* became a central programme in the national governments' agenda as it was considered crucial, given its human

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<sup>224</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3081 de 2000. Plan Colombia. Red de Apoyo Social: Programas de subsidios condicionados y capacitación laboral de jóvenes desempleados de bajos recursos.* (2000) 4. Similar explanations appear in the 2005 CONPES document 3359 which authorized the continuation of the programme. See Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3359 de 2005. "Autorización a la Nación para contratar un empréstito externo con la banca multilateral hasta por US \$86,4 millones, con el fin de financiar parcialmente el programa Familias en Acción y el fortalecimiento de la información y del sistema de monitoreo y evaluación del sector de la protección social"* 2.

<sup>225</sup> See Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 *Feminist Economics* 33 Amartya Sen, *Development as Freedom* (Oxford University Press 1999).



capital orientation, to the enhancement of the national competitive position of the country. Indeed, in the 2006 national development plan, *Familias en Acción* was articulated with Uribe's promise to improve the competitive position of Colombia. Besides security, his new formula included "social inclusion" translated into human capital building for the purpose of market inclusion. In one section of the document it is claimed that competitiveness is good for "social inclusion" as private investment is the engine of growth - presupposing that growth leads to poverty reduction - but at the same time competitiveness requires social inclusion by means of human capital development.<sup>226</sup> Thus, Uribe's development plan represented "social inclusion" in the form of human capital development as a precondition for competitiveness, and *Familias en Acción* was discursively reformulated along these lines.

Juan Manuel Santos' government followed Uribe's path of connecting human capital to competitiveness, but Santos innovated in doing so through the notion of peace rather than security. *Familias en Acción* was again reframed along these lines. The connection between human capital and peace was timidly suggested during Santos' first administration. After his re-election in 2014, when the negotiations had begun between the government of Colombia and the guerrilla group FARC, peace became a central concept of Santos' government. He insisted upon the connection between peace, competitiveness and human capital. Thus, in Santos' 2014 national development plan, it was claimed that peace allows the state to focus of enhancing equity (understood in terms of human capital development, equal opportunities and social mobility) while at the same time equity (in particular equity grounded on education) is a precondition for economic prosperity and peace.<sup>227</sup> Peace, education and equity were described as the engines of competitiveness, social mobility, democracy and good governance. It is important to notice that in 2014, the terms "fighting

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<sup>226</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2006-2010. "Estado comunitario: desarrollo para todos"*. (2007) 26, 33.

<sup>227</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2014-2018 "Todos por un nuevo país. Paz, equidad, educación"*. (2015) 27.

extreme poverty” or “ending extreme poverty” were replaced by the expressions “social mobility” and “closing gaps”. This reflects a shift towards the conceptualisation of poverty as a multidimensional phenomenon as well as Santos’ promise of helping the middle class and improving education for all, not only for the poor, in line with OECD advice. In any case, human capital, especially education, remained central to the strategy of social mobility, while *Familias en Acción* along with *Red Juntos* (re-branded as *Red Unidos*) were turned into peace devices. These discursive twists resemble Brown’s critique of how human capital is instrumental in making the poor responsible not only for their own poverty but also for the wellbeing of the nation. Individuals are made responsible for accumulating human capital not only as a means to raise their future income and provide for themselves and their families, but also as a civic duty to the extent that human capital attracts investors and, consequently, improves the competitive position of a country. Here we find an example of competitiveness constructed as a bottom-up problem and a further instrumentalisation and responsabilisation of the poor.

When *Familias en Acción* was incorporated into *Red Juntos* in 2006, human capital was reformulated as “the functional capacities of families.”<sup>228</sup> In a similar fashion, a 2009 *Red Juntos*’ operation manual added the terms motivation and commitment to help families to put to work their own resources, knowledge and skills in order to defeat poverty<sup>229</sup>. What we see here is the introduction of new perspective on human capital, according to which the poor already have some capital – e.g. some assets, skills, networks, etc. – which if properly used, may help them to overcome poverty. This viewpoint seems close to theories of social capital as another sort of capital to be accumulated and exploited.

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<sup>228</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 10.

<sup>229</sup> Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Ministerio de la Protección Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* (2009) 31.

There is a second way in which theories of human capital and social capital were merged in the 2009 *Red Juntos* operation manual. Premised upon the idea that poverty is a multidimensional phenomenon, the manual identified nine criteria conducive to human capital improvement: access to identification documents (such as birth registration and national identification number), employment promotion (including schemes of employability and support to entrepreneurial initiatives), education, healthcare, housing, nutrition, family dynamics (referring to mechanisms aimed at preventing domestic violence and guaranteeing reproductive health), financial inclusion and legal aid.<sup>230</sup> In this way, indicators of human capital broadened to include financial, political and social dimensions. Thereby, human capital became a much broader concept connected to violence, rule of law, citizenship and financial inclusion.

Sonia Alvarez names this approach the theory of the “productivity of the poor”, which inspired by Hernando de Soto ideas, refers to an intrinsic potential of the poor which rests upon both skills and assets.<sup>231</sup> De Soto, Alvarez notes, explores the informal and underground economies of the poor to claim that they epitomise the stamina, natural entrepreneurial skills and type of productive assets these populations already possess. For de Soto the solution is then to recognise this potential and create mechanisms to help the poor to make the most of it. As the 1990 and 2000 World Development Reports illustrate, such mechanisms include incentives for agricultural production and the development of the informal sector, microcredits, property rights, intellectual rights, access to justice and legal aid, among others.<sup>232</sup> This type of help would allow the poor to have access to credit, insurance and other type of protections necessary to engage in proper entrepreneurial, high

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<sup>230</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 17.

<sup>231</sup> Sonia Alvarez Leguizamón, 'Biopolíticas neoliberales y fopolítica en América Latina, los programas de transferencias condicionadas' (ALACIP) 3-4.

<sup>232</sup> World Bank, *World Development Report 1990 "Poverty"* 56-70; World Bank, *World Development Report 2000/2001. Attacking Poverty*) 38.

risk projects which benefit from market opportunities. Alvarez contends that this twist in human capital theory is another way of commodifying the knowledge, skills and networks of the poor.<sup>233</sup> It is also a way of capitalising on the work they already do in precarious conditions, contributing in this way to furthering the over-exploitation of their labour.<sup>234</sup> I would add that is another way of making the poor internalise the entrepreneurial ethics of neoliberalism, and to further responsabilise them for their situation to the extent that they are portrayed as already possessing the tools and assets required to defeat poverty.

A final aspect in which the reliance upon human capital can be appreciated in *Familias en Acción* is the references to financial inclusion (*bancarización*) contained in most of the official documentation. Since its creation, the programme has been thought of as a tool for financial inclusion, especially in rural areas. To begin with, the cash transfers are delivered through financial institutions, compelling poor families to open bank accounts.<sup>235</sup> Furthermore, one of the criteria that the national government has taken into account to expand the programme to new localities has been the existence of banks in the region.<sup>236</sup> This requirement seeks to incentivise local governments to create conditions attractive to the financial industry. Although in 2005 began experiments in localities without banks,<sup>237</sup> overall, the availability of banks has facilitated the introduction on the programme into new territories. More importantly, since the merging of *Familias en Acción* with *Red Juntos*, the programme has included financial education among its objectives, that is, education on the importance of

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<sup>233</sup> Alvarez Leguizamón, 'Biopolíticas neoliberales y fopolítica en América Latina, los programas de transferencias condicionadas' 3.

<sup>234</sup> *ibid* 14.

<sup>235</sup> See Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción*. (2007) 25 Departamento para la Prosperidad Social, *Manual operativo Más Familias en Acción* (2017) 23.

<sup>236</sup> When *Familias en Acción* was created in 2000, the national government indicated that it would only reach localities where banks were established. Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3081 de 2000. Plan Colombia. Red de Apoyo Social: Programas de subsidios condicionados y capacitación laboral de jóvenes desempleados de bajos recursos* 6.

<sup>237</sup> See Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3359 de 2005. "Autorización a la Nación para contratar un empréstito externo con la banca multilateral hasta por US \$86,4 millones, con el fin de financiar parcialmente el programa Familias en Acción y el fortalecimiento de la información y del sistema de monitoreo y evaluación del sector de la protección social"* 1.

savings, how to navigate the financial system, how to request loans, insurance, etc. I have already mentioned that *Red Juntos* includes financial inclusion among the factors constitutive of human capital. The aims of the scheme in this regard are to insert poor families “into the financial system as a means to access job opportunities, income and security”, as well as to “create a savings culture to help families to achieve their goals.”<sup>238</sup> *Red Juntos* also demands that local governments organise financial education campaigns to help people get to know and use the financial services available in their jurisdictions.<sup>239</sup> *Familias en Acción* has been also articulated to the national strategy for financial inclusions,<sup>240</sup> and has been used as a platform for testing new types of financial services especially designed for low-income and rural customers. Hence financial education has become a dimension of human capital development in the eyes of *Familias en Acción* to the extent that it provides tools for job opportunities and risk management, but more importantly because it instils market behaviour in line with the demands of our financialised times. Drawing on Feher and Brown, it could be argued that *Familias en Acción* is implicated in inculcating financial rationality and, therefore, in constituting the poor as portfolio managers by means of its financial education programmes.

### 3.3. *The Vulnerability Approach to Poverty*

The vulnerability approach to poverty made its appearance in 2001, when *Familias en Acción* was integrated into the System of Social Risk. In a nutshell, this perspective envisions poverty as a problem of ill managed risks and risk adverse behaviours in a world of insecurity, but where risks can also bring about rewards and opportunities.<sup>241</sup> The social risk management

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<sup>238</sup> Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* 26.

<sup>239</sup> *ibid* 28.

<sup>240</sup> Departamento para la Prosperidad Social, *Manual operativo Más Familias en Acción* 23.

<sup>241</sup> See Barrientos and Hulme, 'Social Protection for the Poor and Poorest in Developing Countries: Reflections on a Quiet Revolution' 7-8.

theory advocated by the World Bank underpins this viewpoint. It claims that nowadays individuals, families and communities are vulnerable to multiple and unpredictable risks, ranging from environmental degradation to economic recessions. When these risks transform into catastrophic events, their consequences disproportionately affect the lower ranks of society, making them more vulnerable to fall into poverty or to deepen their situation of impoverishment. Consequently, the solution is to provide the poor with devices to cope with risks in order to reduce their vulnerability to those adverse outcomes. In the words of World Bank experts:

The main idea behind SRM is that all individuals, households and communities are vulnerable to multiple risks from different sources, whether they are natural (such as earthquakes, flooding and illness) or man-made (such as unemployment, environmental degradation and war). These shocks hit individuals, communities, and regions mostly in an unpredictable manner or cannot be prevented, and therefore, they cause and deepen poverty. Poverty relates to vulnerability since the poor are typically more exposed to risk while they have limited access to appropriate risk management instruments. Hence the provision and selection of appropriate SRM instruments becomes an important device in order to reduce vulnerability and provide a means out of poverty. This requires striking a balance between alternative SRM arrangements (informal, market-based, public) and SRM strategies (prevention, mitigation, coping), and matching appropriate SRM instruments in terms of supply and demand.<sup>242</sup>

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<sup>242</sup> Robert Holzmann and Steen Jørgensen, 'Social Risk Management: A New Conceptual Framework for Social Protection, and Beyond' Social Protection Discussion Paper, 3, 530-531.

Holzmann and Jørgensen also stress that the poor's "high vulnerability makes them risk averse and thus unable or unwilling to engage in higher risk/higher return activities".<sup>243</sup> Therefore, by helping the poor to reduce their risk management costs (through mechanisms such as social protection schemes or private insurance), diversify their income sources and accumulate savings (to smooth their consumption in times of crisis), the poor can be incentivised to engage in more risky but also more profitable enterprises.

The human security paradigm is another antecedent of the vulnerability perspective. Human security is a concept that emerged in the post-Cold War period in an attempt to give a different meaning to the idea of security by focusing on the population rather than on the nation-state.<sup>244</sup> Its advocates consider that poverty is associated with the insecurity that many people currently experience due to increasing economic and social problems such violence in neighbourhoods, repressive states and gendered violence. Hence, poverty is a security issue "in that the lives of the poor [are] insecure along multiple dimensions, and the eradication of those risks [is] necessary in antipoverty efforts."<sup>245</sup> It means that eradicating poverty implies alongside growth, addressing violence, political instability, civil conflicts, and so on.

The vulnerability perspective is embedded in the neoliberal approach to risk, which differs from the liberal one in its depiction of risk as difficult to predict and manage. The liberal subject was already conceived as dependent upon uncontrollable risks; however, according to liberal rationality, risks can be managed through statistics and calculations, giving birth to systems of insurance. Neoliberal rationality perceives of risk in a different way. In a changing and interconnected world where humans cannot foresee the effects of their actions, risks have become unpredictable. We have lost control of the consequences of

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<sup>243</sup> *ibid* 530-531.

<sup>244</sup> See Akhil Gupta, 'Is Poverty a Global Security Threat?' in Ananya Roy and Emma Shaw Crane (eds), *Territories of Poverty Rethinking North and South* (First edn, The University of Georgia Press 2015) 87-88.

<sup>245</sup> See *ibid* 91.

our actions. Risk has transmuted into a continuum, it never evaporates and is experienced by the entire population. Therefore, we all have to adapt and take responsibility for it, while risk minimisation must become a feature of our daily choices.<sup>246</sup> However, there are sub-populations more vulnerable to the adverse effects of those risks, such as the poor.<sup>247</sup> For the neoliberal rationality, it is not only that the poor are exposed to more risks and that they are more likely to suffer the adverse consequences of them, but also that, in comparison with other sectors of populations, they lack the assets, skills and abilities necessary to prevent and overcome those consequences. Consequently, these individuals and communities must be targeted and assisted in becoming resilient to risk.

As Chandler and Reid argue, the idea of resilience involves a problematisation of the political habits, tendencies and capacities of peoples, and consequently, engenders a project for replacing them with adaptive ones. Social policy is then entrusted with the task of enabling more adaptive and capable individuals who are more efficient at making use of market mechanisms for coping with risk. <sup>248</sup> It involves teaching people to make responsible decisions to minimise risk and plan for the future in case of calamities, including economic recessions. Social policy is also called on to help poor people to become less risk adverse; at this point it articulates with entrepreneurial subjectivity as responsible risk-taking is a central ingredient of successful entrepreneurialism.

Neoliberal resilience also implies a transformation of the notion of security by virtue of which the poor are responsabilised. Security, like competitiveness, is constructed as a bottom-up problem, that is, the roots of (national) insecurity are placed at the micro level of the individual. Resilience in the context of security discourses also replaces concerns for external threats with “fears over the domestic or internal coping and adaptive capacities of

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<sup>246</sup> Dean, *Governmentality. Power and Rule in Modern Society* 194.

<sup>247</sup> *ibid* 195.

<sup>248</sup> David Chandler and Julian Reid, 'Introduction. The Neoliberal Subject' in David Chandler and Julian Reid (eds), *The Neoliberal Subject Resilience, Adaptation and Vulnerability* (Rowman & Littlefield International Ltd. 2016) 4.



individuals and their communities.”<sup>249</sup> In this way, individuals are made responsible not only for their own security, their resilience, but also for national security. The picture that emerges here is that national security is created by the grouping of resilient and responsible subjects who adapt and efficiently cope with risk.

The 2001 CONPES document 3144 which incorporated *Familias en Acción* into the System of Social Risk Management, once again addressed the problem of how to deal with poverty produced by fiscal adjustments and economic crises. The document reassured that the best solution to poverty is growth, implying that fiscal adjustments could not be challenged as they are the recipe for growth. However, drawing on the World Bank’s theory of risk management, it was claimed that some “equity” measures were necessary in order to help the benefits of growth to reach the poor. Combining the human capital and vulnerability approaches, the policy document referred to two ways in which the state ought to help growth to reach the poor: On the one hand, interventions aimed at creating jobs and, on the other, income support schemes which target the extremely poor with the purposes of maintaining and developing human capital in time of crisis, and assisting the poor to acquire capabilities to deal with recessions and other types of risks.<sup>250</sup> *Familias en Acción* was now claimed to be the means to achieve the latter goal.

The merging of *Familias en Acción* with the System of Social Protection created by the 2002 Law 789 made more explicit the introduction of the vulnerability approach into the discursive operation of the scheme. The system was explicitly grounded on the social protection paradigm promoted by the World Bank above mentioned. Hence, for instance, the system was claimed to be designed to provide tools to the population to cope with the new conditions of the labour market in the context of a changing and interconnected

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<sup>249</sup> David Chandler, 'Debating Neoliberalism. The Exhaustion of the Liberal Problematic' in David Chandler and Julian Reid (eds), *The Neoliberal Subject Resilience, Adaptation and Vulnerability* (Rowman & Littlefield International Ltd. 2016) 30.

<sup>250</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3144 de 2001 "Creación del Sistema Social del Riesgo y Fondo de Protección Social"* 3

world.<sup>251</sup> To put it simply, to teach people how to deal with labour flexibility and precarisation. The conditional cash transfers were defined as promotion measures which seek to develop capabilities and the expansion of liberties by means of incentivising particular types of behaviour through conditionalities.<sup>252</sup> The capabilities which the programme endeavours to develop, continued the argument, were those necessary to cope with the growing dangers of our uncertain world.

Vulnerability theory also emerged in Uribe's 2006 national development plan. According to the document, besides lack of human capital, poverty originates in a myriad of factors outside state control, such as class, possibilities of education, health conditions and calamities. "Factors like these ones... which are not under the control of society or people, are the basis for arguing that the state ought to fulfil only a compensatory function; therefore, its actions and policies must focus on the people"<sup>253</sup> rather than on institutions or structures. It means that given the impossibility of regulating or controlling those factors, social intervention must concentrate on helping people to cope with the consequences of those unavoidable risks.

The 2002 and 2006 regulations, by constructing poverty as the consequence of ill-managed risk, make the poor responsible for their own fate through another discursive route. In this case, the poor are depicted as people who lack the abilities and lifestyles necessary to adapt to the types of risks our contemporary world, in particular the current global economy, brings about. To end poverty then means to inculcate lifestyles suitable for modern risky times, as well as responsible behaviour aimed at minimising and preventing risks such as poverty, for instance, strategies such as savings, insurance, income diversification and

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<sup>251</sup> See Article 1. Congreso de la República de Colombia, *Ley 789 de 2002 "Por la cual se dictan normas para apoyar el empleo y ampliar la protección social y se modifican algunos artículos del Código Sustantivo de Trabajo"* (2002).

<sup>252</sup> Agencia Presidencial para la Acción Social y la Cooperación Internacional, *El camino recorrido. Diez años Familias en Acción* 79.

<sup>253</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2006-2010. "Estado comunitario: desarrollo para todos"* 34.

investments in human capital. As with human capital approaches, the nation-state appears as solely responsible for assisting people in developing adaptive skills. Economic crises, climate change, unemployment, all these phenomena are depicted as highly possible calamities which state institution barely can prevent or mitigate. This engenders the naturalisation of poverty as it is represented as unavoidable, a reality which we all have to accept and be prepared to face.

The vulnerability approach as embraced by *Familias en Acción* also resonates with Chandler's critique of how this discourse is reformulating notions of national security. As mentioned in the previous sections, the Colombian conditional cash transfers have a counterinsurgent inspiration. The idea of constituting responsible resilient subjects who are aware not only of the danger of falling into poverty but also of civil conflict-associated risks, matches Alvaro Uribe's utopia of a "communitarian state" where individuals take responsibility for security as a means to create competitiveness and, therefore, growth. *Familias en Acción* through the constitution of responsible subjects and grateful poor (as the subsidies are portrayed as grants distributed by pro-poor presidents) serve the purpose of creating a loyal base aligned with the security goal of defeating guerrilla groups. It is difficult to map out this rationality in *Familias en Acción* official documents; however, there are some traces like the mention in the 2006 CONPES document 102 of the military as an ally of *Red Juntos* and as a potential provider of social services to the poor.<sup>254</sup> I will come back to this issue in the last chapter. Santos' attempt to link "equity" and peace is also entrenched in this logic. This can be also perceived in the introduction during his administrations of civic education as a theme to be addressed through *Familias en Acción* and *Red Juntos* rebranded as *Red Unidos*. The objective of civic education is to teach people to solve their conflicts without

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<sup>254</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 17.

resorting to violence; in other words, it is a way of turning them into peaceful subjects in line with the demands of peace as the new national project.

### 3.4. *Poverty as Backwardness*

The third conceptualisation of poverty appeared explicitly in Uribe's second development plan as it expressed concerns about welfare dependency and attempted to align *Familias en Acción* with them. These concerns are premised upon the assumption that poor people live in poverty because they are comfortable receiving welfare subsidies and, therefore do not have reasons to make efforts to overcome poverty. This viewpoint resonates with theories that portray poverty as the result of inner cultural and moral factors such as laziness, immoral behaviour and dysfunctional families, which impairs people's willingness and ability for social and economic mobility.<sup>255</sup> It is claimed that these features can be transformed through modernisation, education, training, therapy and (economically coercive) incentives against welfare dependency.<sup>256</sup> An example of this type of explanation can be found in the 1960s Oscar Lewis theory of a cross-national culture of poverty. According to Lewis, the poor can be characterised by their lack of middle class values such as responsibility, discipline and control of sexual desires.<sup>257</sup> This culture, which is transmitted to the new generations, impairs social mobility and labour productivity, meaning that poverty reduction requires cultural modernisation. A harder version of this theory explains poverty in terms of "inherited deficiencies that limit intellectual potential, trigger harmful and immoral behaviour, and

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<sup>255</sup> See Michael B. Katz, 'What Kind of Problem is Poverty? The Archeology of an Idea' in Ananya Roy and Emma Shaw Crane (eds), *Territories of Poverty Rethinking North and South* (First edn, The University of Georgia Press 2015) 44.

<sup>256</sup> Thomas Ross, 'The Rhetoric of Poverty: Their Immorality, Our Helplessness' (1990-1991) 79 *The Georgetown Law Journal* 1499.

<sup>257</sup> Oscar Lewis, 'A Study of Slum Culture: Backgrounds for La Vida' in J. Timmons Roberts, Amy Bellone Hite and Nitsan Chorev (eds), *The Globalization and Development Reader Perspectives on Development and Global Change* (Second edn, Willey Blackwell 2015).

circumscribe economic achievement.” Given the inevitability of poverty, in this case the solution focuses on “containing and managing dependence at the least possible cost.”<sup>258</sup>

Sonia Alvarez draws attention to the function that these types of explanations play in times like ours when inequality and poverty have increased exponentially: they help to naturalise poverty and justify exclusion. These perspectives assume that the culture of poverty is produced and reproduced in the world of the poor. This world is represented as a different world, an inferior one, which explains its separation but also its delineation as a site of intervention. Therefore, the culture of poverty emerges as a natural and catastrophic phenomenon to be changed through cultural upgrading.<sup>259</sup>

These concerns made their appearance in the 2006 development plan. Drawing on what Uribe’s government called “the new universal principles” of social inclusion, the plan restated that any effort to fight poverty must be targeted at the extremely poor and avoid interfering with market incentives.<sup>260</sup> A corollary of this is that subsidies must be kept to the minimum, but also that besides supporting competitiveness via human capital development, they must avoid dependency. In another section, the plan indicated that a successful social inclusion scheme is the one that, among other factors, “generates the correct incentives, that is to say, generates incentives to move out of poverty rather than to remain within it.”<sup>261</sup> Attached to the concept of dependency appeared the language of “co- responsibilities” which, as I will explain in the next paragraphs, has since then governed *Red Juntos* and, therefore *Familias en Acción* as part of its network.<sup>262</sup> The rationality is that a framework of co-responsibilities, in which the poor are not just incentivised but led to commit themselves

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<sup>258</sup> See Katz, 'What Kind of Problem is Poverty? The Archeology of an Idea' 44.

<sup>259</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza', 243.

<sup>260</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2006-2010. "Estado comunitario: desarrollo para todos"* 29.

<sup>261</sup> My own translation. *ibid* 32.

<sup>262</sup> *ibid* 144.

through contractual mechanism to overcome poverty, is most effective in bringing about behavioural changes.

The 2006 CONPES document 102 introduced *Red Juntos* as a network of supporting programmes and incentives aimed at helping poor families to build up the human capital and capabilities required for ending the ‘intergenerational transmission of poverty’, achieving self-determination and improving life plans.<sup>263</sup> The families are treated as parties to a contract in which they commit themselves to comply with a set of requirements in order to move out of poverty.<sup>264</sup> The contractual form is the main manifestation of the principle of “co-responsibility” explicitly introduced in a 2009 operation manual. It is premised upon “the supposition that families, with support and companionship from the state, must make efforts to enhance their capacities, strengthen their assets, and acquire skills and tools to overcome their situation of extreme poverty.”<sup>265</sup> Families’ participation in the network is guided by social workers (“life advisers”)<sup>266</sup> whose role is to provide psychosocial support and motivation to the beneficiaries in order to help them to recognise their strengths and weaknesses, develop strategies adapted to their specific situation and, in this way, improve their life plans.<sup>267</sup> Families are granted five years to achieve the goals of the programme. Throughout this time, life advisers evaluate their progress and if a lack of commitment is observed, families are expelled from the scheme.<sup>268</sup> The temporal character of the assistance is also reinforced by the introduction of exit criteria, that is, indicators of when households

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<sup>263</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 13-14.

<sup>264</sup> *ibid* 19-20.

<sup>265</sup> My own translation. Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* 16.

<sup>266</sup> According to the 2009 operation manual, life advisers must be technicians or professionals from psychosocial disciplines who have demonstrated at least two years of experience working with communities as well as knowledge of the corresponding territory. See *ibid* 30.

<sup>267</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 21-22.

<sup>268</sup> Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* 20.

have been successful in defeating extreme poverty. It was claimed in 2009 that the main objective of this criteria is to prevent dependency.<sup>269</sup> Two assumptions emerge clearly here: On the one hand, *Red Juntos* and *Familias en Acción* are since 2006 premised upon the idea that poverty is the result of bad life decisions which can be improved through psychosocial companionship and behavioural techniques. On the other hand, it is believed that the poor do not necessarily desire to move out of poverty, suggesting a sort of cultural acceptance and prizing of poverty.

Dependency was a marginal subject during Uribe's administration, but became a central theme in Juan Manuel Santos' development plans. It is expressed in the concern that Santos' development plans share about designing clear exit criteria and transition mechanisms towards market-generated income. For instance, the 2010 plan problematises the performance of the programme during Alvaro Uribe's Presidency by claiming that even though it helped many families to move out of poverty, to the extent that it did not promote independent sources of income, it made families dependent upon subsidies.<sup>270</sup> Hence, the document stressed the importance of introducing exit criteria as a means to incentivise families to "self-manage" their own development. The concern with exit criteria was also interlinked with the one about over-inclusion or faults in targeting processes. Better targeting mechanisms were also planned to be implemented as complement to the exit criteria in order to expel families who were not in need of help and therefore deceiving the programme. Here the cultural dimension of the dependency approach became clearer as the Santos' government spent various paragraphs discussing the importance of information sharing and double checks to detect households who were "cheating" on the scheme.<sup>271</sup> The premise is

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<sup>269</sup> *ibid* 12.

<sup>270</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010-2014 "Prosperidad para todos. Más empleo, menos pobreza y más seguridad"* 419.

<sup>271</sup> *ibid* 425.

that the beneficiaries of social assistance are prone to lie in order to keep the aid; therefore, selection mechanisms are essential for targeting the right population.

### 3.5. *Poverty as a Lack of Power & Agency*

Lack of power is the last explanation of poverty that underpins *Familias en Acción*. This perspective claims that poverty is caused by people's lack of agency, that is, of knowledge, abilities and skills to organise, raise their voice, participate in political processes and ignite change. This leads to programmes which seek to empower the poor and give them a voice in decision-making processes, for instance through participatory mechanisms and representative schemes. From a more critical angle, this explanation of poverty encourages organisation and mobilisation of the poor and on behalf of the poor.<sup>272</sup>

According to Barbara Cruikshank the initial manifestations of this approach were the Community Action Programs introduced in the 1960s by the US President Lyndon Baines Johnson in the context of his "War on Poverty". Adapted from techniques used by left and feminist movements, they attempted to transform the subjectivity of the poor from powerless to active citizens.<sup>273</sup> In particular, this technology was claimed to fight welfare dependency. The notion survived but was recalibrated by right-wing governments and connected to entrepreneurial schemes. This perspective, Cruikshank argues, is premised upon a particular conception of power relations according to which there is a dichotomy between power and powerlessness. Power appears as a zero-sum game in which some actors have power at the expense of others. Empowerment is seen as outside power relations, as a facilitator of active participation. This ignores that power is an element of the particular power relations in which the targeted populations are involved.<sup>274</sup> Furthermore, technologies

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<sup>272</sup> See Katz, 'What Kind of Problem is Poverty? The Archeology of an Idea' 61-64.

<sup>273</sup> Dean, *Governmentality. Power and Rule in Modern Society* 83.

<sup>274</sup> See *ibid* 85-86.



of empowerment are presented as aiming at a “quantitative increase in capacity”, while what they really do is to effect a “qualitative transformation of forms of subjectivity”: “It tries to act upon disparate groups so that they come to recognize their common being within a unified administrative category, thereby assuming the identity of active citizens and participants in social reform.”<sup>275</sup>

Sonia Alvarez, on the other hand, alerts us to the manner in which participatory mechanisms oriented towards “community management” or “self-sustainability” constitute technologies of government based on self-vigilance. The idea is that communities by themselves make sure that their members engage in responsible behaviour, such as human capital development and entrepreneurial efforts, while at the same time promote integration and prevent conflict and violence. It is a mechanism through which states devolve this disciplinary exercise to communities. Moreover, it is evidence of how the control of populations works under neoliberal rationality: instead of vigilance of the whole population through universal welfare policies, vigilance now focuses only on specific populations considered dangerous – e.g. the extremely poor and minorities - and draws upon their own energies. Targeting and community management are helpful for purposes of insulating, territorialising and neutralising these communities by creating boundaries between them, delivering subsidies on a territorial base and inculcating systems of self-vigilance.<sup>276</sup>

This perspective clearly emerged in 2006 when *Red Juntos* absorbed *Familias en Acción*. According to the 2006 CONPES document 102, families must join the network voluntarily. In order to ensure voluntary participation, municipalities are made responsible for organising open calls, providing detailed information about what participation in the scheme entitles and raising awareness about the benefits that participation can bring about. Targeted families must decide whether they want to participate or not, knowing that if they join the network,

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<sup>275</sup> *ibid* 86.

<sup>276</sup> Alvarez Leguizamón, 'Biopolíticas neoliberales y focopolítica en América Latina, los programas de transferencias condicionadas' 7-8.

they have to sign written contracts where their responsibilities are defined as well as sanctions for breaching the agreement.<sup>277</sup> The policy document conceives the agreement as a self-targeting mechanism which reveals people's willingness to improve their life conditions. Voluntary participation is then conceived as a means to empower and, therefore, to trigger behavioural change.

Soon after, in 2007, *Familias en Acción's* operation manual was redesigned to include participation and social control as central characteristics of the programme. It was claimed that the programme "promotes the creation of spaces where the beneficiary families can strengthen their social fabric and cultural integration" along with interaction with public authorities with the objective of "building up mechanisms of participation and social control."<sup>278</sup>

In a similar vein, in a 2009 operation manual, participation was explicitly included among *Red Juntos'* objectives and principles. Besides incentivising human capital development, the manual stated that enhancing communities' self-organising and participatory capacities was central to turning them into active subjects of their own development.<sup>279</sup> The manual proclaimed participation and social control as guiding principles of the network. It was argued that participation as the key to good governance should be translated into participatory management. It means that instead of management from above, the scheme should rely upon agreements and consensus. Citizens are then called to share responsibility for ending poverty, which involves awareness raising regarding their rights and duties.<sup>280</sup> Hence, participation is introduced as a way of devolving responsibility for fighting

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<sup>277</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 19.

<sup>278</sup> Internacional, *Manual operativo programa Familias en Acción* 10.

<sup>279</sup> Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* 16.

<sup>280</sup> *ibid* 17.

poverty upon individuals and communities, while at the same time provides *Red Juntos* with legitimacy and sustainability.

One of the main mechanisms through which *Red Juntos* and *Familias en Acción* attempt to raise awareness and empower families is compulsory meetings and training sessions. They are described in the 2009 *Red Juntos*' operation manual as spaces where families:

- i) exchange successful experiences of self-management regarding basic goals [the basic goals of the scheme];
- ii) enhance opportunities of collective encounter with the aim of boosting social cohesion;
- iii) socialize and enjoy recreation and culture with other families from *JUNTOS*;
- iv) get trained in specific topics related to the basic goals;
- v) conduct meetings for the collective managements of the basic goals.<sup>281</sup>

Similarly, the 2017 *Familias en Acción*'s operation manual, besides introducing community wellbeing as a new target of the scheme, created “wellbeing encounters”, that is, meetings organised with the purpose of generating collective capacities to solve problems and empower participants (mothers) to become agents of their own development.<sup>282</sup> The encounters from both schemes are described as spaces where communities can get together, build consensus, look for collective solutions according to their knowledge and experiences, and in this way, get empowered. Women in particular are expected to attend the training session and participate as volunteers in other activities oriented towards empowerment.

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<sup>281</sup> *ibid* 31.

<sup>282</sup> Departamento para la Prosperidad Social, *Manual operativo Más Familias en Acción* 28.

### 3.6. Conclusion

In conjunction, these viewpoints imagine the poor as responsible individuals who commit themselves to cultivate their abilities and skills, to work hard to change their current socioeconomic status, and to reform their inner dimensions such as culture and psyche, all this in order to be able to provide for themselves, participate in the market and fulfil their civic responsibilities. The new definition of the poor goes hand in hand with a new way of understanding society. As Dean claims, instead of a site of conflict and contradictions to be regulated or “a source of needs that are individually distributed and collectively bore,” society is conceived as “a source of energies contained within individual’s exercise of freedom and self-responsibility.”<sup>283</sup> The inherent energies of society should then be facilitated and cultivated. Against this backdrop, instead of promoting unity and containing contradictions, alongside keeping the poor alive, social policy ought to foster the energies of individuals and collectives, while instilling responsibility. This is done through the displacement of welfare policy by cultural and behavioural transformation.<sup>284</sup>

## 4. Constituting Responsible and Sacrificed Poor Mothers

Women are a crucial target-object of *Familias en Acción*’s subjective engineering. Rooted in the assumption that women, as natural caregivers, are more inclined to make investment choices which favour the wellbeing of the family, the programme delivers the cash transfers directly to mothers. It is claimed that the scheme empowers women by giving them discretion to allocate the extra cash received through the programme, and by encouraging them to become more involved in community life. However, by reflecting on the type of subjectivities that *Familias en Acción* attempts to constitute, I argue in this section that the

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<sup>283</sup> Dean, *Governmentality. Power and Rule in Modern Society* 179.

<sup>284</sup> *ibid* 180.

programme's heavy reliance upon women is not about empowerment but rather about the privatisation of care work.<sup>285</sup> Women are essentialised in their role as caregivers and instrumentalised for the purposes of the scheme. *Familias en Acción* seeks to constitute responsible and sacrificial mothers by means of co-responsibilities and training. Women are trained and educated only in connection to their reproductive work. By making women responsible for human capital and resilience building and essentialising them as sacrificial caregivers, the privatisation of social reproduction is furthered while women carry the burden of ending poverty.

The official documentation states that families are the direct beneficiaries of the scheme. Actually, the name of the programme ("Families in Action") emphasises families as the focal point of the initiative. The focus on families is then reiterated in most official regulations. For instance, the 2005 CONPES document 3359 describes the objective of the programme as "to protect the human capital of households and maintain their consumption levels by increasing families' income."<sup>286</sup> During Uribe's Presidency, the family occupied a prominent place in governmental development plans. *Red Juntos* was created to provide complementary social services and psychosocial support to families in extreme poverty. The guiding principles of *Red Juntos* define the family as the "unit of intervention."<sup>287</sup> Santos' government continued with this trend and brought the family to the centre of social policy. Finally, Article 4 of the 2012 Law 1532 makes clear that only families can benefit from the transfers. The idea that the family ought to be the target of social policy seems to be so

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<sup>285</sup> Drawing on Silvia Federici's work, reproductive work is understood in this thesis as the "complex of activities and relations by which our life and labor are daily reconstituted." Silvia Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* (PM Press 2012) 5. It is a type of work which is crucial for the reproduction of the workforce but more importantly for the reproduction of capitalism. To the extent that is unpaid and is predominantly taken in by women, its analysis is crucial for understanding unequal gender relations and the exploitation of women.

<sup>286</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3359 de 2005. "Autorización a la Nación para contratar un empréstito externo con la banca multilateral hasta por US \$86,4 millones, con el fin de financiar parcialmente el programa Familias en Acción y el fortalecimiento de la información y del sistema de monitoreo y evaluación del sector de la protección social"* 3.

<sup>287</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 102 de 2006 "Red de protección social contra la extrema pobreza"* 13.

common-sensical that there are few, if any, justifications for it in the official documents. One of the few justifications is given in the 2006 CONPES document 102 on *Red Juntos*. Here it is claimed that investments in families are more efficient than sectorial schemes as the latter do not address poverty as a multidimensional problem,<sup>288</sup> implying that poverty reduction can benefit from the ties of solidarity and support within families. Similarly, the 2009 *Red Juntos* operation manual indicated that families ought to be the units of interventions as overcoming the vulnerabilities that lead to poverty is easier when family members work together.<sup>289</sup> Santos' 2010 development plan stressed that families along with communities are the basic units of society and hence crucial for development. Therefore, the document insisted that it is necessary that families participate in a solidary manner in providing welfare to children, adolescents and the elderly. The state, on the other hand, is depicted in the role of enabler with the aim of promoting the co-responsibility of families and communities.<sup>290</sup> The picture which emerges from these documents is the family as the natural safety network, a sort of team whose potential, when cultivated, can improve the socioeconomic situation of the whole group. The state on the other hand is represented in the role of helping these teams to cultivate their potential and encourage them make greater efforts.

This emphasis on families and mothers can be interpreted as epitomising the new gendered orientations of the Post Washington Consensus as discussed by Kate Bedford and others.<sup>291</sup> Bedford suggests that a combination of theories of human capital and new institutionalism with responses to the feminist critiques against structural adjustments for overburdening women, resulted in a renewed emphasis on families and partnerships in the

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<sup>288</sup> *ibid* 10.

<sup>289</sup> Departamento Nacional de Planeación, Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social and Social, *Red de Protección Social para la Superación de la Extrema Pobreza - Juntos. Manual de operaciones* 16.

<sup>290</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010-2014 "Prosperidad para todos. Más empleo, menos pobreza y más seguridad"* 326.

<sup>291</sup> See for instance Bedford, *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank*; Calkin, *Human Capital in Gender and Development*.

1990s.<sup>292</sup> The World Bank began to frame the family as a crucial informal institution for poverty alleviation. It insisted that the values and networks of solidarity of families in the developing world, could be capitalised upon to build safety nets for those most affected by structural adjustments.<sup>293</sup> In response to gender concerns, the bank also started to advocate for “sharing partnerships, male inclusion in care, and women’s empowerment through employment.”<sup>294</sup> Instead of overburdening women, the bank and other development agents then promoted a new type of family whereby care responsibilities are shared by men and women. This new approach demanded, on the one hand, the reformation of poor men and, on the other, the empowering and responsabilisation of women. The reformation of poor men was premised upon the assumption that poverty had created a crisis of masculinity. Unemployed men, deprived of their breadwinner role, became violent, vicious and irresponsible. Consequently, in order to cultivate supportive families, it was necessary to fix men, to make them less vicious and more caring.<sup>295</sup> Women, on the other hand, were represented in a paradoxical manner: Firstly, by virtue of the reproductive work they usually assume, women were claimed to be crucial for human and social capital building, which in turn are described as key to break the intergenerational transmission of poverty.<sup>296</sup> This viewpoint demanded responsible mothers and the intensification of caring activities. But secondly, the expectation was that once men began to take on care work, women were going to enter the labour force through entrepreneurialism and employment. Thus, the bank began to promote two objectives which were contradictory in many cases: family strengthening and male inclusion thorough care sharing. This new orientation of development policy is a

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<sup>292</sup> See Kate Bedford, 'Gender and Institutional Strengthening: The World Bank's Policy Record in Latin America' (2009) 15 *Contemporary Politics* 197–202; Bedford, *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank* xvi.

<sup>293</sup> Bedford, 'Gender and Institutional Strengthening: The World Bank's Policy Record in Latin America' 202.

<sup>294</sup> Bedford, *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank* xxviii.

<sup>295</sup> *ibid* 20.

<sup>296</sup> See Bedford, 'Gender and Institutional Strengthening: The World Bank's Policy Record in Latin America' 203; Calkin, *Human Capital in Gender and Development*.

continuation and intensification of the neoliberal logic of privatisation of social reproduction which, as Bedford explains, operates “by adjusting the way in which love is expressed in the family.”<sup>297</sup>

Within debates about the crisis of masculinity men are sometimes depicted as unredeemable. That is why, as Bedford notes, in the 2001 World Development Report the advice given was to “increas[e] women’s share of cash income in the household” in order to “significantly increas[e] the share of the budget their households allocate to food and reduc[e] the share spent on alcohol and cigarettes.”<sup>298</sup> Although she stresses this has not been the most prominent option in the development industry, this is precisely the orientation embraced by *Familias en Acción*. The programme targets women and children. Men are not even mentioned in the official documents. Yet, women are targeted only on the basis of their role as mothers and for instrumental reasons. As one of the operation manuals explicitly states, “mothers are the gearwheel of the programme.”<sup>299</sup> They are in charge of collecting the bimonthly payments and, as the stewards of the money, are expected to spend it wisely on quality food and other goods and services necessary for raising their children.<sup>300</sup> The co-responsibilities demanded by the programme also fall on the shoulders of mothers. According to the 2007 operation manual, participant mothers have the following duties:

- a) to fulfil the co-responsibility acquired with the programme related to the health and/or education components; b) to attend, participate and put in practice the education and health promotion actions incentivised by the

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<sup>297</sup> Bedford, *Developing Partnerships: Gender, Sexuality, and the Reformed World Bank* 21.

<sup>298</sup> 2001 World Bank Development Report 81, quoted in *ibid* 31-32.

<sup>299</sup> Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción*. (2007) 23.

<sup>300</sup> Probably in response to critiques, the language of the official documents has changed in this regard. In the manuals from 2006 and 2007, mothers were explicitly made responsible for collecting the transfers. The 2012 Law 1532 changed the language to “prioritising mothers”. Then the manuals from 2015 and 2017 talk about the head of the household as the recipient of transfers but emphasise that mothers ought to be prioritised.



programme; c) to participate in the private meetings organised by the programme; and d) bring, when necessary, novelties, petitions and complaints before the programme.<sup>301</sup>

It means that mothers have to take on the work of taking children to medical checks, looking after their regular attendance at school, collecting the documentation required by the programme such as medical and school certificates, and attending training sessions such as “care encounters”. The latter are workshops which, according to the operation manuals, target mothers with the purpose of inculcating responsible and preventive health habits and other responsible care practices.<sup>302</sup> Some participant mothers are elected leaders of their neighbourhoods or towns. As leaders, they receive especial training and are entrusted with the duties of representing their groups before the programme, supporting the organisation of “care encounters” and other family gatherings, and teaching care practices to other mothers. This is a voluntary and non-remunerated position, but women who sign up for it are expected to be “community service-minded” and example for other mothers.<sup>303</sup> Leaders from each region must assemble on a regular basis with the purpose of sharing best practices and creating networks of solidarity among women.<sup>304</sup>

The first problematic aspect that I would like to highlight in this section is that *Familias en Acción* increases mothers’ unpaid reproductive work. As Ochoa Almanza observes based on interviews conducted with female participants, the new responsibilities put on women’s shoulders overburden and distress them. In many cases, emotional distress even

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<sup>301</sup> My own translation. Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción* 23-24.

<sup>302</sup> Agencia Presidencial para la Acción Social, *Familias en Acción. Manual operativo versión 5.1* (2006) 31.

<sup>303</sup> Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción*. 24.

<sup>304</sup> *ibid* 39.

stops women from providing what they consider to be good care for their families.<sup>305</sup> As Luccisano and Wall put it in the case of *Progresa* in Mexico, this type of conditional cash transfers entails “an intensification of motherhood”<sup>306</sup> and a “colonization”<sup>307</sup> of the time of mothers. This overburdening of women is connected to theories of human capital as they provide a way of reading female skills as tools for future growth.<sup>308</sup> At the same time, these theories render women as targets of intervention precisely to exploit their capacities and skills. In line with this direction of human capital theories, *Familias en Acción* values mothers’ skills as instruments for forging future responsible poor subjects and this is precisely the reason why they are the main target of the programme via training, co-responsibilities and penalties. Ultimately, beyond intensifying motherhood, the scheme responsabilises women for poverty as their care work is represented as key to breaking the intergenerational transmission of poverty. In other words, as Luccisano and Wall put it, “failure becomes both individualized and gendered” as mothers are blamed for the future difficulties of their children and their families.<sup>309</sup> In this way, *Familias en Acción* gives continuity to the neoliberal pattern of individualising poverty and responsabilising the poor, now with an emphasis on women.

Calkin points out the centrality of a particular form of gender essentialism to the process of turning women into the drivers of anti-poverty efforts within the framework of human capital. Indeed, within these theories, women are often represented as naturally altruistic and sacrificial caregivers. The categories of women, wife and mother are often

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<sup>305</sup> Juana Marcela Ochoa Almanza, 'MUJER NO, MADRE: Análisis crítico del impacto generado por el Programa Familias en Acción en madres beneficiarias del Barrio Jerusalén de Bogotá', Pontificia Universidad Javeriana 2010) 69. See also Helena Alviar García and Isabel Cristina Jaramillo Sierra, *Feminismo y crítica jurídica. El análisis distributivo como alternativa crítica al legalismo liberal* (Primera edn, Siglo del Hombre Editores - Universidad de los Andes 2012) 112.

<sup>306</sup> Luccisano and Wall, 'The Shaping of Motherhood through Social Investment in Children: Examples from Canada and Mexico' 209.

<sup>307</sup> *ibid* 213.

<sup>308</sup> Calkin, *Human Capital in Gender and Development* 9-10.

<sup>309</sup> Luccisano and Wall, 'The Shaping of Motherhood through Social Investment in Children: Examples from Canada and Mexico' 213.

meshed, and women's decisions are assumed to be guided by their reproductive roles.<sup>310</sup> This is the second problematic aspect of *Familias en Acción* that I would like to call attention to. Official documents refer to mothers as inherently responsible subjects and altruistic caregivers. The assumption is that because care work is by default mothers' duty, women ought to be eager to improve their care habits and skills and, consequently, are naturally called upon to take part in the programme. This is one of the reasons why the duties are named "co-responsibilities" as they reflect activities that families, specifically women, are supposed to do by default. As care is an inherently female responsibility, the assumption continues, reproductive work demanded by the scheme should not be remunerated. Additionally, as the official documents state, co-responsibilities are just a way in which the state helps families, specifically mothers, to do their work better. Therefore, there is no reason to consider payments. This is why the documents use expressions like fostering, facilitating and encouraging to frame the objectives of the scheme. Ochoa Almanza also notes that the programme depicts women as sacrificial subjects as they are expected to renounce their own personal desires to provide for the welfare of their children and keep the unity of the family.<sup>311</sup> Women's spare time is expected to be used in improving their care skills rather than in recreational or educational activities for their own pleasure. In studying similar programmes, Molyneux and Thomson have insisted that this rhetoric of care and motherhood normalise and reinforce the socially constructed idea that women are the main responsible for caregiving.<sup>312</sup> By essentialising women as caregivers *Familias en Acción* also normalises and reinforces the traditional division of reproductive labour and helps to

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<sup>310</sup> Calkin, *Human Capital in Gender and Development* 61.

<sup>311</sup> Ochoa Almanza, 'MUJER NO, MADRE: Análisis crítico del impacto generado por el Programa Familias en Acción en madres beneficiarias del Barrio Jerusalén de Bogotá' 77.

<sup>312</sup> Corina Rodríguez Enríquez, 'Políticas de atención a la pobreza y las desigualdades en América Latina: una revisión crítica desde la economía feminista', *La economía feminista desde América Latina Una hoja de ruta sobre los debates actuales en la región* (Onu Mujeres 2012) 425; Maxine Molyneux, 'Mothers at the Service of the New Poverty Agenda: Progresas/Oportunidades, Mexico's Conditional Transfer Programme' (2006) 40 *Social Policy & Administration* 425, 440.

perpetuate gender inequalities. Silvia Federici reminds us that “attributes of femininity are in effect *work functions*” and the process of naturalisation that this work had undergone is precisely a way of maintaining it in its unwaged condition.<sup>313</sup>

A common objection to these arguments is the that schemes like *Familias en Acción* contribute to empowering women. It is claimed that women benefit from having power to control the extra cash received from the programme. Transfers, the argument continues, make women more independent, allow them to develop basic financial skills and improve their decision-making power within the family.<sup>314</sup> Supporters of the scheme also argue that “care encounters,” local assemblies and training sessions enable mothers to socialise, acquire awareness of their surroundings, build support networks and participate in civic and cultural activities which might improve their self-esteem.<sup>315</sup> In accordance with these arguments, Article 10-2 of the 2012 Law 1532 mandates that mothers must be prioritised as transfer recipients “as an affirmative action and as a means to empower women within the family.”<sup>316</sup> Without denying that the programme might have some positive effects on women, it is worth noting that, according to the official documentation, the scheme seeks to empower women only in their role of mothers and caregivers. First of all, it is questionable to think that because mothers receive the transfers, their status within the family improves. The disbursed sums are so modest and the needs of families so high that women often have little discretion regarding how to spend the stipend. In addition, training and education sessions only endeavour to inculcate responsible motherhood. “Care encounters” are conceived of as spaces where women get information on matters related to the programme and discuss care

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<sup>313</sup> Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* 8.

<sup>314</sup> Miguel Urrutia and Christian Robles Báez, *Las transferencias condicionadas en Colombia: una historia del programa Familias en Acción (2001-2018)* (Universidad de los Andes 2018) 5.

<sup>315</sup> Ochoa Almanza summarises these objections. See Ochoa Almanza, 'MUJER NO, MADRE: Análisis crítico del impacto generado por el Programa Familias en Acción en madres beneficiarias del Barrio Jerusalén de Bogotá 61-62.

<sup>316</sup> My own translation. Congreso de la República de Colombia, *Ley 1532 de 2012. Por medio de la cual se adoptan medidas de política y se regula el funcionamiento del Programa Familias en Acción* .

practices. Leadership is only cultivated with regard to care work as the duties of the mother “leaders” illustrate. From another angle, as Ochoa Almanza notes, *Familias en Acción* does not contribute to insert women in paid labour.<sup>317</sup> Mothers do not receive any type of work training and are not encouraged to get involved in paid activities. Actually, as their reproductive work increases, they are discouraged from engaging in paid work or even recreational activities, a trend observed by Ochoa Almanza in her Colombian fieldwork<sup>318</sup> and by Molyneux and Thomson in Peru, Ecuador and Bolivia (countries that run schemes similar to *Familias en Acción*).<sup>319</sup> On the whole, the programme only stimulates better motherhood and gives more power to women as a means to improve their care decisions and practices.

In conclusion, *Familias en Acción* attempts to constitute responsible and sacrificial mothers who, by means of engaging in good parenting practices, raise idealised entrepreneurial and resilient subjects. Premised on the assumptions that reproductive labour is primarily a female duty and that women are inherently caregivers who engage in motherhood out of love, the programme imposes on women new reproductive responsibilities as a way of building human capital and break the intergenerational transmission of poverty. Women are made responsible for the failure of their children measured in terms of overcoming poverty. Female responsabilisation for ending poverty is in turn a way of keeping with the neoliberal logic of privatising social reproduction.

## **5. “Nudging” or “Coercing” the Poor out of Poverty?**

While in the previous sections I concentrated on the rationalities and subjectivities at work in *Familias en Acción*, in this section I will pay particular attention to technologies and

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<sup>317</sup> Ochoa Almanza, 'MUJER NO, MADRE: Análisis crítico del impacto generado por el Programa Familias en Acción en madres beneficiarias del Barrio Jerusalén de Bogotá' 75.

<sup>318</sup> *ibid* 91.

<sup>319</sup> Maxine Molyneux and Marilyn Thomson, 'Cash transfers, Gender Equity and Women's Empowerment in Peru, Ecuador and Bolivia' (2011) 19 *Gender & Development* 195-207.

techniques. The section delves into the logic that supports the neoliberal preference for behavioural techniques. Then it moves to examining the type of techniques at work in *Familias en Acción*. Against depictions of conditional cash transfers as forms of soft power, the main argument developed here is that the behavioural techniques at work in *Familias en Acción* tend to be rather very disciplinary. Furthermore, the programme rests on more traditional technologies of power such as sanctions, resulting in a very invasive and coercive regime.

### 5.1. *The Neoliberal Shift towards Behavioural Techniques*

Neoliberal governmentality, like liberal rationality, works through the various forms of freedom and agency of individuals and collectives. However, as Foucault remarked, it goes beyond liberal government as it seeks to change the subject from inside relying upon behavioural tactics.<sup>320</sup> This shift is a manifestation of the redefinition of economics as the analysis of the way in which scarce means are allocated to competing ends. This redefinition enabled the expansion of market lenses to the study (and prediction) of any individual or collective behaviour.<sup>321</sup> This way of approaching individual conduct enhances the possibilities of environmental technologies of government as individuals appear more predictable and, therefore, more governable. Against this background, neoliberal government began to incorporate behavioural techniques such as stimuli and reinforcement as a means to foster a market-oriented cultural transformation.<sup>322</sup>

The cognitive-behavioural turn which Foucault observed in 1979, Feher notes, while appropriate for the early utilitarian conceptualisation of human capital, no longer seems to

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<sup>320</sup> See Foucault, *The Birth of Biopolitics*; Dean, *Governmentality. Power and Rule in Modern Society*; Feher, 'Self-Appreciation; or The Aspirations of Human Capital.'

<sup>321</sup> Foucault, *The Birth of Biopolitics* 240 – 243.

<sup>322</sup> *ibid* 270-271.

suit the project of governing individuals in search of self-cultivation. Instead, he claims that “it is arguably the psychological discourse of ‘self-esteem’ that is the most accurate correlate of practices and policies that aim at maximizing the (self)appreciation of human capital”.<sup>323</sup> This way of approaching human capital, he adds, rejects the separation of productive and reproductive realms, as the idea of liberal free labourer presupposed. A corollary of this is that strategies aimed at governing neoliberal subjects who seek self-appreciation may involve to interventions in any domain of life, public or private, internal or external.

In the context of this debate, Dean identifies a number of behavioural and agency-based techniques which have become common in neoliberal regimes of government. He names them “technologies of agency.” There are different types of them: the first comprises “the extra-judicial and quasi-judicial proliferation of contract”, a sort of “new contractualism.”<sup>324</sup> This type includes contractual agreements with unemployed persons in the context of unemployment subsidies, learning contracts of schoolchildren, performance contracts between public entities and public servants, amongst other examples. For Dean, a central feature of the logic which underpins these agreements is that “once its ethos of negotiated intersubjectivity is accepted, then all criticisms become simply a means to retooling and expanding the logic of contract.”<sup>325</sup> The second type is made up of “technologies of citizenship” which aim to empower communities. Examples of these are “techniques of self-esteem, of empowerment and of consultation and negotiation”<sup>326</sup> used in diverse settings such as community development, environmental impact studies, teaching and health campaigns. “Instruments of ‘voice’ and representation” represent a third type. Their function is professed to be allowing groups to enter into negotiations over their needs. They engage subjects “as active and free citizens, as informed and responsible consumers,

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<sup>323</sup> Feher, 'Self-Appreciation; or The Aspirations of Human Capital' 28-29.

<sup>324</sup> Dean, *Governmentality. Power and Rule in Modern Society* 196.

<sup>325</sup> *ibid* 196.

<sup>326</sup> *ibid* 196.

as members of self-managing communities and organizations, as actors in democratizing social movements, and as agents capable of taking control of our own risks.”<sup>327</sup> These technologies often require individuals to agree “to a range of normalizing, therapeutic and training measures”<sup>328</sup> with the aim of turning targeted populations (in risk or high risk populations) into active citizens capable of and responsible for managing their own risks. Therefore, these technologies, Dean notes, produce agency in specific ways and insert it into particular regimes of government.

Richard Thaler and Cass Sunstein’s theory of nudging epitomises this logic and the corresponding technologies. As David Chandler explains, Thaler and Sunstein problematise the idea of the liberal rational subject, specifically the assumption that rational humans make good choices to maximise their welfare. By contrast, drawing on behavioural economics, they assert that people lack the capacity to adapt efficiently to their circumstances and to pick the best pathways. It means that humans require guidance and incentives to make good decisions.<sup>329</sup> This theory has been translated into state-led projects of “choice architecture” whose purpose is to create “choice environments” which provide external nudging and steering to people in order to navigate our globalised and insecure world.<sup>330</sup> Similarly, in analysing risk, Anthony Giddens argues that humans are not well equipped to cope with complexity, meaning that we need external assistance. Chandler also explains that this is the premise of Giddens’ theory of “generative politics” which look forward creating a governance of “choice-shaping” to assist humans to deal with our uncertain world.<sup>331</sup>

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<sup>327</sup> *ibid* 196.

<sup>328</sup> *ibid* 197.

<sup>329</sup> David Chandler, 'Resilience. The Societalization of Security' in David Chandler and Julian Reid (eds), *The Neoliberal Subject Resilience, Adaptation and Vulnerability* (Rowman & Littlefield International Ltd. 2016) 31.

<sup>330</sup> *ibid* 31-32.

<sup>331</sup> *ibid* 41.



## 5.2. Behavioural Techniques of *Familias en Acción*

Conditional cash transfers rely upon these theories and techniques. By means of incentives, agreements, co-responsibilities and sanctions, cash transfers attempt to shape the poor as neoliberal subjects. *Familias en Acción* is no exception. It relies upon a number of behavioural techniques to achieve its goals in terms of building human capital, resilience and agency. The first technique is conditionalities. As I have already explained, the delivery of subsidies is conditioned upon the fulfilment of requirements referred to children's attendance at school and health controls. The initial language of the scheme was of conditionalities and commitments. In 2006, when *Familias en Acción* joined *Red Juntos* the language mutated into co-responsibilities, contractual obligations and sanctions, a shift that resembles the "new contractualism" described by Dean. Since then, families must enter into written agreements with the local authorities in charge of delivering subsidies and comply with the schooling and health requirements. If they breach the agreement, they are sanctioned by expulsion from the scheme. The change in language is important because it signals a tougher disciplinary approach. By talking about contracts and co-responsibilities, the idea is to create stronger commitments backed by sanctions. This shift has gone hand in hand with the introduction of dependency debates and new mechanisms aimed at avoiding fraud.

The second salient technique is psychosocial advice and companionship. Since 2006, families are assisted by life advisors who guide and teach them how to identify their potentials, design strategies to make the most of them and make the right decisions regarding the human capital of their children. Advisors are professionals from psychosocial disciplines expected to use behavioural techniques to help families to improve their self-esteem, agency and self-responsibility. Advisors visit families as a form of companionship but also to monitor progress and the fulfilment of the agreements. The goal is that families achieve their objectives with the support of the life advisors before the end of the five year period. Here we find an example of the use of psychology and behavioural strategies to steer the conduct

of the beneficiaries in order to transform it from inside. This technique then matches cultural-based explanations of poverty which look at cultural patterns and inner characteristics of the poor. Advisors are not only helping people to improve their self-esteem and agency, but actually fixing cultural trends and helping in this way to attain the cultural transformation imagined by the precursors of neoliberalism.

The participatory training components of the programme are the third salient technique. The head of each household, specifically women, are expected to attend training sessions and workshops organised by the municipal authorities. Although non-attendance is not sanctioned, it is part of the commitments that families agree to when they enter the programme and women are strongly encouraged to participate. The themes addressed by the sessions have increased over time. Initially, the sessions focused on self-care, nutrition and health practices, the importance of education and domestic violence.<sup>332</sup> More recently, subjects such as participation and community self-management have been added.<sup>333</sup> The programme also organises “care encounters” with the aim of disseminating best practices of care and formulating collective strategies for improving the living standards of the community.<sup>334</sup> Borrowing Dean’s words, the training sessions and the “care encounters” operate as technologies of agency. The idea is to empower women and communities in order to make them responsible for their own development.

In spite of the rhetoric of autonomy, co-responsibility and empowerment, as Arne Ruckert contends, programmes like *Familias en Acción* add “elements of (micro-political) disciplining to the arsenal of power and control of disciplinary neoliberalism”.<sup>335</sup> They subject households, specifically women, to intrusive requirements related to a wide range of

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<sup>332</sup> Agencia Presidencial para la Acción Social, *Familias en Acción. Manual operativo versión 5.1* 31. Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción* 11, 39.

<sup>333</sup> Departamento para la Prosperidad Social, *Manual operativo Más Familias en Acción* (2015) 27.

<sup>334</sup> Agencia Presidencial para la Acción Social, *Familias en Acción. Manual operativo versión 5.1* 32.

<sup>335</sup> Ruckert, 'The Forgotten Dimension of Social Reproduction: The World Bank and the Poverty Reduction Strategy Paradigm' 824.

subjects, from schooling to family planning and participation in communal activities. These requirements are merged with psychological techniques aimed at reforming not only external behaviour but rather the inner dimensions of the psyche of the subjects. In this way, conditional cash transfers provide evidence as to how neoliberal rationality erases the borderline between public and private, and inner and outer dimensions of human behaviour, in the attempt to shape everything according to market rationality and trigger a cultural transformation. Moreover, rather than indirect techniques of government, conditional cash transfers, as *Familias en Acción* illustrates, use very coercive and disciplinary devices such as sanctions, accountability mechanisms based on follow-up visits and indicators of performance. As Ruckert puts it, they amount to “new forms of policing the poor”.<sup>336</sup> Hence, they epitomise what Mahon and Macdonald have termed “intrusive neoliberalism”,<sup>337</sup> but also the coercive tendencies of neoliberalism in spite of its rhetoric of soft governance.<sup>338</sup>

## 6. Insulating Poverty from Political Deliberation

The construction of the poor as entrepreneurs of themselves and resilient subjects insulates poverty from political deliberation. In this section, I focus on how *Familias en Acción* epitomises this effect. As we have seen conditional cash transfers identify the root causes of poverty in the individual. People are made responsible for coping with and defeating poverty. At the same time poor subjects are expected to contribute to the national effort of assembling a competitive economic environment. This apparatus normalises poverty. It is detached from the structures of the economy and institutional arrangements, meaning that political change cannot significantly effect it. As a result, equality is always placed out of reach as a goal for society. It is turned into a managerial problem which demands expert knowledge. The structure of this section is twofold: Drawing on a discussion of relevant

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<sup>336</sup> *ibid* 832.

<sup>337</sup> Quoted by Ruckert *ibid* 824.

<sup>338</sup> See Ferguson, 'The Uses of Neoliberalism' 172; Hilgers, 'The Historicity of the Neoliberal State' 89.

literature which critiques neoliberal rationality for insulating poverty and inequality from democratic political deliberation, it examines how *Familias en Acción* epitomises these critiques, firstly, by individualising and normalising poverty, and secondly, by turning it into a managerial problem.

### 6.1. *The Normalisation of Poverty*

The first group of critiques revolve around the individualisation of poverty and the responsabilisation of the poor. In this regard, Wendy Brown's assessment of neoliberalism becomes relevant. I have already explored her critique of the manner in which neoliberal rationality constructs human beings as portfolio managers. Her first important claim for the purposes of this section is that human capital normalises poverty to the extent that inequality is the condition of possibility of competition.<sup>339</sup> Poverty, as the natural consequence of inequality, emerges as an unavoidable phenomenon which can be ameliorated but not solved. If inequality is normal, Brown notes, "political subjects lose guarantees of protection by the liberal state".<sup>340</sup> It means that the poor no longer have rights to state assistance or social protection. Any assistance becomes a gratuity, and therefore, acquires a discretionary nature. Besides normalising poverty, human capital makes the poor responsible for their own fate,<sup>341</sup> a point already explored in previous paragraphs. This responsabilisation also has a depoliticising effect as anti-poverty efforts, it is claimed, must concentrate on individuals rather than on structures or institutional arrangements.

According to Brown, the second effect of human capital and the expansion of market rationality is the hollowing out of democracy and with it the destruction of the possibility of contesting the structures that produce poverty.<sup>342</sup> For Brown, as market

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<sup>339</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 38.

<sup>340</sup> *ibid* 64.

<sup>341</sup> *ibid* 132-133.

<sup>342</sup> *ibid* 10.

rationality expands, the foundations of citizenship – the precondition for democracy – shrink. Human capital erases moral autonomy, class and other foundations of solidarity. This renders political citizenship difficult to achieve.<sup>343</sup> The *homo politicus*, the liberal subject of rights, is then replaced by pure market actors.<sup>344</sup> As a result, politically active subjects who discuss other ways of shaping our world disappear, and with them go debates on alternative social structures that might not reproduce a naturalised poverty.

Concerning the resilient subject, Chandler and Reid make a similar argument about how discourses and practices of resilience limit political contestation and political imagination. For them, the constitution of resilient subjects “requires divesting peoples and individuals of any belief in the possibility of determining their own conditions for development and security and accepting instead the necessity of adaptation to the ‘realities’ of an endemic condition of global insecurity”.<sup>345</sup> Resilience undermines the role and possibilities of politics, and of course, withdraws poverty and inequality from what is questionable and changeable. Chandler adds that if there is no possibility of rational change, politics cannot be a contestation about societal goals, and is thereby reduced to technical management of the status quo.<sup>346</sup>

*Familias en Acción* puts flesh on these critiques. I have already discussed that that programme represents the root causes of poverty as lying in people’s wrong choices, irresponsible behaviour and inability, for cultural and psychological reasons, to take advantage of their potential to benefit from market exchanges. In this way, poverty is depicted as a problem which demands solutions at the level of individuals and targeted populations, rather than changes in the structures of the economic apparatus or the political regime. As García Trujillo explains, following this rationality, the national government has

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<sup>343</sup> *ibid* 65, 78.

<sup>344</sup> *ibid* 98-99.

<sup>345</sup> Chandler and Reid, 'Introduction. The Neoliberal Subject' 1-2.

<sup>346</sup> Chandler, 'Debating Neoliberalism. The Exhaustion of the Liberal Problematic' 16.

managed to detach poverty from the neoliberal oriented reforms that have taken place in Colombia since the 1980s. The cash transfers are then represented as a sort of “humanitarian aid” granted by a government who cares for the poor. People perceive them as a good means of ameliorating their precarious conditions, without connecting their poverty to the economic reforms promoted by the same governments. In other words, the programme has effected a normalisation of poverty. In this way, the government have managed to get rid of any political responsibility related to people’s growing experiences of precarity, a factor which was crucial for Uribe’s re-election.<sup>347</sup>

### *6.2. Poverty is Rendered a Technical Problem*

A second way in which the programme depoliticises poverty is by rendering it as a technical problem. The depoliticisation of poverty through this strategy is an old tactic of the development apparatus. James Ferguson, back in the early 1990s, categorised development as an anti-politics machine to the extent that it reduces poverty to a technical problem. According to Ferguson: “By uncompromisingly reducing poverty to a technical problem, and by promising technical solutions to the suffering ..., the hegemonic problematic of ‘development’ is the principal means through which the question of poverty is depoliticized”.<sup>348</sup> As developmental interventions “squash political changes to the system” questions of land, wages, distribution and others related to processes of impoverishment are portrayed as responsive only to technical interventions. In a similar fashion, neoliberal rationality constructs problems of inequality as belonging to the realm of management and expertise, and demanding a calculative logic borrowing Dean’s terms.<sup>349</sup> Against this

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<sup>347</sup> This argument was initially proposed by Alejandro Gaviria, an orthodox economist who later on joined Santo’s administration as Ministry of Health. Quoted in García Trujillo, ‘Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina’ p. 116 See also Pulido Buitrago, ‘Los programas de transferencias monetarias condicionadas en América Latina. El caso de Familias en Acción.

<sup>348</sup> James Ferguson, *The Anti-Politics Machine. “Development,” Depo* (Tenth edn, University of Minnesota Press 2014) 270.

<sup>349</sup> Dean, *Governmentality. Power and Rule in Modern Society* 197.

backdrop, in the remaining of this section I delve into how *Familias en Acción* renders poverty as a technical issue. Some of the discussion might seem repetitive, but I engage with them again here as a mean to complete the analysis.

Peck and Theodore show that by depicting poverty as a technical problem and hence representing conditional cash transfers as sound technical solutions, the World Bank has increased the legitimacy of the programmes. As technical solutions, they have spread by means of a “best-practice contagion.”<sup>350</sup> Indeed, their ascendance as the “default setting for anti-poverty reform” has resulted from a combination of expert knowledge, most of it produced and reproduced by the World Bank and its allies in the multilateral development community, and technocratic practice. The “experts” behind the scheme have actively promoted an “experimental ethos” which presupposes “randomized control trials and the extensive dissemination of impact-evaluation studies.” This ethos shares with “behavioural economics and motivational psychology a predilection for experimental program designs, the rigorous testing of stimulus-response relationships, and the deployment of quasi-clinical trials.”<sup>351</sup> An evidence-based approach to policy design is another aspect advocated by the “experts”. As Peck and Theodore explain, “[t]he macro logic of this evidence-based approach is one that favours incrementalist mutation and technocratic tinkering in the shadow of preferred ‘models.’”<sup>352</sup> The way conditional cash transfers have spread around the world is an example of a new “model of power” – a neoliberal model of power – which is “orchestrated from global centers of persuasion, enacted through expert networks, sustained by narratives of best practice, and mediated by the rationalistic lore of experimental evaluation.”<sup>353</sup> These techniques secure the status of experts as “architects, advocates, and evaluators”, while privileges claims and policy models based on measurable effectiveness.

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<sup>350</sup> Peck and Theodore, 'Paying for Good Behavior: Cash Transfers Policies in the Wild' 103.

<sup>351</sup> *ibid* 108.

<sup>352</sup> *ibid* 105.

<sup>353</sup> *ibid* 105.

*Familias en Acción* draws on this type of evaluation-driven and evidence-based style of policy-making. Its technical aura can be appreciated in its deference to evaluations and experimentation. Since its inception, it has been subjected to continuous monitoring and evaluation. It is embedded in the logic of problematisation, experimentation, evaluation and improvement which characterise neoliberal policy-making. Furthermore, it reproduces the rationality of public funding allocation according to documented outcomes, a logic which rewards efficiency as measured through continuous and detailed assessments. Since its creation, the multilateral institutions which funded the scheme have required investments in these types of technical activities. Hence, shares of every loan have been allocated to experimentation, assessments and redesigns.

Indeed, the programme was prolonged in 2005 based on impact evaluations conducted in 2003 with support from the World Bank and the Inter-American Development Bank.<sup>354</sup> The coverage of the scheme was expanded thanks to a new loan granted by these institutions, which also allocated funding for conducting a pilot test in big cities (up to that moment the programme had only reached small cities) and to introduce a System of Monitoring and Evaluation (M&E) into the System of Social Protection.<sup>355</sup> The particular types of activities foreseen were data collection, monitoring and evaluation based on outcomes and impacts, case studies, and the creation of accountability mechanisms. The rationale of the M&E system is to orient budget allocation according to efficiency outcomes.<sup>356</sup> In 2007, flexibility was granted to local authorities to experiment with different types of schooling incentives, especially in urban environments.<sup>357</sup> The idea was to use the

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<sup>354</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3359 de 2005. "Autorización a la Nación para contratar un préstamo externo con la banca multilateral hasta por US \$86,4 millones, con el fin de financiar parcialmente el programa Familias en Acción y el fortalecimiento de la información y del sistema de monitoreo y evaluación del sector de la protección social"* 2.

<sup>355</sup> *ibid* 2.

<sup>356</sup> *ibid* 5.

<sup>357</sup> Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción* 13.



results of these experiments to improve the delivery of school subsidies, as school attendance seemed to have improved less than health conditions among the targeted population. In 2009, based on new impact assessments, a new loan was requested to expand the programme.<sup>358</sup> This loan was also aimed at funding new experiments in urban setting.

Additionally, since the beginning, the conditional cash transfer programme has had its own mechanisms of evaluation and control. There is an Internal Group of Strategic Direction and Monitoring along with a system of monitoring and evaluation. The unit is in charge of designing monitoring and evaluation plans, collecting relevant data, elaborating reports for the national government or international funders and, overall, providing information to support decision-making processes.<sup>359</sup> On the other hand, assessments – ex-ante and impact assessments, as well as specific spot checks are usually conducted by external firms.<sup>360</sup>

To conclude, it is worth mentioning two specific effects that the technical approach of *Familias en Acción* to poverty has produced: On the one hand, the argument about the technical character of the scheme was crucial in keeping it away from Congress until 2012. Until the 2012 Law 1532 was passed, the programme was regulated completely through policy documents and operation manuals. It was claimed that in this way flexibility was preserved, allowing “experts” to redesign and make adjustments as often as necessary. This means that democratic debate about the social policy approach that underpins *Familias en Acción* was precluded for nearly a decade, a fact which at the same time helped to reinforce the image that the programme was a manifestation of the benevolence of pro-poor

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<sup>358</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3472 de 2007 "Concepto favorable a la Nación para contratar empréstitos externos con la banca multilateral hasta por US\$1.500 millones, o su equivalente en otras monedas, con el fin de financiar la puesta en marcha de la expansión del programa Familias en Acción 2007-2010"* (2007) 24.

<sup>359</sup> See Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción*. 47-48 Departamento para la Prosperidad Social, *Manual operativo Más Familias en Acción* 29.

<sup>360</sup> See Agencia Presidencial para la Acción Social y la Cooperación Internacional, *Manual operativo programa Familias en Acción* 47-48.

presidents rather than a state policy.<sup>361</sup> On the other hand, the programme's avoidance of the language of rights have been legitimised by its technical aura. The subsidies are depicted as targeted technical means, hence, temporary, in need of flexibility and subject to monitoring and evaluation. This characterisation of the transfers clashes with traditional definitions of rights as universal, inherent to humans and inalienable. Therefore, it has been argued, it would be an error to classify them as rights and provide them with legal safeguards.

## 7. Conclusion

This chapter looked at *Familias en Acción*, a conditional cash transfers scheme created in the year 2000 as a temporal strategy to mitigate the social effects of the late 1990s economic crisis, but which also formed a part of the broader anti-guerrilla and anti-narco-trafficking 'Plan Colombia' and of counterinsurgency national tactics. By investigating the origins of the programme, this chapter began to reveal the connection between anti-poverty interventions and security concerns under neoliberal regimes of government, a subject to which I will return in Chapter 3.

Alongside making evident the poverty-security nexus at the basis of the scheme, this chapter advanced two main arguments. Firstly, it revealed two strategies through which *Familias en Acción* depoliticise poverty. On the one hand, the programme shifts the responsibility of poverty onto the shoulders of poor subjects by constructing poverty as a problem of their bad investments in human capital, lack of capabilities to deal with risk, lack of agency and dependency. Those ways of looking at poverty individualise its causes and always move attention from the structures and processes of impoverishment. On the other hand, poverty is depicted as a technical problem in need of technical solutions rather than

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<sup>361</sup> See García Trujillo, 'Los programas de transferencias condicionadas: mecanismos de legitimidad política en América Latina 114-115.

political solutions. By constructing poverty as an issue of measurement, evaluations, experimentations, psychological techniques and behavioural design, *Familias en Acción* precludes political deliberation.

Secondly, in the context of debates about soft power and the neoliberal shift towards behavioural techniques, this chapter contends that *Familias en Acción* operates as both a technology of government (governing from a distance) and a technology of power. In spite of its language of incentives and empowerment, it relies upon very coercive and disciplinary devices such as sanctions, accountability mechanisms based on follow-up visits and performance indicators. As Ruckert puts it, conditional cash transfers like *Familias en Acción* amount to “new forms of policing the poor”.<sup>362</sup> They epitomise what Mahon and Macdonald have termed “intrusive neoliberalism,”<sup>363</sup> but also the coercive tendencies of neoliberalism in spite of its rhetoric of soft governance.

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<sup>362</sup> Ruckert, 'The Forgotten Dimension of Social Reproduction: The World Bank and the Poverty Reduction Strategy Paradigm' 832.

<sup>363</sup> Quoted by Ruckert *ibid* 824.

## Chapter Two: Domesticating Social and Economic Rights. The Fiscal Compact in Colombia

### 1. Introduction

This chapter is concerned with how austerity rules were introduced into the Constitution of Colombia to discipline and neutralise social and economic rights in line with the logic of rights and development embedded in current debates about austerity. Aside from promising a welfare state, the 1991 Constitution of Colombia also recognised a large number of social and economic rights. While there was some scepticism about the potential of these rights, the combination of easy access to courts for the poor and what many consider a progressive Constitutional Court has resulted in massive and unprecedented judicial enforcement activities.<sup>364</sup> Despite the observations in the last chapter that the 1991 Constitution facilitated many neoliberal reforms in social welfare, social and economic rights became a crucial bulwark against neoliberal reforms.<sup>365</sup> In reaction to this form of contestation, in 2011 the Congress of Colombia passed a constitutional amendment that introduced austerity rules (termed Fiscal Sustainability) which comprised of a set criteria, intended to guide every governmental decision. Fiscal Sustainability was proclaimed as an instrument to achieve the objectives of the welfare state promised in 1991, including the progressive realisation of social and economic rights. Besides subjecting national budgets and national development plans to austerity rules, the amendment created a mechanism which could be activated by the Controller General of the Republic or any minister in order to assess the fiscal

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<sup>364</sup> Julieta Lemaitre, 'El Coronel sí tiene quien le escriba: la tutela por mínimo vital en Colombia'; Magdalena Sepúlveda, 'Colombia. The Constitutional Court's Role in Addressing Social Injustice' in Malcolm Langford (ed), *Social Rights Jurisprudence Emerging Trends in International and Comparative Law* (First edn, Cambridge University Press 2008).

<sup>365</sup> Maria Paula Saffon, 'Can Constitutional Courts be Counterhegemonic Powers vis-a-vis Neoliberalism? The Case of the Colombian Constitutional Court' (2007) 5 *Seattle Journal for Social Justice* 533.

consequences of high court decisions. Its aim is to persuade the corresponding high court to modulate the remedies granted or agree on a plan for future fulfilment.

The amendment resembles the austerity reforms adopted in Europe after the 2008 economic crisis.<sup>366</sup> Although it does not contain arithmetic rules such as those contemplated by the “Treaty on the Stability, Coordination, and Governance in the Economic and Monetary Union” or a number of European constitutions, it does make clear that every public authority must endeavour to keep the national budget balanced and avoid expenses which may impair debt levels or the country’s ability to honour its debt in the future. Furthermore, it shows a permanent commitment to economic consolidation driven by spending cuts rather than revenue-based strategy.

I argue that Fiscal Sustainability has been successful in governing courts and disciplining social and economic rights in at least three ways. Firstly, the amendment locked in a particular model of development and rights: the expansionary fiscal consolidation thesis. This way of thinking about prosperity relies upon the assumption that growth is investment driven, meaning that it demands low levels of social spending to foster stability and confidence. As a result, the progressive realisation of social and economic rights is delegated to the market as bigger welfare budgets undermine the national competitive position in the global economy. Secondly, Fiscal Sustainability rewrites social and economic rights from inside. It has been inserted into the structure of these rights and turned into a condition of possibility of their progressive realisation, while courts are forced to engage in fiscal debates and are made accountable for the fiscal impact of their decisions. Furthermore, Fiscal

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<sup>366</sup> In 2009 Germany amended its constitution by introducing fiscal rules intended to compel both the Federation and the *Länder* to balance their budgets. Similarly, in 2011 Spain introduced the constitutional principle of budgetary stability. This trend was followed by the 2012 “Treaty on the Stability, Coordination, and Governance in the Economic and Monetary Union”, known as the Fiscal Compact”. The treaty, subscribed by twenty-five out of twenty-seven members of the European Union, imposes on signatory states the obligation of enacting the “golden rule”, this is, the requirement that annual national budgets be balanced or in surplus. Paul P. Craig, 'The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism' (2012) 37 *European Law Review* 231; Federico Fabbrini, 'The Fiscal Compact, the "Golden Rule", and the Paradox of European Federalism' (2013) 36 *Boston College International and Comparative Law Review* 1.

Sustainability has given birth to a new constitutional jurisprudence on social and economic rights which, as well as reversing previous interpretations favourable to workers and pensioners, has shrunk their scope to a minimum. Contrary to ideas of universality, it is turning these rights into entitlements that only the extremely poor can enforce. Finally, the amendment is implicated in producing new subjectivities. The desired subjects of Fiscal Sustainability are responsibilised and sacrificial citizens who provide for themselves, their families and communities, who do not expect the state to come to their rescue unless strictly necessary, and who commit to helping the state to create competitive environments as a means to bring about collective flourishing. Consequently, Fiscal Sustainability brings the neoliberal logic of targeting and market solutions to the realm of rights. Moreover, it furthers the processes of individualisation of the causes of poverty and responsibilisation of the poor for their own fate. At a more general level, it is complicit in exacerbating and normalising inequality and precarity, and in this way is rendering the poor easier to govern.<sup>367</sup>

Rights have been described as flowing between two poles: On the one hand, turned into legal regulations – human rights treaties, constitutions, human rights statutes, etc. – rights channel and neutralise social conflict, while at the same time reinforce and legitimise sovereign power and the global order. On the other hand, they have a radical pole. Rights possess an aspirational dimension which allows them to be used to resist current political arrangements, while providing tools for emancipation, re-articulation and change. Hence, there is not an essence of rights, or at least “not separable from their performance in each instance.”<sup>368</sup> Rights discipline and empower. In this sense, rights are a governing technique. In Foucauldian terms, they are mechanisms through which to conduct behaviours and actions.<sup>369</sup> Rights are key liberal technologies of government. They contain and neutralise

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<sup>367</sup> See Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social!'; Lorey, *State of Insecurity. Government of the Precarious*.

<sup>368</sup> Illan rua Wall, *Human Rights and Constituent Power: Without Model or Warranty* (Routledge 2012) 3.

<sup>369</sup> Sokhi-Bulley, *Governing (Through) Rights*.

social conflict at the same time as they fabricate particular subjectivities, such as that of *homo economicus*. They empower some and disempower others, include and exclude, and render visible and invisible both peoples and political claims. As Bal Sokhi Bulley has illustrated, they not only orientate individual behaviours, but also shape the conduct of governments, national and international agencies, NGOs and other non-state actors.<sup>370</sup> Yet, rights are also deployed to contest authoritarian regimes, discrimination, neoliberal reforms, etc. Rights offer tools for political struggle, to contest and remake relations of power. As Foucault asserted in his late work, we can also observe counter-conducts in rights.<sup>371</sup> For Ben Golder, this later approach of Foucault to rights can be encapsulated in three dimensions: Firstly, rights are “contingent and ungrounded.” Foucault rejected the conventional normative grounds of rights in favour of more “contingent, artifactual, and revisable grounds” which might open up spaces for political struggle.<sup>372</sup> Secondly, rights are ambivalent to the extent that they “can enlarge, expand, or protect the sphere of action of subjects (as well as performatively bring new worlds and communities into being),” while simultaneously “constitute those very subjects and communities in particular ways and hence work to re-inscribe them within existing forms of power.”<sup>373</sup> Finally, rights constitute “tactical deployments and interventions.” They are instrumental for achieving other political aims outside the liberal political system and, in this way, may support wider political goals.<sup>374</sup> In this chapter, drawing on these discussions about the strategic and ambivalent character of rights, I take rights as technologies of government and look at them as processes, paying attention to the strategies, tactics and discourses deployed to govern through them.<sup>375</sup>

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<sup>370</sup> Ibid.

<sup>371</sup> Jessica Whyte, 'Is Revolution Desirable?: Michel Foucault on Revolution, Neoliberalism and Rights' in Ben Golder (ed), *Re-reading Foucault: On Law, Power and Rights* (Routledge 2013); Ben Golder, *Foucault and the Politics of Rights* (Stanford University Press 2015).

<sup>372</sup> Golder, *Foucault and the Politics of Rights* 26-27.

<sup>373</sup> *ibid* 91.

<sup>374</sup> *ibid* 28.

<sup>375</sup> Sokhi-Bulley, *Governing (Through) Rights* 11.

My analysis is situated specifically in the context of debates about the strategic deployment of social and economic rights and the transformative potential of their judicial enforceability.<sup>376</sup> The detractors of justiciability have focused on the courts' lack of democratic legitimacy to order public expenditure and their poor institutional capacity and lack of expertise to make informed judgments about allocation of public resources.<sup>377</sup> In contrast, however, it has been claimed that they offer important instruments to challenge poverty and resist neoliberal reforms.<sup>378</sup> This is a subject matter broadly discussed within debates about transformative constitutionalism and the potential of social and economic rights litigation. Since the 2000s, a rising number of academic works have discussed the advantages and disadvantages of their judicial enforcement in terms of addressing poverty and inequality, and have engaged in debates about best judicial practices, remedial frameworks and implementation mechanisms.<sup>379</sup> Within these optimistic works, the problems faced in the enforcement of social rights are framed in different ways: For some, social rights suffer from some interpretative and structural shortcomings which impair their counterhegemonic potential; however, if used as part of a portfolio of tactics and discourses, they become helpful tools to challenge power structures.<sup>380</sup> Others formulate the difficulties

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<sup>376</sup> I leave aside the discussion on whether social and economic rights are rights in the first place. For a summary see Joe Wills, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony' (2014) 27 *Leiden Journal of International Law* 11.

<sup>377</sup> For a summary of the critiques against the enforcement of social rights see Paul O'Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences* (Routledge 2012) 10.

<sup>378</sup> Saffon, 'Can Constitutional Courts be Counterhegemonic Powers vis-a-vis Neoliberalism? The Case of the Colombian Constitutional Court'; Lucie E. White and Jeremy Perelman (eds), *Stones of hope: How African Activists Reclaim Human Rights to Challenge Global Poverty* (Stanford University Press 2011); David Bilchitz, 'Constitutionalism, the Global South, and Economic Justice' in Daniel Bonilla Maldonado (ed), *Constitutionalism of the Global South The Activist Tribunals of India, South Africa, and Colombia* (Cambridge University Press 2013); Gillian MacNaughton and Diane F. Frey (eds), *Economic and Social Rights in a Neoliberal World* (Cambridge University Press 2018)

<sup>379</sup> See for instance: Malcolm Langford (ed), *Social Rights Jurisprudence. Emerging Trends in International and Comparative Law* (Cambridge University Press 2008); César Rodríguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America' (2011) 89 *Texas Law Review* 1669; O'Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences*; Helena Alviar García, Karl Klare and Lucy A. Williams (eds), *Social and Economic Rights in Theory and Practice. Critical Inquiries* (Routledge 2015); Malcolm Langford, César Rodríguez Garavito and Julieta Rossi (eds), *Social Rights Judgments and the Politics of Compliance: Making it Stick* (Cambridge University Press 2017).

<sup>380</sup> Joe Wills and Ben TC Warwick, 'Contesting Austerity: The Potential and Pitfalls of Socioeconomic Rights Discourse' (2016) 23 *Indiana Journal of Global Legal Studies* 629.



in terms of co-optation and situate the problems at the level of interpretation and judicial practice. It is argued that although social rights are incompatible with neoliberalism at a foundational level since both rest on different conceptions of the state, society and justice, in courts as well as in international institutions they are being harmonised with neoliberal imperatives and hence divested from their radical qualities.<sup>381</sup> Less optimistic accounts conceive social rights as mere ameliorating tools which have served to provide some relief to the most disadvantaged victims of neoliberalism, the extremely poor, but have been unable to transform the structures that produce extreme inequality.<sup>382</sup> For others the problem is that courts do not target the most impoverished and actually their decisions tend to be detrimental to them from a distributive perspective. According to these commentators, since access to courts is not easy or cheap, judicial enforcement of social and economic rights ends up benefiting a privileged minority of litigants (usually wealthy) and diverting resources from comprehensive and universal welfare schemes.<sup>383</sup> More radical critiques call into question the seeming opposition between social and economic rights and neoliberalism. Rights are accused of being complicit with neoliberalism. It has been claimed that to the extent that the mainstream discourse on social and economic rights has focused on minimum provisions, lacking ambition in terms of distributive equality, they have been a perfect companion to neoliberalism.<sup>384</sup>

In the post-2008 era, social and economic rights have been targeted by discourses of austerity. The debates about austerity and rights revolve around many different topics.

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<sup>381</sup> Paul O'Connell, 'The Dead of Socio-Economic Rights' (2011) 74 *The Modern Law Review* 532; Wills, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony' Joe Wills, *Contesting World Order? Socioeconomic Rights and Global Justice Movements* (Cambridge University Press 2017).

<sup>382</sup> Helena Alviar García, 'Distribution of Resources Led by Courts. A Few Words of Caution' in Helena Alviar García, Karl Klare and Lucy A. Williams (eds), *Social and Economic Rights in Theory and Practice Critical Inquiries* (First edn, Routledge 2015).

<sup>383</sup> Pablo Rueda, 'Legal Language and Social Change during Colombia's Economic Crisis' in Javier Couso, Alexandra Huneus and Rachel Sieder (eds), *Cultures of Legality Judicialization and Political Activism in Latin America* (First edn, Cambridge University Press 2010); Octavio Luiz Motta Ferraz, 'Harming the Poor Through Social Rights Litigation: Lessons from Brazil' (2011) 89 *Texas Law Review* 1643; David Landau, 'The Reality of Social Rights Enforcement' (2012) 53 *Harvard International Law Journal* 189.

<sup>384</sup> Samuel Moyn, *Not Enough. Human Rights in an Unequal World* (Harvard University Press 2018).

Following the thesis that social and economic rights are counterbalances to neoliberalism, many scholars and practitioners made a call to respond to the economic crisis using rights frameworks.<sup>385</sup> It is recognised that rights frameworks suffer from many structural and practical limitations; however, it is claimed that principles such as progressive realisation, non-retrogression and non-discrimination may offer appropriate tools to challenge austerity reforms.<sup>386</sup> Others were not surprised that violations of social and economic rights increased in the aftermath of the financial meltdown and instead stressed how the framework of austerity was brought from the South to the North accompanied by a rhetoric of necessity and pain sharing.<sup>387</sup> Similarly, other voices lament how austerity has accelerated the reconfiguration of social rights pursuant to the logic of competitiveness, and demand to reimagine them through the lenses of solidarity.<sup>388</sup> I do not intend to defend a normative approach to social and economic rights. My contribution to these debates is an exploration of how rights, which before the rise of austerity discourses were deployed successfully to provide material relief to poor populations in Colombia and contain neoliberal reforms, have been neutralised by precisely a re-inscription of them at the authoritative level of a national constitution. The jurisprudence that is emerging following the amendment is not only inimical to the poor, but also increases inequality and dismantles democratic deliberation on development and other economic matters. This chapter is then an examination of the ambivalence of rights exemplified by this battle in which austerity provides the authoritative and argumentative framework to recode them.

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<sup>385</sup> Aoife Nolan, 'Introduction' in Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press 2014); Magdalena Sepúlveda Carmona, 'Alternatives to Austerity: A Human Rights Framework for Economic Recovery' in Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press 2014).

<sup>386</sup> Wills and Warwick, 'Contesting Austerity: The Potential and Pitfalls of Socioeconomic Rights Discourse'.

<sup>387</sup> Paul O'Connell, 'Let Them Eat Cake: Socio-Economic Rights in an Age of Austerity' in Aoife Nolan, Rory O'Connell and Harvey Colin (eds), *Human Rights and Public Finance Budgets and the Promotion of Economic and Social Rights* (Hart Publishing 2013).

<sup>388</sup> Emiliós Christodoulidis, 'Social Rights Constitutionalism: An Antagonistic Endorsement' (2017) 44 *Journal of Law and Society* 123.

The chapter begins with an examination of the process of constitutionalisation of Fiscal Sustainability in Colombia. It explores how the Ministry of Finance capitalised on international discussions about austerity to discipline the judicial enforceability of social and economic rights. In section two I put forward the argument that Fiscal Sustainability has been a successful technique to govern courts - especially the Constitutional Court - and neutralise social and economic rights litigation, to the extent that it entrenched at the authoritative level of the constitution a new understanding of development and rights, while simultaneously forced courts to engage in fiscal discussions and made them accountable for the economic effects of their verdicts. The section also explores the logic of sacrifice embedded in the amendment and the desired poor subjects which it attempts to constitute. In the third section, I move to the jurisprudence which emerged in the aftermath of the amendment. Attention then turns to how Fiscal Sustainability is implicated in reversing interpretations favourable to labour and pension rights, in disseminating narratives about poverty which further the processes of responsabilisation of the poor, and more notoriously, in reframing social and economic rights as entitlements that only belong to the extremely poor.

## **2. The Constitutionalisation of Fiscal Sustainability**

In 1991, in the middle of one of the oldest civil conflicts of the world, Colombia adopted a new constitution with the aim of pacifying the country. Alongside the traditional political parties, ethnic minorities, demobilised guerrilla groups and civil society joined forces in a publicly elected Constitutional Assembly. The result was the promise of a welfare state combined with an extensive charter of rights inserted in a neoliberal institutional

framework.<sup>389</sup> Seeking the effective protection of rights, a constitutional tribunal was created together with an expeditious, flexible and easy to exercise writ of protection of fundamental rights (*tutela* action). This last element proved especially amenable to the poor,<sup>390</sup> who deployed it to great effect. As Lemaitre and Young explain, thanks to the Constitutional Court's jurisprudence, *tutela* action has become an expansive and popular institution. The Court has strengthened the powers of judges. Any judge is qualified to decide *tutela* cases, to protect rights. It eliminated standing and procedural constraints, facilitating people's access to the judiciary.<sup>391</sup> Both the Court and the special writ of protection have been crucial in the development of an unprecedented jurisprudence on social and economic rights which has been celebrated as progressive and pro-poor.<sup>392</sup> A huge part of the case law has revolved around the enforcement of pension and labour rights in the face of legal reforms aimed at labour flexibilisation and the privatisation of pension schemes.<sup>393</sup> An expansive interpretation of the right to health has also given rise to countless judgments which have dispensed protections at both individual and collective levels.<sup>394</sup> Structural remedies have

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<sup>389</sup> The neoliberal framework of the constitution characterises by the privatisation of social services, an autonomous central bank, political and administrative decentralisation, and regulations in favour of trade liberalisation and financial opening. See Jairo Estrada Álvarez, *Construcción del modelo neoliberal en Colombia 1970-2004* (Primera edn, Ediciones Aurora 2004).

<sup>390</sup> Lemaitre, 'El Coronel sí tiene quien le escriba: la tutela por mínimo vital en Colombia' 14-15.

<sup>391</sup> Katharine G. Young and Julieta Lemaitre, 'The Comparative Fortunes of the Right to Health: Two Tales of Justiciability in Colombia and South Africa' (2013) 26 *Harvard Human Rights Journal* 179 185 According to the constitutional case law, the special writ of protection of fundamental rights introduced in Article 86 of the Constitution can be used to demand the protection of social and economic rights in at least three types of cases: Firstly, when the violation of social and economic rights leads to the breach of civil and political rights such as the right to decent life or the right to dignity - the connection argument. Secondly, when the plaintiffs are persons in extreme poverty or in extreme vulnerability who cannot provide for themselves due to factors such as disability, illness or age. Thirdly, when social and economic rights have been regulated by the Congress and public policies have been put in place; in these cases the Constitutional Court has stated that they become fundamental rights and can be enforced directly by the judiciary. See Johanna del Pilar Cortés Nieto and others, 'La naturaleza jurídica de los derechos económicos, sociales y culturales en la jurisprudencia de la Corte Constitucional' (2007) 9 *Estudios Socio-Jurídicos* 109; Magdalena Sepúlveda and César Rodríguez Garavito, 'Colombia: la Corte Constitucional y su contribución a la justicia social' in Malcolm Langford (ed), *Teoría y jurisprudencia de los derechos sociales Tendencias emergentes en el derecho internacional y comparado* (First edn, Siglo del Hombre Editores & Universidad de los Andes 2013).

<sup>392</sup> Saffon, 'Can Constitutional Courts be Counterhegemonic Powers vis-a-vis Neoliberalism? The Case of the Colombian Constitutional Court'; Sepúlveda, 'Colombia. The Constitutional Court's Role in Addressing Social Injustice.'

<sup>393</sup> María Paula Saffon and Mauricio García Villegas, 'Derechos sociales y activismo judicial. La dimensión fáctica del activismo judicial en derechos sociales en Colombia' (2011) 13 *Revista Estudios Socio-Jurídicos* 75.

<sup>394</sup> Young and Lemaitre, 'The Comparative Fortunes of the Right to Health: Two Tales of Justiciability in Colombia and South Africa.'

been crucial in the development of this vibrant case law. They are judicial decisions that pinpoint structural state failures that massively infringe fundamental rights, and therefore, compel authorities to adopt systemic reforms in the form of policies, institutions and budget increments. Rodríguez Garavito describes them as follows:

I characterize these cases as judicial proceedings that (1) affect a large number of people who allege a violation of their rights, either directly or through organizations that litigate the cause; (2) implicate multiple government agencies found to be responsible for pervasive public policy failures that contribute to such rights violations; and (3) involve structural injunctive remedies, i.e., enforcement orders whereby courts instruct various government agencies to take coordinated actions to protect the entire affected population and not just the specific complainants in the case.<sup>395</sup>

The Court has retained jurisdiction to oversee the implementation of some of these decisions and has engaged in close monitoring activity which has involved the design of compliance indicators, public hearings and sanctions. As a result, the government has been compelled to create institutions and programmes aimed at assisting the internally displaced population, expanding healthcare services to the poor, improving prison infrastructure, among other examples. In sum, the jurisprudence on social and economic rights, aside from providing some material relief to the most impoverished sectors of the Colombian population, has become an important counterweight to neoliberal reforms, forcing the Executive to allocate higher sums to social expenditure and limiting privatisation and market-oriented reforms related to social services. Of course, these have not been popular decisions among the

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<sup>395</sup> Rodríguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America' 1671.

Executive and other state branches. The Court's detractors argue that it has usurped the institutional jurisdiction of Congress and has made important decisions about rights which should be restricted to representative bodies. It is also accused of making decisions with serious economic implications without having the knowledge and expertise necessary to do so. The Court had thus been described as a sort of unchecked absolute power.<sup>396</sup>

### *2.1. The Constitutional Amendment*

In this section I analyse how the Executive sought to tame the judicial enforcement of social and economic rights by means of a constitutional amendment. Rights were deployed in this case as a means to govern the courts and prevent judgements with serious fiscal implications. Yet, the ultimate goal was to deter social movements and the poor from using rights as a strategy to contain neoliberal reforms and make real the social promises present in the Constitution. In the following section I examine at the tactics used by the Executive, the debates they sparked and the implications of introducing austerity into the Constitution in terms of rights and political deliberation about economic self-determination.

In spite of the rejection of a balanced budget rule by the Constitutional Assembly, since the early 1990s, there have been attempts to introduce fiscal rules to control what many have considered a fiscal expansionary drive embedded in the Constitution.<sup>397</sup> Indeed, some have accused the Constitution not just of creating new budgetary burdens, due for instance to the introduction of new rights and the establishment of new institutions such as the Office of the General Prosecutor, but also of generating incentives for debt expansion, such as the new powers granted to local governments as part of the drive towards decentralisation and

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<sup>396</sup> For an overview of the critiques see Saffon, 'Can Constitutional Courts be Counterhegemonic Powers vis-a-vis Neoliberalism? The Case of the Colombian Constitutional Court'; Alviar García, 'Distribution of Resources Led by Courts. A Few Words of Caution.'

<sup>397</sup> Salomón Kalmanovitz, *Las instituciones y el desarrollo económico en Colombia* (Primera edn, Grupo editorial Norma 2004) 96; José Antonio Ocampo Gaviria, Carmen Astrid Romero Baquero and María Ángela Parra, 'La búsqueda, larga e inconclusa, de un nuevo modelo (1981-2006)' in José Antonio Gaviria Ocampo (ed), *Historia económica de Colombia* (Primera edn, Planeta - Fedesarrollo 2007) 344-391.

the strengthening of the judiciary.<sup>398</sup> Against this backdrop, the national Legislature has introduced a number of laws to limit expenditure and control debt levels: the 1997 Law 358 subjected borrowing by regional governments to strict supervision by the Ministry of Finance; the 2000 Law 617 compelled local governments to balance their budgets and to draw up detailed debt reduction plans; the 2003 Law 819 created a medium-term fiscal plan binding on the Executive, mandated the inclusion of fiscal impact assessments within bills affecting taxes or expenditure, and required sub-national governments to get satisfactory credit ratings before contracting new loans; and finally, besides cutting pension benefits, the 2005 Constitutional Amendment 01 made fiscal sustainability a binding principle of the social security system.

On July 2010, dissatisfaction with the effect of these rules led President Álvaro Uribe's administration to elaborate a project of amendment aimed at locking Fiscal Sustainability into the Constitution. The bill followed the international consensus on austerity as the ultimate solution to stagflation and other macroeconomic problems that emerged in 2010 after some American and European experimentation with quasi-Keynesian policies in the aftermath of the 2008 financial crisis.<sup>399</sup> Promoted by the World Bank,<sup>400</sup> it

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<sup>398</sup> Miguel Gandour Pordominsky, 'Constitución fiscal y equilibrio de las finanzas públicas. Efectos de la Constitución de 1991 sobre la economía política del financiamiento del gasto público en Colombia' (2008) 68 *Colombia Internacional* 68.

<sup>399</sup> Heather Whiteside, 'Neoliberalism as Austerity. The Theory, Practice, and Purpose of Fiscal Restrain since the 1970s' in Simon Springer, Kean Birch and Julie MacLeavy (eds), *Handbook of Neoliberalism* (First edn, Routledge 2016) 656.

<sup>400</sup> The World Bank actively encouraged the reform by claiming that Fiscal Sustainability is crucial in improving growth and poverty reduction. In its 2007 report on Colombia, the World Bank claimed that one of the most important challenges that the government would face in the following years was the achievement of fiscal sustainability. In its view, it would demand responsible fiscal policies, such as a comprehensive tax reform and cuts in central government's transfers to pensions and sub-national governments – the latter being the source of funding for healthcare and primary education. The World Bank, *Colombia 2006-2010: A Window of Opportunity* (The World Bank 2007) 20-21. Since the 1990s, the World Bank has also provided financial and technical support to improve public and fiscal management. In the context of this long relationship, since 2009 the Bank has focused on budget predictability, transparency and stability, supporting the adoption of the fiscal rule. The World Bank, *Colombia: Programmatic Strategic Engagement on Public Sector* (The World Bank 2011) 8. Following the adoption of the amendment, the World Bank has provided further financial and technical support to maintain fiscal sustainability and accelerate growth in a context of a less favourable external environment. The World Bank, *Report No 60620-CO. Country Partnership Strategy for the Republic of Colombia for the Period FY2012-2016* (The World Bank 2011) 23.

also drew on a constitutional trend that pictures austerity rules as good constitutional practices.<sup>401</sup> However, the Ministry of Finance opted for a constitutional amendment not only influenced by international trends in constitutional design and development models but, as will become evident, because a constitutional change was perceived to be required to control the high courts and change the hermeneutical framework which allowed the massive judicial enforcement of social and economic rights.

The bill sought to subordinate public decision-making to the requirements of austerity, including the authority of Congress and any other authority to define social and economic rights. This was done on the grounds that Fiscal Sustainability is necessary to achieve the social commitments of the state. According to the Ministry, the progressive realisation of social and economic rights depends upon growth, which cannot be attained without healthy finances that attract investors and encourage entrepreneurialism. Consequently, the bill proposed to turn Fiscal Sustainability into a constitutional collective right to make it binding upon every public authority. The following excerpt illustrates the content of the project:

...the proposal that the National Government presents to the Congress of the Republic for consideration consists in adopting a right which contributes to protect the other rights and to give them continuity in the face of the different difficulties that the economy might encounter to attain its social commitments. From this right originates a duty binding on all the branches of power and

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<sup>401</sup> Stephen Gill and A. Claire Cutler, 'New Constitutionalism and World Order: General Introduction' in Stephen Gill and A. Claire Cutler (eds), *New Constitutionalism and World Order* (New Constitutionalism and World Order, First edn, Cambridge University Press 2014) 7.



entities of the state to make decisions pursuant to fiscal sustainability with the objective of achieving the goals of the Social State of Law.<sup>402</sup>

The Ministry added:

Fiscal sustainability is indispensable to achieve the aims of the Social State of Law. Hence, it is a right of everybody and a duty of all public branches and organs to contribute harmonically, within their competences, to achieve it. The Congress of the Republic, when determining the specific scope of the social and economic rights recognised in the Constitution, must do it in a way which ensures fiscal sustainability with the purpose of providing to them, as a whole, continuity and progressiveness.<sup>403</sup>

The logic underpinning the proposal was that all citizens have a right to demand healthy finances and the growth they promote; hence every authority should be compelled to realise this right. It is worth noting that the strategy of the Ministry of Finances identified rights as the main opponents to Fiscal Sustainability and hence, since the beginning, some of the tactics consisted precisely in using rights language and in making Fiscal Sustainability appear necessary to rights satisfaction.

Fiscal Sustainability was not defined in the bill. However, the justification provided by the Ministry and the congressional deliberations showed that it was about a framework of expansionary austerity. That is the theory that links austerity not just to the solution of macroeconomic problems, but also to positive effects on expectations, investment, and

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<sup>402</sup> My own translation. Ministerio de Hacienda y Crédito Público, *Proyecto de Acto Legislativo Número 016 de 2010 Cámara "por el cual se establece el derecho a la sostenibilidad fiscal para alcanzar los fines del estado social de derecho"* (Gaceta del Congreso No. 451 2010) 14.

<sup>403</sup> My own translation. *ibid* 24.

growth.<sup>404</sup> Sustainability refers to the idea that public expenditure should be kept at levels that could be maintained in the future, not only in terms of the possibility of honouring acquired debt, but also in terms of preserving stable conditions to encourage investment. This translates into austere budgets, especially when it comes to welfare expenditure, as debt and the rise of taxes are not an option for funding higher expenses as they would undermine stability and discourage investment. The underlying expectation is that the collective sacrifice that Fiscal Sustainability demands in the present will bring about prosperity, poverty reduction, and intergenerational equity by means of foreign direct investment and cheaper access to credit. The Ministry explained this point as follows:

Indeed, increasing the levels of public expenditure significantly vis-à-vis the size of the economy (this is, as a percentage of the GDP) can lead to drastic increments in interest rates. This happens because public and private sectors compete for resources within internal and external financial markets, the former in order to fund public spending which is not backed by taxes and other sources of public income, and the latter to finance corporations' productive activities and, in the case of households, to acquire assets. Internal financial resources are limited as well as the amount of funding that international financial markets are willing to allocate to the country. Consequently, public sector's higher demand of resources will translate into higher interest rates. Higher interest rates inhibit investment and productivity, affecting economic growth.<sup>405</sup>

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<sup>404</sup> Blyth, *Austerity. The History of a Dangerous Idea* 169; Whiteside, 'Neoliberalism as Austerity. The Theory, Practice, and Purpose of Fiscal Restrain since the 1970s' 565.

<sup>405</sup> My own translation. Ministerio de Hacienda y Crédito Público, *Proyecto de Acto Legislativo Número 016 de 2010 Cámara "por el cual se establece el derecho a la sostenibilidad fiscal para alcanzar los fines del estado social de derecho"* 14.

Regarding the impossibility of appealing to taxes and debt as options to balance the budget, the Ministry noted:

... to increase public debt as a percentage of the GDP involves a higher dependency on external and internal funding, which will mean in the future that a higher rate of income and public spending will have to be allocated to debt servicing. It will translate into a burden on future generations, which will have to pay more taxes to enable the public sector to pay for the debt. Tax rises inhibit investment and savings and, in this way, growth and the creation of employment in the future.<sup>406</sup>

## 2.2. *Austerity Constitutionalism*

The reform was conceived as a permanent condition, not a temporary solution to a crisis, confirming its ascription to expansionary austerity as a development model. The bill proposed introducing a permanent change to one of the main constitutional provisions about state intervention in the economy (Article 334) and make Fiscal Sustainability an instrument, objective and duty of the state. The Executive stressed the “necessity” of a permanent commitment to Fiscal Sustainability in view of the current organisation of the global economy. Yet the Executive was cautious in announcing that growth does not depend exclusively on austerity. The global economy was portrayed as a world of risks and forces beyond state control, which can suddenly impair national efforts in spite of firm commitments to fiscal discipline.

The ascription of Fiscal Sustainability to ideas of expansionary austerity also became clear during congressional proceedings. It was pointed out that the bill was about sending a

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<sup>406</sup> My own translation. *ibid* 15.

message to the global economy about the stability of the Colombian finances, and to creditors about the priority that would be granted to their interests. Arguments were heard in the Senate about increments in the national debt due to the negative impact of the European crisis on global interest rates. The amendment was then proclaimed as necessary to calm markets and restore faith in the national economy.<sup>407</sup> Parallel to the congressional deliberations on the amendment, the specification of fiscal rules through a new statute was under discussion. In these debates the Ministry proposed to exclude debt servicing from fiscal balance rules to calm down investors, proving again that expansionary austerity was the framework inspiring the new regulations.<sup>408</sup>

During the debates it also became clear that Fiscal Sustainability was about restricting the scope of rights and deterring judges from issuing decisions with high budgetary implications, in particular regarding social and economic rights. A member of the House of Representatives called the project an attempt to end judicial dictatorship,<sup>409</sup> and other senators suggested that the jurisprudence on social and economic rights was driving public finances towards a collapse.<sup>410</sup> The Ministry's central strategy consisted in a redefinition of rights coupled with the restriction of judicial powers. The tactics were twofold: the first relied upon the articulation of two narratives about rights and collective flourishing. This tactic relied upon a narrative about what conditions are necessary to bring about growth as a precondition for poverty reduction and the satisfaction of social and economic rights. Given the natural situation of scarcity that states face (in view of the difficulty of increasing revenues, raising taxes, and accessing debt at reasonable interest rates), these unavoidable

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<sup>407</sup> Juan Carlos Vélez Uribe and Roberto Gerlein E., *Pliego de modificaciones propuesto para primer debate primera vuelta al proyecto de acto legislativo número 016 de 2010 Cámara, 019 Senado* (Gaceta del Congreso 919 2010) 4.

<sup>408</sup> Ministerio de Hacienda y Crédito Público, *Proyecto de ley 112 de 2010 Cámara "por el cual se establece una regla fiscal y se dictan otras disposiciones"* (Gaceta del Congreso 738 2010).

<sup>409</sup> Congreso de la República de Colombia, *Acta de la sesión ordinaria del 26 de octubre de 2010, Cámara de Representantes* (Gaceta del Congreso 948 2010) 38.

<sup>410</sup> Vélez Uribe and Gerlein E., *Pliego de modificaciones propuesto para primer debate primera vuelta al proyecto de acto legislativo número 016 de 2010 Cámara, 019 Senado*.

conditions include spending cuts, control of the rate of inflation, the stability of the exchange rate, low interest rates, debt reduction, etc. The Executive stressed the narrative of growth generated by stability, competitiveness and investment, and the necessity of growth to satisfy rights. Hence Fiscal Sustainability was presented as a condition of possibility of growth and, therefore, rights. The second narrative was a story about how the immediate satisfaction of social and economic rights poses obstacles to the realisation of the superior goal of growth. This tale included references to “greedy” workers and public servants who, by claiming excessive and abusive rights in a context of generalised poverty and scarcity, enhance inequality and impair governmental efforts to bring about collective flourishing by means of growth.

In the intersection of these two narratives, the problem that the bill claimed to solve emerged: how to make rights and growth compatible. The answer was the traditional one: rights can only be the effect of a prosperous economy with well-functioning markets that fairly distribute the yields of growth. Fiscal Sustainability as a necessary condition for growth must be given legal leverage to avoid individual rights triumphing over it, or future “irresponsible” governments destroying the ‘natural path to growth’. The juridical solution was to elevate it to a constitutional collective right binding primarily on the courts. Austerity as a pro-growth, anti-poverty and pro-rights solution, both in times of crisis and normality, was proclaimed as a superior commitment lying at the heart of rights.

Ironically, the Ministry relied upon International Human Rights Law in order to justify the reconstitution of rights within this “harmonising exercise.” It sought to sidestep the constitutional jurisprudence on social and economic rights by appealing to the language of progressive realisation, availability of resources, fulfilment according to states’ capacities, flexibility to address the contingencies of the real world, and efficiency in the use of resources contained in the International Covenant on Social and Economic Rights. Thus, the

Executive turned against the jurisprudence on social and economic rights the same tools that supported its expansion beyond the textual definition of these rights in the Constitution.<sup>411</sup>

The second tactic was an attempt to redefine the social commitments of the state and the means by which they must be attained. According to the Ministry, redistribution through social expenditure is by no means the only or the most important mechanism to improve people's well-being. Keeping the rate of inflation at a low level, preventing economic crisis (as both phenomena have disproportional negative effects on the poor), reducing debt levels, maintaining low interest rates, and creating jobs by enhancing competitiveness, together with other pillars of the market economy, are alternative and perhaps more important tools to fulfil rights. Hence, the Executive defended markets and macroeconomic stability over redistribution as the most efficient social policies of our time.<sup>412</sup>

The project faced severe objections in Congress, which forced a reformulation of the Ministry's strategy. One of the main obstacles was congressmen's fear of dismantling the writ of protection of fundamental rights, a very popular institution which has facilitated access to courts and allowed the judicial enforceability of social and economic rights.<sup>413</sup> It was also argued that the bill amounted to the subordination of rights to economic imperatives as well as a limitation of the Constitutional Court's role as supreme guarantor of rights.<sup>414</sup> Other voices warned of the limitation of the congressional budgetary power that

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<sup>411</sup> Apparently, this "harmonising exercise" is also taking place at the international level as in the aftermath of the 2008 crisis, the UN Committee on Economic, Social and Cultural Rights has declared that austerity measures are not necessarily incompatible with these rights, and some degree of sacrifice in terms of rights might be acceptable in accordance with the International Covenant on Economic, Social and Cultural Rights. See Wills and Warwick, 'Contesting Austerity: The Potential and Pitfalls of Socioeconomic Rights Discourse' 662.

<sup>412</sup> Ministerio de Hacienda y Crédito Público, *Proyecto de Acto Legislativo Número 016 de 2010 Cámara "por el cual se establece el derecho a la sostenibilidad fiscal para alcanzar los fines del estado social de derecho"* 21.

<sup>413</sup> Intervention of Congressmen Pablo Enrique Salamanca Cortés. Congreso de la República de Colombia, *Acta de la sesión ordinaria del 26 de octubre de 2010, Cámara de Representantes* 31.

<sup>414</sup> For instance, Congressmen Alfonso Prada asked the plenary of the House of Representatives to reject the proposal claiming that by subordinating rights to economic objectives, the bill constituted a destruction of the constitutional scheme of protection of rights. Alfonso Prada, *Ponencia para segundo debate del proyecto de acto legislativo 016 de 2010 Cámara* (Gaceta del Congreso 779 2010).

would result from the amendment.<sup>415</sup> Finally, the role of the World Bank in promoting Fiscal Sustainability was stressed as well as the benefits the amendment would bring to foreign investors.<sup>416</sup> Important changes were introduced as a result: initially, Fiscal Sustainability was subordinated to the progressive and programmatic achievement of the social commitments of the state. A paragraph which compelled Congress to define the scope of social and economic rights according to Fiscal Sustainability was eliminated, while it was categorised as a principle rather than a collective right.<sup>417</sup> Later on, the use of Fiscal Sustainability to infringe rights was banned,<sup>418</sup> while it was finally turned into a guiding criterion rather than a constitutional principle.<sup>419</sup>

To make up for the lower legal rank granted to Fiscal Sustainability, a judicial mechanism aimed at forcing high courts to modulate their decisions in light of their fiscal impact was created by Congress. It was crafted as follows:

When a judgment has been handed down by any of the high courts, the General Inspector of the Nation or one of the government ministries may request the initiation of a Financial Impact Assessment, the holding of which shall be obligatory. The explanations of the supporters on the consequences of the judgment on the public finances shall be heard, as well as the concrete plan for its execution, and a decision shall be taken whether to modulate, modify or postpone the effects of the judgment with the objective of preventing serious

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<sup>415</sup>Congreso de la República de Colombia, *Acta de la sesión ordinaria del 26 de octubre de 2010, Cámara de Representantes* ; Prada, *Ponencia para segundo debate del proyecto de acto legislativo 016 de 2010 Cámara*.

<sup>416</sup> Intervention of the Congressmen Wilson Arias. Congreso de la República de Colombia, *Acta de la sesión ordinaria del 26 de octubre de 2010, Cámara de Representantes* 33-34.

<sup>417</sup> Congreso de la República de Colombia, *Texto definitivo del proyecto de acto legislativo 016 de 2010 Cámara* (Gaceta del Congreso 833 2010) 16.

<sup>418</sup> Congreso de la República de Colombia, *Texto definitivo del proyecto de acto legislativo 016 de 2010 Cámara, 019 de 2010 Senado* (Gaceta del Congreso 232 2011).

<sup>419</sup> Congreso de la República de Colombia Colombia, *Acta número 60 de la sesión ordinaria del día miércoles 8 de junio de 2011* (Gaceta del Congreso 485 2011).

disturbances to fiscal sustainability. In no case shall the essential core of a fundamental right be affected.<sup>420</sup>

Congress passed two statutes to implement the amendment: the 2011 Law 1473 obliged the government to adopt balanced structural budgets and reduce the structural deficit to 1% of the GDP from 2022 onward.<sup>421</sup> In turn, 2013 Law 1695 regulated the procedural aspects of the Fiscal Impact Assessment mechanism.<sup>422</sup> It strengthened the power of the Ministry of Finance to intervene in judicial proceedings when significant fiscal effects are foreseeable and compelled high courts to take into consideration the fulfilment plans elaborated by the Executive in view of judgements with serious fiscal implications.

### *2.3. The Constitutional Court's Response*

The Constitutional Court was invited to interpret the scope of the amendment in its decision 2012 decision C-288. The Court upheld the reform after concluding that the Constitution did not suffer a substantial transformation, the standard applied to constitutional amendments when they are the objects of lawsuits on the ground of Congress' violation of its power to amend the Constitution.<sup>423</sup> Specifically, for the Court the amendment did not undermine the social objectives and rights recognised by the Constitution. On the contrary,

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<sup>420</sup> Ibid.

<sup>421</sup> Ley 1473 de 2011 "por la cual se establece una regla fiscal y se dictan otras disposiciones".

<sup>422</sup> Ley 1695 de 2013 "Por medio de la cual se desarrolla el artículo 334 de la Constitución Política y se dictan otras disposiciones."

<sup>423</sup> The Constitutional Court has claimed its authority to review constitutional amendments since decision C-551 of 2003 on the grounds of an implicit constitutional limitation of the constituent power held by the Congress. This limitation emerges from the nature of this power: It is a power to amend rather than to transform the constitution. Amendments are subjected to a particular type of scrutiny, which, according to the Court, harmonises the deference due to the Congress as a "secondary constituent power", and the duty of ensuring the integrity of the constitution trusted to the Court. The scrutiny consists of three analytical steps: Firstly, the Court defines the content of the constitutional pillar that the plaintiff argues is transformed by the amendment. Secondly, a detailed analysis of the amendment is conducted seeking to define its content. Thirdly, the amendment is contrasted against the constitutional pillar with the aim of examining whether the former transforms or substitutes the latter and hence creates a new type of constitution. This is the *test of constitutional substitution*. Corte Constitucional de Colombia, Sentencia C-288 de 2012 (2012).



it created an important instrument in the service of the progressive realisation of social and economic rights.<sup>424</sup>

Two arguments provided in support of this conclusion are of particular importance to this chapter: The first relies upon a vision of rights as having a thin nucleus and a periphery of progressive fulfilment, an old narrative in human rights discourses. The nucleus concretises in a minimum set of goods and services necessary for human survival. It is followed by a periphery constituted mainly by positive obligations, e.g. duties that demand expenditure. Judicial enforceability of rights regarding positive duties must be restricted to the nucleus unless the Legislative specifies further obligations or the activities demanded by the plaintiffs are inexpensive. According to the Court, Fiscal Sustainability does not interfere with this nucleus because, besides the explicit prohibition of the amendment of doing so, this minimum core is guaranteed by other constitutional provisions on social spending, that is, the expenditure aimed at satisfying the basic needs that people cannot provide for themselves. The Constitution orders the prioritisation of this expenditure and prohibits reductions except in cases of extreme urgency. Since the amendment does not alter these mandates, the Court concluded that Fiscal Sustainability does not infringe the nucleus of rights.<sup>425</sup>

More importantly, for the tribunal, Fiscal Sustainability not only does not change the social commitment present in the Constitution, but also represents a helpful tool for the progressive realisation of social and economic rights; in other words, it is instrumental in expanding their periphery. Since progressiveness is conditioned by availability of resources, Fiscal Sustainability does not pose obstacles to the progressive realisation of rights but rather is one of its conditions of possibility to the extent that it enables growth and creates the

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<sup>424</sup> Ibid.

<sup>425</sup> The Court stated: "... those budget allocations for addressing unsatisfied basic needs in health, education, environmental safety, drinking water, and in general the guarantees contemplated in Articles 350 and 366 of the Constitution, could not be affected by fiscal sustainability because that would mean that social expenditure is no longer a priority ..." (My own translation) *ibid* Consideration 71.1.

resources necessary to expand the protection of these rights. Moreover, it incentivises entrepreneurialism, employment and investment, helping in this way to reduce poverty. This picture of rights is not new. What is new is that by asserting that Fiscal Sustainability is a condition of possibility of the progressive realisation of social and economic rights, the Court implied that its value is not just instrumental, instead it became an element of rights' realisation.

The second argument was introduced when the Financial Impact Assessment mechanism was under scrutiny. The mechanism was regarded as a venue for dialogue where although it is possible to critique the fiscal effects of judicial rulings, it is not possible to compel high courts to change their decisions. This argument relies upon a distinction between the decision and the remedy as two different parts of a ruling, a distinction that the Court embraced in previous judgements in order maintain its jurisdiction over the implementation of structural remedies. The former addresses the infringement of rights and the corresponding responsibility of the defendants. Remedies, on the other hand, are the orders issued to repair or compensate for the damage caused by violations. For the Court, the amendment refers only to the remedies, meaning that within the new mechanism there is only opportunity to modify them rather than the declarations of responsibility. Here the Court relied upon a separation between judicial protection and the means of protection. While the former is not negotiable, Fiscal Sustainability can mediate the latter allowing for modifications and modulations in both temporal and material terms. The Court explained:

... it should be noted that the sphere of action allowed by the new judicial procedure is restricted to issues different from the decision in itself. Although it is true that the original project proposed the possibility of challenging the decision, the final text refers only to the effects of the decision. This is a

fundamental change because it means that the new judicial mechanism cannot alter the *res judicata* effects of decisions already made by a high court.<sup>426</sup>

Hence, for the tribunal, the modification and modulation of “the effects” of a judgement does not constitute a “substantive” change. By making this claim it asserted that the most important part of a ruling is the declaration of responsibility, while the remedies play a sort of secondary role which justifies adjustments pursuant to Fiscal Sustainability.

This interpretation was strengthened in the 2014 decision C-870 where the constitutional validity of the 2013 Law 1695 was assessed. In this decision it is even more evident that the Court conceives Fiscal Sustainability as belonging to the structure of rights. The tribunal appealed to a language of dialogue and balancing, rejecting the idea that the new mechanism was an adversarial procedure. In its view, once the mechanism is activated there is not a confrontation of interests since, on the one hand, rights have been already protected by the judgment, and, on the other, Fiscal Sustainability as a “necessary tool” to protect rights constitutes a manifestation of the public interest. According to the Court, the mechanism is a “space of dialogue” aimed at “guaranteeing the effectiveness of the remedies issued in a judgement when they have the capacity to alter Fiscal Sustainability”, which in turn is defined as “a tool for the satisfaction of the social commitments of the Social State of Law”. Therefore, the Court concluded it is in the interest of all parties to open a space of dialogue about the fiscal effects of judicial verdicts with the aim of achieving Fiscal Sustainability and allowing the judiciary and the Executive to harmonise their views.<sup>427</sup>

As of 2018, the Financial Impact Assessment mechanism has been activated in few occasions and in all of them the petitions have been dismissed on procedural grounds.<sup>428</sup>

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<sup>426</sup> My own translation *ibid* Consideration 74.3.

<sup>427</sup> Corte Constitucional de Colombia, *Sentencia C-870 de 2014* (2014).

<sup>428</sup> Corte Constitucional de Colombia, *Auto 174 de 2015* (2015); Corte Constitucional de Colombia, *Auto 184 de 2016* (2016); Corte Constitucional de Colombia, *Auto 233 de 2016* (2016); Corte Constitucional de Colombia, *Auto 182 de 2017* (2017).

This has led to claims that it has not produced any significant change in the constitutional framework of the country.<sup>429</sup> For others, without questioning whether Fiscal Sustainability represents a retrogressive intervention with regard to rights, they insist that the problem is that the Financial Impact Assessment mechanism was not well designed. It does not open a space for dialogue but rather confers too much power to the Executive over judicial verdicts, it contains ambiguous expressions which make its use difficult. On top of this, it entrusts its activation to agencies which lack the technical capacity for doing it, such as the Office of the General Inspector and some of the ministries.<sup>430</sup> Conversely, for me the constitutionalisation of Fiscal Sustainability is not a minor change and the problems with it go beyond the design of the Financial Impact Assessment mechanism. This is the subject matter of the next section.

### **3. Fiscal Sustainability is Inserted in the Heart of Social and Economic Rights**

In this section I argue that the constitutional amendment on Fiscal Sustainability entails the entrenchment of a particular model of development with serious repercussions on how rights ought to be interpreted and enforced. Overall, the amendment introduced two major changes: firstly, as it involves a permanent roll back of welfare budgets, Fiscal Sustainability amounts to the establishment of a sort of market sacrificial citizenship whereby social and economic rights shift from universal legal entitlements to opportunities to seek the procurement of goods and services in the marketplace. Secondly, the Ministry of Finance was successful in taming some of the mechanisms which have facilitated litigation and judicial activism with regard to these rights. High courts have been compelled to embrace

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<sup>429</sup> Juan Camilo Gómez Fajardo, 'El criterio de sostenibilidad fiscal: un cuestionamiento sobre los efectos del Acto Legislativo 03 de 2011' (2015) *Revista de Derecho Público* 3.

<sup>430</sup> Jorge Ernesto Roa Roa, 'Activismo judicial, legitimidad democrática de la protección judicial de los derechos e incidente de impacto fiscal' (2017) 8 *Economic Analysis of Law Review* 446.

argumentative frameworks akin to fiscal considerations, whereas the Executive has been empowered to obstruct structural remedies. The paragraphs that follow also discuss the effects that embracing this way of thinking about development and rights have from the perspective of democracy, as well as its implications in terms of citizenship.

### *3.1. The Indirect Determination of Social Objectives*

For many years, it has been argued that the economic model of the Constitution of Colombia is open, that it admits different styles of state intervention in the economy and that the role of the Constitution is only to impose basic limitations on it. It has also been claimed that the Constitution sets up social objectives – such as the realisation of social and economic rights – but defers to the Legislative and the Executive the choice of the means to pursue them.<sup>431</sup> The Ministry of Finance was successful in ending the debate about the development model by embedding expansionary austerity in the Constitution. The bill elaborated by the Ministry of Finance and the congressional proceedings made clear that the amendment is about a particular model of development: “the expansionary fiscal consolidation theory,” that is to say, a model based on economic consolidation, macroeconomic stability, confidence boost and investment-led growth. As Blyth and Whiteside explain, this theory proclaims that spending cuts, especially social spending, besides reducing debt, prompt growth by improving expectations.<sup>432</sup> In short, it is a model of development based on improving the competitive position of the country by means of spending cuts, inflation control and lower taxes.<sup>433</sup>

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<sup>431</sup> Rodrigo Uprimny Yepes and César Rodríguez Garavito, 'Constitución, modelo económico y políticas públicas en Colombia: el caso de la gratuidad de la educación primaria', *Los derechos sociales en serio: hacia un dialogo entre derechos y políticas públicas* (Los derechos sociales en serio: hacia un dialogo entre derechos y políticas públicas, First edn, Centro de Estudios Derecho, Justicia y Sociedad DeJusticia e Instituto para la Investigación Educativa y el Desarrollo Pedagógico IDEP 2007) 36.

<sup>432</sup> Blyth, *Austerity. The History of a Dangerous Idea* 169; Whiteside, 'Neoliberalism as Austerity. The Theory, Practice, and Purpose of Fiscal Restrain since the 1970s' 565.

<sup>433</sup> Mark Blyth summarises the theory as follows: “Consumers with rational expectations are seen to calculate their lifetime consumption function based on the credibility of the signal to cut spending sent by the

Consequently, Fiscal Sustainability is not an empty vessel which can serve the social objectives contained in the Constitution. The amendment pursues particular objectives and appeals to specific instruments. To begin with, it means that growth must be sought through the creation of an environment attractive to investors. In turn, it implies that public spending (in particular welfare spending) cannot increase, since stability and confidence rise in inverse proportion to the size of the public budget.<sup>434</sup> This understanding of public finance has a significant effect on how rights ought to be secured: if social spending shrinks and cannot increase as long as the country is committed to attracting investors, then rights, especially social and economic rights, can only be secured by the market. In other words, state commitment to expansionary austerity involves reducing social spending and keeping it to the minimum, which in turns means that people ought to seek security in the marketplace for their most basic needs.

Aside from proscribing increments in welfare expenditure, the amendment together with the Constitutional Court's initial rulings have a second important connotation related to how social and economic rights ought to be interpreted: Fiscal Sustainability was inserted in the structure of these rights and turned it into a condition of possibility of their progressive realisation, creating another paradox. As explained in the previous section, during the legislative and implementation proceedings, two tactics to rework social and economic rights were visible. Firstly, there was an attempt to separate rights possession from rights satisfaction. Similarly, the second tactic was the introduction of a border line between the

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government, and they accurately incorporate these estimates into their private spending decisions. In this version of events, interest-rate changes that create wealth effects are now no longer exogenous to expectations, but are part of the same mechanism by which credible cutting leads to bond-yield-premium reductions, and hence cheaper loans, which consumers rationally anticipate as coming in the future, and so they spend now. Indeed, expectations now impact the labor market directly, as cuts in government employment lowers wages, which leads not to recession as the Keynesians warn, but to 'higher profits, investment, and [greater] competitiveness.' Expectations are now everything. They dictate outcomes, and they are always improved when the government does less, even in a slump. They are the final nail in Keynes's coffin because they make the most contractionary of circumstances expansionary. In such a world, the slump is the perfect place to cut while spending is always and everywhere the wrong policy." Blyth, *Austerity. The History of a Dangerous Idea* 174.

<sup>434</sup> *ibid* 171.

minimum core of rights (their nucleus) and their peripheral obligations. When combined, these two tactics portray this image: rights entitle people to claim in the present only the provision of their minimum core. The satisfaction of further claims (the periphery) depends upon Fiscal Sustainability and growth, therefore, they cannot be demanded before courts. In other words, the progressive realisation of rights is conditional upon Fiscal Sustainability.

In addition to reworking rights, the amendment involves a second major change as it endeavours to discipline the judicial enforceability of social and economic rights in order to prevent structural remedies and other types of decisions that are dangerous to expansionary austerity. Even though the amendment does not restrict access to courts or ban the judicial enforceability of these rights, the creation of the Financial Impact Assessment mechanism is expected to have at least two effects: first of all, it impels courts to embrace a fiscal rationale when making decisions about rights. Heated debates about the logic which should guide the judicial adjudication of social and economic drew public interest for many years. The Constitutional Court was accused of relying exclusively upon a deontological approach to rights – focused on liabilities and remedies, ignoring their fiscal consequences. Proposals to harmonise deontological and consequentialist ways of thinking about rights emerged.<sup>435</sup> Fiscal Sustainability tilts the balance in favour of a consequentialist approach by inducing courts to embrace the logic of expansionary austerity. As the Court declared in the 2012 decision C-288, since the fiscal impact assessment mechanism is a judicial venue, its concluding decision must be grounded on substantive arguments which respond to the fiscal objections formulated by those who activated it.<sup>436</sup> Although this does not mean that courts must engage in a detailed examination of the fiscal consequences of their rulings, this disclaimer does not exempt them from engaging in fiscal discussions. By

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<sup>435</sup> Everaldo Lamprea M., 'Derechos fundamentales y consecuencias económicas' (2006) 8 *Revista de Economía Institucional* 77.

<sup>436</sup> Corte Constitucional de Colombia, *Sentencia C-288 de 2012* Consideration 74.72.

compelling courts to harmonise rights and fiscal rationales, the amendment may lead to different outcomes when it comes to the protection of rights.

### *3.2. Executive Obstruction*

It is noteworthy the power that the amendment grants to the Executive to obstruct the enforcement of structural remedies. The Court argues that when the fiscal assessment mechanism is activated, it is up to the high courts to decide whether or not the remedies should be modified or modulated. Furthermore, in the 2014 decision C-870, it was decided that the fulfilment plans elaborated by the Executive are not binding on courts. However, the fiscal impact assessment mechanism in itself is an opportunity for the Executive to postpone the fulfilment of structural remedies. While the mechanism stretches out the judicial debate, the hearings that ought to take place during the judicial proceedings are a way of making magistrates accountable for their decisions and exercise political pressure on them.

The Ministry of Finance, congressmen and the Constitutional Court conceived these interpretations as a good way of harmonising humanitarian commitments and market demands without altering the essence of the Constitution. It has been claimed that the link made between Fiscal Sustainability and the progressive realisation of social and economic rights does not undermine the latter as this principle has always rested on available resources, meaning growth. On the contrary, I argue that these changes represent a re-inscription of social and economic rights with paradoxical effects, as I explain in the following paragraphs.

First of all, by locking in a particular model of development, Fiscal Sustainability isolates fiscal debates as well as discussions about rights from congressional deliberations. Even though congressional powers over fiscal and budgetary issues have been curtailed significantly since the adoption of the Constitution of 1991, Congress retained important



functions. For instance, annual budgets and national development plans require congressional approval. Additionally, although congressional legislative initiatives which require expenditure necessitate a fiscal impact assessment, the Constitutional Court has stated that the Congress maintains its power to pass legislation even when negative fiscal effects are expected. By subjecting national budgets, national development plans and any other type of legislation to Fiscal Sustainability, and in particular to the rules contained in the 2011 Law 1473, Congress has lost power to increase expenditure and discuss the budget. This change amounts to a redistribution of power regarding budgetary issues which tilts the balance in favour of the Executive, while contributing to depoliticising debates about resource distribution.

From the angle of rights, there are several significant implications. To begin with, the separation of their nucleus from the periphery introduces a temporality which allows for the indefinite postponement of the desires and needs of the poor, a recurrent logic in neoliberalism. Legal temporalisations can be biopolitical techniques that structure “legal subjects and experiences by shaping their temporal horizons, histories, and possibilities.”<sup>437</sup> In the picture that Fiscal Sustainability draws, only the future is the time of the poor. People might possess rights, but rights only entitle them to demand in the present a minimum core. Other types of goods and services, those which might enable “the good life,”<sup>438</sup> the periphery in the Court’s terminology, are subjected to the illusion of growth which Fiscal Sustainability will bring about. But as already analysed, competitiveness demands that welfare budgets do not increase, which means that the good life will never arrive for the poor. Put it differently, the promised time of the poor will never come. It is true that according to the international human rights framework, social and economic rights are subjected to the principle of progressive realisation pursuant to available resources. But the paradox I am stressing here

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<sup>437</sup> Emily Grabham, *Brewing Legal Times. Things, Form, and the Enactment of Law* (First edn, University of Toronto Press 2016) 8.

<sup>438</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 44.

is that if progressiveness is connected to expansionary austerity, the former is never going to occur as expansionary austerity proscribes expenditures above minimums, even if growth actually takes place. Consequently, rights are condemned to remain as minimum provisions indefinitely. Instead of having a nucleus and a periphery of progressive satisfaction, rights actually narrow indefinitely to their minimum core.

This permanent constriction of social and economic rights also signals a shift from social citizenship to market citizenship. There are many explanations of how social and economic rights got legal leverage.<sup>439</sup> However, overall there is agreement that they endeavoured to attempt to solve the contradictions between owners and non-owners through universal welfare entitlements which, in turn, rendered the costs of social reproduction collective. In this way, social rights, especially those associated with social security, were conceived of as a means to release people from the need to accumulate in order to secure their future. The ambition of the welfare state was also to progressively achieve higher standards of protection in line with the utopia of unlimited economic growth redistributed through the state.<sup>440</sup> These were the premises of social citizenship. Instead of universal legal entitlements binding on the state and subjected to progressive realisation, Fiscal Sustainability pursuant to expansionary austerity re-casts social and economic rights as opportunities to seek the procurement of previously considered social services – healthcare, education, pensions, etc. – in the market place; put differently, rights are converted into market outcomes.<sup>441</sup> The shift involves that rights satisfaction is no longer a collective problem but rather an individual one dependent upon people's ability to earn an income and accumulate capital by market means. Rights are then subjected to market logic,

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<sup>439</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' 245-247.

<sup>440</sup> César Giraldo, 'Política social contemporánea.' in César Giraldo (ed), *Política social contemporánea en América Latina* (Política social contemporánea en América Latina, Ediciones desde abajo 2013) 66.

<sup>441</sup> *ibid* 39,66; Wills, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony' 30.

enhancing processes of privatisation and devolution. Furthermore, rights-bearers are turned into customers who satisfy their own rights in the marketplace. As customers, their entitlements depend upon how much they are able and willing to pay. Against this backdrop, as Wills explains, “the obligation of the state shifts from the direct duty to ensure access to welfare goods and services to the duty to provide the framework in which individuals exercise economic freedoms to secure their own access to welfare goods and services.”<sup>442</sup> It includes, as *Familias en Acción* illustrates, interventions directed towards enabling people, especially the ones who have not reached the status of customers, the extremely poor, to participate in market exchange by means of human capital and resilience building.

### *3.3. Sacrificial Citizenship*

Debates in Congress about “greedy” pensioners and public workers point towards a third crucial implication of Fiscal Sustainability regarding rights: in a world of “scarcity” social rights protected above the minimum core are reframed as privileges. As Giraldo notes, social rights are accused of being privileges of interest groups – workers unions in particular – which have co-opted certain spaces of economic and political decision-making, such as legislative bodies and courts.<sup>443</sup> In this way, as privileges, citizens are called for to sacrifice and renounce them.

This last point leads us to discuss how, alongside market citizenship, Fiscal Sustainability is implicated in creating a sort of sacrificial citizenship. In analysing the effects of neoliberalism on democracy, Wendy Brown reminds us that the idea of citizenship has always involved notions of sacrifice. However, this idea is re-inscribed in neoliberal times, in particular in the era of austerity: “citizens virtue is reworked as responsabilized entrepreneurialism and self-investment” as examined in the previous chapter, but it is also

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<sup>442</sup> Wills, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony' 30

<sup>443</sup> Giraldo, 'Política social contemporánea.' 67.

reworked in the austerity era as the “shared sacrifice routinely solicited by heads of state and heads of businesses.”<sup>444</sup> Instead of demanding welfare services, labour opportunities or social protections, citizens, in particular the poor, are expected to renounce these constitutional promises as a precondition for political inclusion. The Ministry of Finance clearly called for this type of sacrifice when asserted in the amendment proposal: “To achieve and ensure [fiscal] sustainability requires a big compromise and the discipline of the public sector, as well as the support of society in the search of this objective. If it is not achieved, the economic and social cost could be considerable.”<sup>445</sup>

Drawing on Brown, it is possible to see two forms of sacrifice requested in the debates which led to the adoption of Fiscal Sustainability. Firstly, there is a call for a shared self-sacrifice to the economy as the supreme “other.”<sup>446</sup> Borrowing Humbert and Mauss’ terminology,<sup>447</sup> there is not a separation between victims and sacrificers:<sup>448</sup> virtuous citizens as sacrificers and victims are expected to offer a part of themselves which is destroyed as a result of the sacrifice. This part consists in bearing the consequences of austerity in terms of cuts in salaries and pensions, labour flexibilisation, and shrinking social services, all this combined with “the more sustained effects of stagflation, currency deflation, credit crunches, liquidity crises, foreclosure crises, and more.”<sup>449</sup> But as Fiscal Sustainability also refers to competitiveness and the creation of territories attractive to investors, this sacrifice also involves “willingness to suffer regressive taxation” in order to attract foreign investors, as well as to accept “encomiums to spend, borrow, or save according to the changing needs

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<sup>444</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 210.

<sup>445</sup> Ministerio de Hacienda y Crédito Público, *Proyecto de Acto Legislativo Número 016 de 2010 Cámara "por el cual se establece el derecho a la sostenibilidad fiscal para alcanzar los fines del estado social de derecho"*.

<sup>446</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 210-215.

<sup>447</sup> Henri Hubert and Marcel Mauss, *Sacrifice: Its Nature and Function* (First edn, Cohen & West 1968) 9-12.

<sup>448</sup> In analysing the scheme, nature and functions of sacrifices, Hubert and Mauss identify a number of elements present in most sacrifices: The sacrificer, who is “the subject to whom the benefits of the sacrifice thus accrue, or who undergoes its effects” the victim, this is, the thing or being that is consecrated and destroyed as a result of the sacrifice; the object, which is the thing to which the effects of the sacrifice are exerted when they are not exerted directly on the sacrificer; and the sacrificer, the person who guides the rituals. *ibid* 9-12.

<sup>449</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 210-211.

of the economy, rather than the needs of oneself, one's family, community or planet."<sup>450</sup> In short, it is about tolerating a life of precarity and permanent insecurity.

In this case the sacrificers do not receive the benefits of the sacrifice directly; the national economy is the one that benefits directly from it. Through citizens' self-sacrifice, it is expected to bring about prosperity by means of investment-led growth. Drawing again on Brown, the national economy as the object of the sacrifice must be distinguished from the economy as the superior other to whom the sacrifice is offered. The former is subordinated to the latter. That is why in this sacrifice the expected return does not constitute a promise and it does not necessarily initiate an exchange; in a globalised economy more Fiscal Sustainability is necessary to bring about growth as the Ministry of Finance clearly recognised in its bill proposal. For Wendy Brown, the absence of a promise of security differentiates the sacrifice demanded in current times from the one required in the initial years of neoliberalism. No security is promised, we do not know if the great will benefit from the sacrifice and if their wealth will reach the marginal. The lack of promise also tells us something about the character of the economy as the superior other: It is an unpredictable force which we must fear. Yet we offer a sacrifice expecting to nurture its force as the source of life, seeking to restore its order, an order to which all depend upon.<sup>451</sup>

Fiscal Sustainability also entails a second form of sacrifice: That of "greedy" citizens who do not subordinate to the demands of austerity and claim abusive individual rights. Public employees, pensioners and lazy and dishonest poor individuals, who pursue the judicial enforcement of social and economic rights such as the right to annual salary increments, to pensions above the minimum wage, to subsidised healthcare or public education, are portrayed as the new enemies. People who demand rights are turned into "the others". This second form of sacrifice functions as a sort of scapegoating in René Girard's

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<sup>450</sup> *ibid* 212.

<sup>451</sup> *ibid* 213-216.

terms. Girard explains that societies that face an escalation of violence to the point of a crisis usually resort to the sacrifice of a minority as a strategy to release tension, end violence and restore harmony. It is an unconscious act justified by means of blaming the victim for the violence experienced by the community. Hence the sacrifice is presented as a legitimate act of self-defence which is expected to restore peace.<sup>452</sup> For the Ministry of Finance and more recently for the Constitutional Court, greedy public employees, pensioners, unionised workers, in general, those who refuse to adapt and give up their aspirations are highly responsible for the crisis of previous welfare arrangements. They forced the state to adopt austerity and hence should be held accountable. Social panic is now redirected to the identification and sanction of these free riders.

Brown stresses how market sacrificial citizenship is inimical to democracy. Going back to the debates about the radical pole of rights, they open spaces for political aspirations while offering tools to contest and transform current political, social and economic arrangements. This radical pole is what make rights central to democracy; rights as political struggle are a type of constituent power understood as “the democratic power of a collectivity to determine the nature of its being-together”, as Wall puts it.<sup>453</sup> When rights are subjected to market rationality, as Fiscal Sustainability endeavours to do, they are deprived of their radical side. It is not only that rights face obstacles for their fulfilment – e.g. through courts – but also that as subjects are transformed from citizens into customers, their political aspirations are tamed as they only come to see themselves as entitled to what they can afford. In turn, democratic political principles of equality and distribution are replaced by competition, while the state transforms itself “into a manager of the nation on the model of

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<sup>452</sup> René Girard, 'Generative Scapegoating' in Robert G. Hamerton-Kelly (ed), *Violent Origins Walter Burkert, René Girard, and Jonathan Z. Smith on Ritual Killing and Cultural Formation* (Violent Origins Walter Burkert, René Girard, and Jonathan Z. Smith on Ritual Killing and Cultural Formation, First edn, Stanford University Press 1987) 78-79.

<sup>453</sup> Illan Rua Wall, 'On a Radical Politics for Human Rights' in Costas Douzinas and Conor Gearty (eds), *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (Cambridge University Press 2014)113.

the firm”<sup>454</sup> engaged in competitiveness enhancement rather than collective welfare. Following Brown’s description of how neoliberalism undoes democracy, rights as collective claims for transformation lose their valence as the market does not allow collective questions that are foreign to its logic. They are also deprived from their site as austerity destroys the very idea of the people and collective decision-making.<sup>455</sup>

### *3.4. Conclusion*

In this section I have argued that drawing on the language of rights and prosperity, Fiscal Sustainability has been a successful strategy to end some debates associated with the fiscal implications of rights’ interpretation and adjudication. Aside from isolating debates about development and budget allocation from congressional deliberations, the constitutional amendment re-works social and economic rights in several ways: they are narrowed down permanently to their minimum core, while progressive realization pursuant to public schemes becomes an impossibility as it is made conditional upon Fiscal Sustainability. Hence progressive realisation is entrusted to the market, transforming social citizenship into a sort of market citizenship whereby right-holders become customers and rights’ fulfilment is made dependents upon individual capacity and willingness to pay. The role of state is reframed; it becomes as a sort of market enabler regarding people. In this context, the minimum core of rights which is still publicly protected acquires compensatory and habilitating characters. On one hand, its function is to keep the people who cannot survive by their own means (the extremely poor) alive; and on the other, it is re-formulated as a means to enable market participation, epitomised in the redefinition of public basic education or public healthcare schemes as human capital builders. Market citizenship is enhanced by a sacrificial citizenship. Citizen virtue is re-cast as willingness to accept this new logic of rights and renounce all

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<sup>454</sup> Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* 35.

<sup>455</sup> *ibid* 39.

entitlements above the minimum. Progressive realisation of social and economic rights in a context of permanent scarcity, is depicted as a privilege which poses obstacles to the new national project of enhancing the country's competitive position as the only possible path to prosperity.

This picture of rights reminds us of the World Bank's prescription on poverty alleviation described in the previous chapter: social and economic rights in line with poverty alleviation are reduced to the minimum and turned into means to incorporate the poor into the market. We see here an example of the reconfiguration of the government of poverty in the neoliberal era as noted by Foucault, Alvarez, Lorey, Lazzarato and others. The management of poverty and with it social and economic rights is about defining a threshold – vital minimum – which prevents civil conflict and ensures that people can become enterprises.<sup>456</sup> The Ministry of Finance, by relying on a language of rights and prosperity, succeeded in emending this logic in the Constitution. It is true that social citizenship was not a reality in Colombia prior to the amendment. However, it was certainly the aspiration of the 1991 Constitution and it has been tamed by Fiscal Sustainability.

#### **4. Towards a New Jurisprudence on Social and Economic Rights**

The jurisprudence of the Constitutional Court of Colombia on social and economic rights has been celebrated as progressive and pro-poor. Despite the fact that these rights were not classified as 'fundamental' by the 1991 Constitutional Assembly, almost since its creation the Court has granted protection to them in both individual cases and in cases investigating the constitutional validity of legislation. Hand in hand with international human rights law, the judicial enforceability of these rights has resulted in a massive number of judgments whereby

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<sup>456</sup> Foucault, *The Birth of Biopolitics*; Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza'; Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social'; Lorey, *State of Insecurity. Government of the Precarious*.



remedies have ranged from the individual provision of healthcare services to structural and collective remedies such as injunctions ordering the Executive to redesign public policies and increase budget allocations in particular areas. In spite of accusation of privileging the interests of middle class<sup>457</sup> and of not addressing the structural causes of inequality,<sup>458</sup> overall the Colombian jurisprudence has been viewed as progressive because of the material relief that it has provided for the poor and the obstacles it has put in place to neoliberal reforms.<sup>459</sup> However, following the adoption of the Fiscal Sustainability amendment, things began to change, this section traces the shifting social and economic rights jurisprudence. The number of decisions which protect social and economic rights continues to be important; yet a new wave of rulings has introduced obstacles to their judicial enforceability in tandem with new interpretations about social rights and narratives about poverty and the role of the state vis-à-vis the poor. Two effects of the new case law deserve particular attention: Firstly, it strikes down interpretations that in the past were favourable to social rights, especially of workers and pensioners. Secondly, it constitutes social and economic rights as entitlements which only belong to the poor and, in consonance with the line of reasoning examined in the previous section, narrows them to a threshold just above indigence.

Before proceeding, it is worth noting that between 2015 and early 2017, a change of the Court's magistrates took place.<sup>460</sup> The nomination process is important for the purposes of this chapter as Fiscal Sustainability was a central factor for the election of the new judges. Indeed, when the candidates spoke to the Senate (the body in charge of their election), they were interrogated on their opinion about Fiscal Sustainability. Most of them expressed

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<sup>457</sup> See Landau, 'The Reality of Social Rights Enforcement'; Rueda, 'Legal Language and Social Change during Colombia's Economic Crisis'.

<sup>458</sup> Alviar García, 'Distribution of Resources Led by Courts. A Few Words of Caution' 67.

<sup>459</sup> See Saffon, 'Can Constitutional Courts be Counterhegemonic Powers vis-a-vis Neoliberalism? The Case of the Colombian Constitutional Court' ; Sepúlveda, 'Colombia. The Constitutional Court's Role in Addressing Social Injustice'.

<sup>460</sup> According to articles 173 and 269 of the Constitution, the magistrates of the Constitutional Court are elected by the Senate from lists presented to it by the President of the Republic, the Supreme Court of Justice, and the Council of State. Seven new magistrates out of nine were elected between 2015 and early 2017.

concerns about the fiscal implications of the Court's case law and promised to amend it if they were elected. For instance, one of the new magistrates (Carlos Bernal Pulido) recognised that Fiscal Sustainability is a guiding criterion rather than a constitutional principle, yet he stressed:

...there is a superior principle of law according to which nobody is obliged to the impossible, and in other countries of the North and Global South there is a principle related to this issue, the principle of the 'reserve of the possible,' this is, the idea that the state cannot commit to pay for provisions ... which it cannot afford.<sup>461</sup>

As soon as the new magistrates took office, changes in the jurisprudence on social and economic rights began to become evident. Overall the new rulings seek to prevent the judicial enforcement of social and economic rights through the special writ of protection of fundamental rights, as well as to reverse interpretations adopted by the Court in previous years which were favourable to workers and pensioners. In most of the decisions the tribunal does not use arguments of Fiscal Sustainability directly; however, it is clear that social rights and cases with high budgetary implications are being targeted for change.

#### *4.1. The Vulnerability Test*

For a long time there has been a discussion in Colombia about whether or not the writ of protection of fundamental rights can be used to seek the judicial enforcement of social and

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<sup>461</sup> My own translation. Congreso de la República de Colombia, *Acta número 70 de la Sesión Ordinaria del día martes 2 de mayo de 2017* (Gaceta del Congreso 590 2017) 28. During the same hearing, Justice Bernal added "the Constitutional Court has to delve into this issue of fiscal sustainability, it has to take into account this argument, those litigating before the court ought to demonstrate why their claims of protection of social rights are sustainable fiscally, the plaintiff should bear the argumentative burden, this is the truth, and the Court ought to consider fiscal sustainability elements in a detailed manner" 28.

economic rights, especially in cases pertaining to pension and salary-related rights. The debate has taken place because the exercise of the special writ (*tutela*) enables any person to file a lawsuit without the mediation of an attorney. This has facilitated its use by the poor, as well as by small NGOs, civil society organisations and social leaders. The Court settled this discussion in its early jurisprudence, expressing its willingness to accept writs designed to protect socio-economic rights. There have been several attempts on the part of the Executive to restrict access to the writ, but they have been rejected by Congress and the Constitutional Court itself.

In the 2017 decision T-626 the tribunal introduced a “test of vulnerability” in order to assess whether a plaintiff has standing to use the special writ of protection. The Constitution states that it can only be used in the absence of other judicial mechanisms or when the claimant is in a situation of risk or vulnerability. In the past the Court had interpreted the latter requirement loosely, meaning that as long as some evidence of poverty or urgency was provided, the case ought to be heard by the courts. This broad interpretation was crucial in facilitating the use of the writ by the poor. The new “test of vulnerability” introduced a significantly higher standard for assessing the plaintiff’s standing to sue. According to the test, vulnerability is demonstrated when the following three conditions are fulfilled:

... the plaintiff: (i) belongs to a group to which it has been granted special constitutional protection (objective condition), (ii) faces a risky situation (negative-subjective condition) and (iii) lacks resilience, this is, the capacity to provide for himself or herself until a lawsuit is filed using a different judicial mechanism and a final decision is made (positive-subjective condition).<sup>462</sup>

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<sup>462</sup> My own translation. Corte Constitucional de Colombia, *Sentencia T-626 de 2017* (2017).

The first condition refers to groups of people who, due to intrinsic characteristics, are more vulnerable to fundamental rights violations. Examples of this status include the elderly, children, people with disabilities or serious illnesses, indigenous peoples and black rural communities. According to the Court, the second requirement alludes to external circumstances which in a particular case expose the claimants to a higher level of risk of suffering infringements of their rights. Examples of this conditions are poverty and illiteracy. The last requirement, the “lack of resilience”, is explained by the tribunal as follows:

The third and last condition, *positive-subjective*, requires verifying whether the person by herself or with help from her family is capable of fending for herself until her rights are protected through ordinary judicial mechanisms. It means that the remedy requested through the especial writ of protection of fundamental rights ought to be the only possible way of addressing her lack of resilience. The fulfilment of this requirement enforces the state’s duty to provide aid to individuals only when they or their families cannot satisfy their needs. This derives from the moral and legal duty that every person has to satisfy her own needs or the needs of those with whom she shares a nexus of solidarity. Only in view of people’s inability to fence for themselves, they are entitled to request support from society and, therefore, from the state.<sup>463</sup>

The test introduces three main changes with regard to the interpretation of the standing to file lawsuits pursuant to the writ of protection of fundamental rights: firstly, in the past the Court did not require the fulfilment of the three conditions simultaneously. The court had

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<sup>463</sup> My own translation. Ibid.

treated the first two arms of the test as independent requirements, meaning that the demonstration of any one of them was taken as sufficient evidence of standing. The third arm of the test is entirely new. Poverty used to be interpreted as a cause of vulnerability, but destitution and lack of family or community support was definitively not framed as a precondition to have access to the courts.

Secondly, by virtue of the first condition, the use of the writ of protection is restricted to particular groups that deserve “special constitutional protection.” Belonging to these groups was previously taken as a sign of vulnerability but did not prevent other groups from using the writ as long as they provided evidence of difficult circumstances. This latter option has then been precluded and now the standing is restricted to “groups of especial constitutional protection.” Finally, the third requirement, that is, “the lack of resilience” entails a further restriction regarding the poor, as it demands evidence of the lack of any means of subsistence. On the one hand, this is a type of evidence which is very difficult to provide. Actually, in view of this difficulty, in the past the Court used to shift the burden of evidence to the defendant, meaning that the latter was in charge of demonstrating that the plaintiff was not in poverty. Therefore, the new requirement imposes a higher standard of evidence on the poor. On the other hand, this requirement reveals a new approach to social rights. Instead of universal entitlements, the new magistrates conceive them as prerogatives which belong only to the poor who on top of it lack any family or community support.

Initially, the test was applied in decisions adopted by one of the sections of the Court.<sup>464</sup> This section dealt with cases related to pensions, wages, labour dismissals and compensation to the victims of the internal civil conflict.<sup>465</sup> The test is used in rulings drafted by a magistrate who has publicly condemned the previous case law for being over ambitious,

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<sup>464</sup> For purposes of deciding cases related to the especial writ of protection of fundamental rights, the Court is divided into nine sections, each one composed of three magistrates: the one who drafts the project of judgement and the two magistrate which follow him or her in a list organized in alphabetical order.

<sup>465</sup> See Corte Constitucional de Colombia, *Sentencia T-626 de 2017*; Corte Constitucional de Colombia, *Sentencia T-664 de 2017* (2017); Corte Constitucional de Colombia, *Sentencia T-672 de 2017* (2017).

ineffective, co-opted by interest groups (like pensioners) and beneficial to the middle and upper classes rather than for the extremely poor.<sup>466</sup> In some of these decisions, the section not only requested the claimants to provide evidence of their poverty, but it also ordered visits and interviews to corroborate their alleged precarious living conditions.<sup>467</sup> In February 2018 the test was adopted by the plenary of the Court.<sup>468</sup> Although vulnerability was not the grounds for the case's dismissal, the 2018 decision SU-003 signalled the acceptance of the new vulnerability test by the majority of Constitutional Court magistrates. The hurdle of standing would be used to contain the power of the special writ of protection. The test entails a targeted approach to these rights to the extent that limits their judicial justiciability to cases whereby claimants are in extreme poverty. In other words, the test recognises social and economic rights only to the extremely poor. In a number of dissenting opinions, certain magistrates stated that the “test of vulnerability,” besides restricting access to the special writ and limiting its standing to groups of people in extreme vulnerability according to very questionable criteria, implies a redefinition of social rights as belonging only to the extremely poor and guaranteeing only a minimum of public assistance.<sup>469</sup> Following decisions made by the Constitutional Court in plenary, the “test of vulnerability” has been applied by other

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<sup>466</sup> Carlos Bernal Pulido, *Introduction to I-CONnect Symposium—Contemporary. Discussions in Constitutional Law—Part II: The Paradox of the Transformative Role of the Colombian Constitutional Court* (2018).

<sup>467</sup> Corte Constitucional de Colombia, *Sentencia T-203 de 2018* (2018). The plaintiffs of this case claimed a survivors' pension as beneficiaries of a son who died in 1997 while working for the Police. They alleged to be old, unable to work due to their precarious health condition, and living in conditions of extreme poverty as certified by their SISBEN categorization (see chapter one on SISBEN as a mechanism to measure levels of poverty and identify the beneficiaries of public subsidies). The magistrate in charge of the case requested the plaintiffs to provide detail evidence of their income and expenses between 1997 and 2017, records of property and other assets, information about public benefits they were receiving, and explanations about how they have managed to survive since their son's death. In addition, the magistrate ordered the local authorities to visit their residence and provide a detailed description of its habitability conditions. The section dismissed the case arguing that the poverty experienced by the claimants was not directly connected to the pension benefit they were demanding since they have managed to live without it for nearly twenty years.

<sup>468</sup> Corte Constitucional de Colombia, *Sentencia SU-003 de 2018* (2018); Corte Constitucional de Colombia, *Sentencia SU-005 de 2018* (2018).

<sup>469</sup> Diana Fajardo Rivera and Alberto Rojas Ríos, *Salvamento de voto a la Sentencia SU-005 de 2018* (2018); Diana Fajardo Rivera, *Salvamento de voto a la Sentencia T-304 de 2018* (2018).

sections of the Court becoming the new standard to assess whether a person can seek judicial enforceability of social and economic rights.<sup>470</sup>

#### 4.2. *Labour and Social Security Protections*

Labour and social security case law was at the centre of the debates on Fiscal Sustainability since, aside from structural remedies, it was accused of creating the largest burden on the public budget and posing challenges to labour flexibilisation and entrepreneurialism. Following the adoption of the amendment, a wave of Court decisions began to strike down the established jurisprudence on these rights. According to human rights standards, these decisions could be classified as retrogressive to the extent that they have reversed interpretations which were favourable to pensioners and workers. The trend began in 2012 with decision SU-1073 in which the Court limited the amount of the compensation that pensioners from the state-managed pension system could claim before courts if their pensions had been miscalculated. The tribunal approached Fiscal Sustainability as a constitutional principle and argued that limiting the compensation was required to prevent distortions of the system, protect the pensions of other citizens and future generations, and in this way fulfil the principle of progressiveness of social and economic rights. For the Court, ordering the retroactive payment of such compensation “would risk the financial stability of the General System of Pensions, infringing other constitutional principle: the principle of Fiscal Sustainability recognised in article 334 of the Constitution.”<sup>471</sup> Other examples are found in the 2018 decision SU-005, which reversed interpretations based on the principle of the most favourable provision regarding survivor pensions,<sup>472</sup> and the 2018

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<sup>470</sup> Corte Constitucional de Colombia, *Sentencia T-324 de 2018* (2018); Corte Constitucional de Colombia, *Sentencia T-346 de 2018* (2018); Corte Constitucional de Colombia, *Sentencia T-391 de 2018* (2018).

<sup>471</sup> Corte Constitucional de Colombia, *Sentencia SU-1073 de 2012* (2012).

<sup>472</sup> Corte Constitucional de Colombia, *Sentencia SU-005 de 2018*.

decision SU-023, whereby the plenary of the tribunal changed its interpretation about what factors ought to be taken into account to calculate monthly pension payments.<sup>473</sup>

In a final group of decisions, the Court has nullified its own judgements appealing to reasons seemingly related to Fiscal Sustainability. The Court's power to nullify its own rulings is not explicitly recognised in any written legislation. It was created by the Court itself to address serious violations of the principles of the due process or to discipline errant sections of the tribunal which had departed from the precedents set by the plenary of the Court. The use of the Court's power to nullify its own judgements has increased in recent years, especially regarding decisions that are considered as having serious fiscal effects. The 2018 decision A-320 is emblematic of this group of cases. In 2018 the Court nullified a ruling which protected the right of survivor pensioners to annual increments pursuant to the legislation which was in effect at the time when their pensions were recognised. The Ministry of Finance argued that the decision disregarded the principle of fiscal sustainability of the pension system, which amounted to a serious violation of the due process of law. The plenary of the Court agreed with the claim and stressed that principles of labour law such as the most favourable rule and most favourable interpretation must be balanced against fiscal considerations.<sup>474</sup>

Other examples of these changes in jurisprudence can be drawn from the labour rights decisions of A-126 of 2017, A-217 of 2018 and A-546 of 2018. These cases emerge from the Colombian Institute for Family Welfare, who created a programme in the 1980s named *Madres Comunitarias* (*Community Mothers*) to provide childcare in poor neighbourhoods. The institute recruited "volunteer" mothers from each neighbourhood, trained them in basic childcare skills and provided them with pedagogic aids, food rations and some basic infrastructure in order to enable them to look after the children of their neighbourhoods. In

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<sup>473</sup> Corte Constitucional de Colombia, *Sentencia SU-023 de 2018* (2018).

<sup>474</sup> Corte Constitucional de Colombia, *Auto 320 de 2018* (2018).



return, mothers receive a monthly stipend which the administrative regulations carefully categorised as a grant. For years these women have sought recognition of labour rights arguing that they do work for the institute and their monthly payments constitute salary. The subject matter of this debate is whether or not the institute is responsible for pension contributions, holidays and other employment benefits.

In decisions T-480 of 2016 and T-639 of 2017 two sections of the Court decided in favour of the “community mothers” and ordered the institute and the Ministry of Finance to make arrangement to secure their labour rights. The sections were cautious in addressing the discussion on Fiscal Sustainability and recalled that, according to the 2018 decision C-288, it is a guiding criterion rather than a constitutional principle. This implied that there are not grounds for balancing it against rights as the defendants suggested.<sup>475</sup> In 2017 the plenary of the Court nullified part of the 2016 judgement T-480 and restricted its scope to fewer employment benefits. This was undertaken on the basis that it was a reduction of the budgetary burden created by the ruling.<sup>476</sup> Finally, in 2018 both judgements were fully nullified appealing to the argument that some state agencies involved in the dispute were not called as defendants, which amounts to a serious violation of the principle of due process of law.<sup>477</sup> Soon after, the plenary issued a new judgement and settled the debate against the plaintiffs on the grounds that the legislation clearly states that “community mothers” are volunteers, that their activities reflect the duties that families and communities have regarding their children. They stated that there was no evidence of any sort of employment relationship between them and the state.<sup>478</sup> Although these decisions do not rest formally on

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<sup>475</sup> Corte Constitucional de Colombia, *Sentencia T-480 of 2016* (2016); Corte Constitucional de Colombia, *Sentencia T-639 de 2017* (2017).

<sup>476</sup> Corte Constitucional de Colombia, *Auto 186 de 2017* (2017).

<sup>477</sup> Corte Constitucional de Colombia, *Auto 217 de 2018* (2018); Corte Constitucional de Colombia, *Auto 546 de 2018* (2018).

<sup>478</sup> Corte Constitucional de Colombia, *Sentencia SU-079 de 2018* (2018).

arguments related to Fiscal Sustainability, the Ministry of Finance has consistently lobbied against the cases, so it is very likely that this is the reason behind the decisions.

#### 4.3. *Hollowing-Out Rights*

We have looked at three groups of decisions: the vulnerability test, the pensioners cases and the community mothers. These three groups of decisions are illustrative of the new orientation taken by the Constitutional Court pertaining to social and economic rights. The last two groups show a new commitment to retrogressive interpretations and self-restrain when it comes to pension and labour rights. The new commitment to retrogressive interpretations of social and economic rights is a trend which is not unique to Colombia. These rights are increasingly portrayed as the enemies of balanced budgets and competitiveness (labour flexibilisation). Recalling the arguments that I developed in the previous section, pensioners and workers who demand protection above welfare minimums are depicted as greedy and privileged. Demands are made that they should sacrifice their entitlements in the name of growth. The Court reproduces and reinforces this sacrificial logic by changing its interpretations about labour and pension rights and demanding reasonability in claimants' petitions.

The first group, on the other hand, aligned with the indefinite contraction of social and economic rights explored in the previous section, is another way in which the targeted approach to poverty alleviation embodied in *Familias en Acción* is brought to the realm of rights. By restricting the judicial enforceability of social rights, they are delinked from citizenship and recoded as entitlements which only belong to the extremely poor. This interpretation is supported by the manner in which the Court refers to the duties of the state vis-a-vis poor in those decisions. For instance, in the 2017 decision T-626, the tribunal declared that it is a moral and legal duty of every person “to satisfy her own needs or the

needs of those with whom she shares a nexus of solidarity. Only in view of people's inability to fend for themselves, are they entitled to request support from society and, therefore, from the state."<sup>479</sup> Some pages further on it was added: "the family has a juridical and moral duty to assist its most close descendants and ancestors, and only when the family is materially unable to do so, the state, in fulfilment of its essential and social objectives, is obliged to protect the rights of the person."<sup>480</sup> Pursuant to these statements, social rights are enforceable against the state only when individuals are unable to fend for themselves by their own means or with family support. Therefore, social and economic rights belong to the poor but only to those poor who lack family and are unfit to work. It could be objected that the special writ of protection of fundamental rights is not the only judicial mechanism through which individuals and collectives can pursue the enforcement of their social rights. It could be also argued that the "test of vulnerability" at the rhetorical level only restricts judicial standing regarding the writ of protection and does not reformulate interpretations about the universality of rights. However, to the extent that the special writ of protection is the mechanism which has enabled the extensive jurisprudence on these rights and because it is very difficult to think about these rights separated from their judicial enforcement, the conclusion is that the new test is a manner for the Court to contest the universality of social and economic rights and ascribe them only to the extremely poor.

This picture of rights is then akin to what Sonia Alvarez terms the target-politics of neoliberalism, whereby state support is reserved for the extremely poor and narrowed to basic provisions which acquire compensatory and habilitating character.<sup>481</sup> I have already explained how the amendment reduces social and economic rights to their minimum core and proscribes their progressive realisation pursuant to public resources. The Court

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<sup>479</sup> My own translation. Corte Constitucional de Colombia, *Sentencia T-626 de 2017*.

<sup>480</sup> My own translation. *Ibid.*

<sup>481</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza' 242.

complements this picture by implying that social and economic rights are entitlements which only belong to the poor, or more precisely, that only the extremely poor can enforce before the courts. For Giraldo, this type of interpretation gives birth to a sort of “assisted citizenship,” according to which the source of rights is individual failure.<sup>482</sup> Similarly, Alvarez notes that this approach to rights involves a return to moral discourses about poverty and the deserving poor which paves the way to new form of tutelage of these populations. She recalls that 19th century poor laws also reserved a sort of welfare rights to the poor, who in exchange were requested to renounce their autonomy in order to be subjected to different types of rehabilitating interventions. Therefore, the entitlements of the poor did not stem from citizenship but were an alternative to them which signalled inferiority and subjection.<sup>483</sup> The quotes from the Court’s judgements about individual duties to fend for oneself and for one’s family and the assertion that the state is responsible for assisting people only in the absence of capacity to work and community or family safety nets, reveal the Court’s acceptance of this new moralised groundings of rights. For the tribunal, only individual failure in the marketplace traduced into extreme poverty activates rights.

From a different angle, we might also notice how this redefinition of rights (along with the moral discourse on work ethic which it relies upon) represents a tactic to make the poor behave according to neoliberal expectations about human behaviour. As rights are transformed into a sort of downgraded entitlements, they represent mechanisms to bring about neoliberal subjectivities of responsibility, entrepreneurialism and resilience.<sup>484</sup> In this case, the image of the deserving poor, of the right-bearer poor is one of a hardworking responsible individual who looks after his family and asks little from society and the state. Only when these expectations are impossible to attain, rights can come to their rescue. In

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<sup>482</sup> Giraldo, 'Política social contemporánea' 70.

<sup>483</sup> Alvarez Leguizamón, 'Los discursos minimalistas sobre necesidades básicas y los umbrales de ciudadanía como reproductores de la pobreza', 264-265.

<sup>484</sup> See a similar argument in Sokhi-Bulley, *Governing (Through) Rights*.

this way, discourses of rights serve the purpose of modelling the behaviours and life expectations of the poor.

## 5. Conclusions

This chapter focuses on two ways that rights can be used to manage poverty in contemporary Colombia. Firstly, the chapter illustrates how social and economic rights are being reconfigured in order to tame the political aspirations of destitute and precarised populations in the face of structural adjustments, welfare cuts and other neoliberal reforms. The constitutional amendment on Fiscal Sustainability locked in a model of development which narrows rights to their minimum core and condemns higher standards of protection funded by public resources. Moreover, rights are transformed into market tools aimed at rehabilitating people, especially the poor, for market participation. This constitutes a transformation of social citizenship into a market citizenship, whereby rights-bearers become customers whose aspirations are shaped and constricted pursuant to market logic. Judicial decisions are aligning with the rationality of rights entrenched in Fiscal Sustainability. Relying upon moral discourses on work ethic and individual responsibilities, the Constitutional Court of Colombia is not only narrowing rights through retrogressive interpretations, but also turning them into downgraded entitlements that only the poor enjoy. In line with the logic of poverty alleviation of the Post-Washington Consensus embedded in *Familias en Acción*, rights have been hollowed out and turned into minimum welfare provisions which only belong to the poor and which (besides keeping them alive) are instrumental in shaping them as market actors and rehabilitating them for market participation. These new rights seek to constitute responsible and sacrificial citizens who fend for themselves and their families and renounce to their social entitlements (pensions, salary benefits, etc.) as a means of contributing to the high public objective of investment-led growth. Hence, as in the case of *Familias en Acción*, the poor are made responsible not

only for their own fate, but also for improving the competitive position of the country, in this case, by renouncing aspirations of progressive realisation and enabling a restricted but healthy public budget.

The chapter explores a second way in which rights govern: as discourses and constitutional institutions, they are implicated in directing the conduct of actors beyond rights-holders, in this case, Congress and more importantly the Constitutional Court. The second objective of this chapter was to show how the language of rights and prosperity was deployed to counteract other progressive uses of the same language, that is, the resort to social and economic rights to resist neoliberal reforms and obtain some material relief for the most impoverished. In this sense, the chapter epitomises some of the dangers of the use of rights, as discussed in the critical literature. In this case rights as the language of the state was hollowed out and manipulated to domesticate more radical uses of rights.

## Chapter Three: Securing the Port against the Poor

### 1. Introduction

On 16 May 2017, the community of port-city of Buenaventura, Colombia's main port city went on a general strike. After years of unfulfilled government promises to provide basic services and improve security, the social and economic emergency continued unabated until the locals, nearly 90 per cent of them Afro-descendants,<sup>485</sup> took to the streets. Against a backdrop of 80 per cent poverty and 68 per cent unemployment, the strikers demanded not just the end of the violence that had plagued the city, but also structural solutions to poverty and inequality. They demanded jobs, education, housing, a sewage system, running water and a hospital. In short, the strike was about the provision of basic needs in the contexts of a modern and wealthy port city.

Where the first two chapters approached the question of poverty in neoliberal times through specific techniques of governance, this chapter takes a different approach. It focuses on an event. The Buenaventura general strike reveals the entanglements of poverty, political subjectivity and security in a way that neither the *Familias en Acción* nor the Fiscal Sustainability constitutional politics can. By shifting the focus from the knowledges and discourses of governmentality, and turning instead to a particular space, we can trace a different genealogy of neoliberalism in Colombia: Instead of talking about the discursive depoliticisation of poverty, we begin to see the popular politicisation of development; By focusing on the local (rather than the national) different temporalities emerge – histories of

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<sup>485</sup> Buenaventura is the Colombian Pacific coast city with the largest Afro-descendent population. Financiera del Desarrollo Territorial S. A. (Findeter) and Fundación Esteyco, *La Buenaventura que nos merecemos. Plan Maestro 2050* (Proyecto editorial MIRANDA 2015) 45.

colonialism structure the racial dynamics of the space; Rather than abstract populations like ‘the poor’, the violence of development emerges in a concrete sense; And with all of this, particular groups begin to speak, different forms of life emerge into our account and different forms of action and resistance become visible. In this sense, the shift between chapters 2 and 3 is not simply a change of focus, it is an insistence upon different modes of thinking and different possibilities of thought.

Despite this divergence, there are also key continuities. Like previous chapters, I will examine narratives of poverty and the types of subjectivities that are produced and reproduced in the encounters between national and regional governments, security forces and poor communities. Some of the more muted themes of the previous chapters will be brought to the fore: The question of security and securitisation, hinted at throughout chapter 1 comes more clearly into focus here; The possibilities of challenging the order of neoliberalism, suggested in chapter 2 are drawn out in a more directly political manner here.

Section one narrates how the strike developed. It highlights the encounter between the strikers, national government and the anti-riot police. Section two contextualises the emergence of Buenaventura as Colombia’s main port but also as one of the poorest and most violent cities of the country. This section highlights the role that race and the logic of extractions have played in these dynamics. The third section focuses specifically on the violence of development. By this I mean both the violence which has been instrumental in bringing about development to the region and also the violence that development has affected there. This part also shows some connections between physical violence, deployed by both state and non-state actors, and harnessing of the potential of the poor. Section four pays special attention to the securitisation of the poor population of Buenaventura, that is, their discursive construction as dangerous and thereby as a security threat to the port. I contend that this narrative about the insecurity of the poor reinforces the image of the undeserving poor, while at the same time it legitimises the coercive interventions that have



characterised the control of criminality and social mobilisation in the port-city. The final section looks at the types of social and political mobilisation that have flourished in the region, mainly in response to the development projects and the violence they have caused. Here I explore the political subjectivity that has emerged in resisting and contesting development represented by the port.

## **2. The Strike**

The people of Buenaventura took to the streets on the 16 May. They demonstrated against the dramatic levels of poverty and violence and unfulfilled promises of the national government. The general strike was convened by 71 organisations, including communal councils (representatives of rural black communities), indigenous groups, unions, grassroots and human rights organisations, neighbourhood associations, the Catholic Church and local business coalitions. They were joined by other social and economic sectors, such as the financial sector and lorry drivers' associations, which announced they would stop their activities in support. Hence, on the morning of the 16<sup>th</sup> of May the vast majority of workers, students and the unemployed joined the demonstrations. Relying on the language of rights, the protestors demanded the satisfaction of basic needs such as water provision, healthcare, sewage infrastructure, housing, and education. More importantly, they highlighted how the national government has historically neglected Buenaventura and subjected it to discrimination and marginality. Beyond the provision of basic social services and reparations for the victims of the civil conflict, the protesters demanded structural solutions to the precarity and discrimination they faced. They sought greater control over local public expenditure and changes in a legal system which historically has marginalised and criminalised them. Paradoxically, the declaration of a state of emergency on the grounds of a social and economic crisis was the mechanism requested by the strike committee to enable

the national government to adopt immediate solutions and allocate new funds to meet the most pressing needs of the local population.<sup>486</sup>

On the first day of the demonstrations, road blockages were followed by sports and cultural activities scheduled in different parts of the port city. Local artists and cultural organisations offered free concerts and performances. In the concentration points designated by the strike committee, neighbours sang and danced traditional rhythms in the streets, while families cooked meals for the protesters. Eight working groups were created by the strike committee to discuss solutions to the main problems faced by the population. But an environment of solidarity and joy reigned in the city on the first day of the strike.<sup>487</sup>

On the second day (17<sup>th</sup> of May), as the demonstrations intensified and the strikers demanded the presence of President Juan Manuel Santos, the Mobil Anti-Disturbance Squad (ESMAD for its Spanish acronym) arrived in the city. Tanks were deployed to intimidate the strikers and unblock the highway<sup>488</sup> through which 70% of all Colombian imports and exports pass.<sup>489</sup> On the third day, in the concentration point at *La Delfina*, a rural area inhabited by indigenous and Afro-Colombian populations at the outskirts of the city and beside the highway, a police officer died in a traffic accident involving the barricades used by the protesters to obstruct the road. The ESMAD appear to have sought retaliation and escalated the use of force against the community.

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<sup>486</sup> Asamblea ciudadana por la defensa de Buenaventura, 'Pliego de soluciones' 2017 <<https://www.vokaribe.net/wp-content/uploads/PLIEGO-DE-SOLUCIONES.pdf>> accessed 9 October 2018 Comité del parocívico para vivir con dignidad y en paz en el territorio, 'Comunicado a la opinión pública nacional e internacional' May 2017 <<https://www.las2orillas.co/wp-content/uploads/2017/05/COMUNICADO-PU%CC%81BLICO.pdf>> accessed 9 October 2018.

<sup>487</sup> Noticiero Noti5, 'Hoy fue la primera jornada de paro en Buenaventura' 2017 <<https://www.youtube.com/watch?v=8pVZgHYCVKI>> accessed 9 October 2018.

<sup>488</sup> Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"* (2017) 9.

<sup>489</sup> Consejo Nacional de Política Económica y Social CONPES, *Documento Conpes 3847 de 2015 "Plan Todos Somos PAZcífico: Concepto favorable a la Nación para otorgar garantía al patrimonio autónomo 'Fondo para el desarrollo del plan Todos Somos PAZcífico', para contratar operaciones de crédito público externo hasta por la suma de USD 400 millones, o su equivalente en otras monedas, destinados a su financiamiento parcial y; declaración de importancia estratégica del programa de inversión que se financiará con estos recursos"* (2015) 19.

After negotiations between the strike committee and the national and regional governments were suspended on the morning of the fourth day (19<sup>th</sup> of May), the anti-riot police went out on the streets and attacked demonstrators on the highway. The attacks, supported by new officers who arrived that morning, began at *La Delfina*. The anti-riot police fired tear gas into the concentration point, they assaulted fifteen protesters and broke into a house without explanation. In the afternoon, ESMAD squads entered the city centre. Their main objective was to unblock the *El Piñal* bridge, a strategic point that connects the port facilities located in the *Cajascal Island* with the mainland. In the process, ESMAD officers entered the *Bajamar* neighbourhoods (these are poor areas located in intertidal zones) near the bridge. They broke into a large number of houses and made sweeping arrests. Their use of racist language seems to have ignited aggression and violence. Members of the community reported that police officers shouted ‘those who denounce will die’ while shooting indiscriminately into the air. Officers fired large quantities of tear gas into the neighbourhood. Nearby health facilities were affected by the gas and had to close their doors at a time when healthcare was in high demand because of the violence. More than 200 protesters were arrested, nearly 80 people were injured and a young man died.<sup>490</sup>

After a long day of intense confrontations between protesters and anti-riot squads at multiple sites around the city, on the evening of the fourth day the police seemed to suddenly disappear. Instead, people unknown in the neighbourhoods looted local businesses.<sup>491</sup> They

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<sup>490</sup> The Office of the National Ombudsman reported that at the local hospital, 27 minors injured, 2 of them shoot, received treatment. The Office received nearly 500 complaints for police brutality, nearly 250 of them against minors, pregnant women and elderly people. Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"* 11-15. Comisión veeduría de derechos humanos paro cívico para vivir con dignidad y en paz en el territorio, 'Boletín 3. Seguimiento situación de derechos humanos' 19 May 2017) <<http://nomadesc.com/boletin-03-seguimiento-situacion-de-derechos-humanos/>> accessed 17 June 2018. Comisión veeduría de derechos humanos paro cívico and para vivir con dignidad y paz en el territorio, 'Boletín 04. Seguimiento situación de derechos humanos' 2017) <[http://jyp.megadatesystem.com/IMG/pdf/boletin\\_seguimiento\\_a\\_ddhh\\_no\\_4.pdf](http://jyp.megadatesystem.com/IMG/pdf/boletin_seguimiento_a_ddhh_no_4.pdf)> accessed 17 June 2018. Amnistía Internacional, 'Colombia: Hechos violentos en el marco del Paro Cívico de Buenaventura deben parar' 1 June 2017) <<https://www.amnesty.org/es/latest/news/2017/06/colombia-hechos-violentos-en-el-marco-del-paro-civico-de-buenaventura-deben-parar/>> accessed 17 June 2018.

<sup>491</sup> Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"*. 7 ZICO Producciones, 'Crónica de unanoche oscura en Buenaventura' 20 May 2017) <[https://www.youtube.com/watch?v=k23\\_WSvzWW4](https://www.youtube.com/watch?v=k23_WSvzWW4)> accessed 11 October 2018.

broke into supermarkets and convenience stores, and stole whatever they managed to reach. Some demonstrators led by the Catholic Church organised a human chain to prevent the looting of a local supermarket<sup>492</sup>, while many others called the police desperately without an answer or response. The local Ombudsman and the strike committee blamed police brutality for the anger of the mob<sup>493</sup>, but there were also rumours of police and paramilitary provocations and undercover participation.<sup>494</sup> Many claim that the ESMAD received a non-intervention order from the national government, and no official explanation for the lack of intervention has been given.

Following the looting, the Municipal Major decreed a mandatory curfew for the local population but not for the hundreds of lorries that transited throughout the city every day.<sup>495</sup> Nearly 530 soldiers and 400 police officers joined the ESMAD, while tanks, helicopters and a 'phantom airplane' were sent from a nearby military facility to support the anti-riot efforts.<sup>496</sup> Besides preventing new road blockages, the police and the military organised caravans to escort and protect cargo vehicles.<sup>497</sup> Clashes between the police and protesters

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<sup>492</sup> Natalia Arenas, 'La Iglesia, la fuerza moral de los paros en el Pacífico' 23 May 2017) <<https://lasillavacia.com/silla-pacifico/la-iglesia-la-fuerza-moral-de-los-paros-en-el-pacifico-61042>> accessed 11 October 2018.

<sup>493</sup> Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"*. 7. Comité del Paro Cívico de Buenaventura para vivir con dignidad y en paz en el territorio, Comunicado de prensa No. 8, <https://www.polodemocratico.net/nuestras-noticias/103-nacionales/11527-comite-del-paro-civico-para-vivir-con-dignidad-y-en-paz-en-el-territorio-comunicado-de-prensa-8-buenaventura-20-de-mayo-de-2017> 17/06/2018 'La furia de Buenaventura', 20-05-2017, <https://www.semana.com/nacion/articulo/detenidos-y-heridos-por-protestas-en-buenaventura/525913> 17-06-2018.

<sup>494</sup> ZICO Producciones, 'Crónica de unanoche oscura en Buenaventura.'

<sup>495</sup> Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"* 7.

<sup>496</sup> Comisión veeduría de derechos humanos "Paro cívico para vivir con dignidad y paz en el territorio", 'Boletín 06. S.O.S. Acción urgente' 2 June 2017) <<http://nomadesc.com/s-o-s-accion-urgente/>> accessed 17 June 2018. Resumen latinoamericano, 'Colombia: Buenaventura sigue en paro pese a represión, militarización y toque de queda. ¡El pueblo de Buenaventura y Chocó exige solución y no represión!' 20 May 2017) <<http://www.resumenlatinoamericano.org/2017/05/21/colombia-buenaventura-sigue-en-paro-pese-a-represion-militarizacion-y-toque-de-queda-el-pueblo-de-buenaventura-y-choco-exige-solucion-y-no-represion/>> accessed 17 June 2018. Noticias Uno Colombia, 'Toque de queda en Buenaventura' 20 May 2017) <[https://www.youtube.com/watch?v=k37P2P7QP\\_M](https://www.youtube.com/watch?v=k37P2P7QP_M)> accessed 10 October 2018.

<sup>497</sup> Personería Distrital de Buenaventura, *Informe ejecutivo en el marco del paro cívico "Para vivir con dignidad y en paz en el territorio"*. 8.

continued to take place.<sup>498</sup> ESMAD squads adopted new intimidation strategies, such as firing tear gas and shooting into the air at night while people were sleeping.

The looting of the 19<sup>th</sup> of May had a demoralising effect on the strikers. Many gave up the strike. But after two days, the strike committee reunited the movement and organised a new march: “The March for the Territory and the Dignity of the Community of Buenaventura.” On Sunday 20 May, shouting the slogan “Buenaventura does not give up,” more than 50,000 people gathered in the streets in rejection of police brutality and the vandalism of the looters.<sup>499</sup> They demanded the continuation of the negotiations with the national government, as well as the presence of its main leaders. In response to the massive march, President Juan Manuel Santos threatened the strikers by asserting that road blockages would not be tolerated and called for military and police intervention until obstacles on the motorway were completely removed.<sup>500</sup> The government’s negotiation team had previously suggested that the strike would not last long as most protesters depended upon the informal economy, meaning that their subsistence depended upon daily work. However, their predictions were proven false as the *Bonaverenses* demonstrated to be united and ready to reassume protest rallies.

On Monday the 22<sup>nd</sup> of May (the seventh day), local businesses reopened their doors and some lorries were allowed to cross the city. The community stocked up on food and other supplies in order to remain on the streets. New marches and peaceful activities were organised in the following days. On Tuesday the 23<sup>rd</sup> of May, fishermen and sailors sailed to the mouth of the bay to demand the protection of their right to the sea and to denounce the violence to which fishermen had been subjected in recent decades.<sup>501</sup> On Wednesday the 24<sup>th</sup>

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<sup>498</sup> *ibid* 7.

<sup>499</sup> El País Cali, 'Paro cívico de Buenaventura - Sexto día' 25 May 2017) <<https://www.youtube.com/watch?v=R1cWkmdCeGM>> accessed 11 October 2018.

<sup>500</sup> Telepacífico Noticias, 'Sexto día de paro cívico en Buenaventura' 21 May 2017) <<https://www.youtube.com/watch?v=2C9JbQZxzzY>> accessed 11 October 2018.

<sup>501</sup> Noticiero Noti5, 'Aún no hay acuerdo para levantar paro cívico en Buenaventura' 23 May 2017) <<https://www.youtube.com/watch?v=X-HivKskH6E>> accessed 11 October 2018. Asociación Nomadesc,

of May, strikers marched against the position adopted by the government in the negotiations.<sup>502</sup> Sixteen days after the strike began, on the 31<sup>st</sup> of May, indigenous people joined the mobilisation and held a public hearing to denounce multiple violation to their fundamental rights.<sup>503</sup> On Saturday the 3<sup>rd</sup> of June, hundreds of women went out to the streets to highlight their contribution to the construction of peace and territory.<sup>504</sup> And on Sunday the 4<sup>th</sup> of June, famous artists, sport players and other celebrities born in Buenaventura arrived at the port-city and marched in support of the strike.<sup>505</sup>

However, clashes between protesters and anti-riot officers continued for several days. On the 21<sup>st</sup> of May police officers forcefully entered into rural houses in *La Delfina* area.<sup>506</sup> The 24<sup>th</sup> of May saw attacks on the neighbourhoods *Juan XXIII* and *San Luis* with tear gas in which two children were injured.<sup>507</sup> On the 26 May attacks began with tear gas during the night. At around 02:30 on the 2<sup>nd</sup> of June, a helicopter fired tear gas into the *La Paz* neighbourhood forcing the residents to flee their houses and take refuge from the gas.<sup>508</sup> Similar events were reported on the same night in the *Oriente* and *Ciudadela Nueva Buenaventura*<sup>509</sup> neighbourhoods.

Negotiations between the strike committee and the government resumed on Tuesday the 23<sup>rd</sup> of May, led by the Vice-Minister for Interior Affairs. The government rejected the proposal to declare a state of exception and instead suggested changes in tax

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'Por el derecho al mar' 10 June 2017) <<https://www.youtube.com/watch?v=KrdlGg6e-FE>> accessed 11 October 2018.

<sup>502</sup> El País Cali, 'Paro cívico de Buenaventura - Noveno día' 25 May 2017) <<https://www.youtube.com/watch?v=qaiz2Ufqqr8>> accessed 11 October 2018.

<sup>503</sup> Asociación Nomadesc, 'Audiencia pública por la protección a la vida, el territorio y la dignidad de los pueblos' 31 May 2017) <<https://www.youtube.com/watch?v=vXOveKuBQ-A>> accessed 11 October 2018.

<sup>504</sup> Asociación Nomadesc, 'Marcha de las mujeres por la dignidad y la vida' 3 June 2017) <<https://www.youtube.com/watch?v=G-CsJAPeFXI>> accessed 11 October 2018.

<sup>505</sup> Asociación Nomadesc, 'Marcha de artistas de Buenaventura día 20 del paro cívico' 4 June 2017) <[https://www.youtube.com/watch?v=TDD-SEnE\\_DM](https://www.youtube.com/watch?v=TDD-SEnE_DM)> accessed 11 October 2018.

<sup>506</sup> cívico and para vivir con dignidad y paz en el territorio, 'Boletín 04. Seguimiento situación de derechos humanos.'

<sup>507</sup> *ibid.*

<sup>508</sup> Comisión veeduría de derechos humanos paro cívico para vivir con dignidad y paz en el territorio 'Boletín 06. S.O.S. Acción urgente' 02-06-2017 <http://nomadesc.com/s-o-s-accion-urgente/> (17/06/2018).

<sup>509</sup> cívico and para vivir con dignidad y paz en el territorio, 'Boletín 04. Seguimiento situación de derechos Humanos.'

collection rules to benefit local infrastructure projects. Due to disagreements, negotiations were suspended again the following day<sup>510</sup> and resumed only on Friday the 26<sup>th</sup> of May when new government delegates arrived at the port. The government brought to the table a new proposal: the creation of an autonomous fund in order to give power to local representatives over budget allocation processes and public procurement with regard to the infrastructure projects demanded by the community.<sup>511</sup> Yet, the strike committee insisted on its proposal of the declaration of a state of exception in order to accelerate procurement processes. Negotiations lasted 22 days and the final agreement was released on the 6<sup>th</sup> of June.

The national government promised investments of more than 1.5 billion pesos (approximately £375,000) to be spent on basic services and public facilities. Six areas were prioritised: housing, healthcare, employment and productivity (in particular local fisheries, timber businesses and handicrafts), water and sewage services, education, electricity and justice. The government also offered to create a ten year development plan for the city managed by an independent fund in which members of the community would be granted decision-making power. Yet the structural changes at the root of the demonstrations were not part of the agreement, while many of the promised projects (as in the case of previous agreements) seemed to benefit the port rather than the local population.

### **3. A Rich Port in a Poor City**

To understand the events of May and June 2017, it is important to situate them more broadly. Buenaventura hosts Colombia's most important port. The three port facilities in operation today – one managed by the public-private corporation Port Society of Buenaventura, a container terminal operated by the Spanish Corporation TCBuen and the “Sweet Water” industrial port owned by Philipino and Dutch capital – move nearly 70% of all national

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<sup>510</sup> El País Cali, 'Paro cívico de Buenaventura - Noveno día' accessed.

<sup>511</sup> La Silla Vacía, 'Paros en vivo, un arma de doble filo' 25 May 2017) <<https://lasillavacia.com/historia/paros-en-vivo-un-arma-de-doble-filo-61092>> accessed 11 October 2018.

cargo.<sup>512</sup> It produces a third of the customs income collected by the national government and generates more significant revenues than all of the country's other ports. Its strategic geographical position on the Pacific coast – close to the Panama Channel and at mid distance between the ports of Vancouver in Canada and Valparaiso in Chile – makes it attractive for both national and international investors. In striking contrast, the city of Buenaventura, the locality with the largest African-Colombian population in the country, faces severe conditions of poverty, inequality and violence. With 80% poverty and 68% unemployment according to official data, Buenaventura is one of the poorest places in Colombia. However, the tangle of interests, neglect, poverty, racialisation and struggles for control and development has a much longer history. Given our focus on the city in the final chapter, it is important to begin to understand this longer context.

### *3.1. Buenaventura as a Colonial and Postcolonial Site*

The history of Buenaventura's neglect can be traced back to colonial times, when the Pacific coast was represented as a savage land (of riches to be extracted) inhabited by uncivilised beings. Since then race has been an organising factor in the processes of settlement and economic organisation. As Arturo Escobar explains, extraction has been “inextricably linked to the harnessing of black labor (from colonial slave mining to today's African palm cultivation) not infrequently through representations of race that depicted blacks in natural terms.”<sup>513</sup> In this section I address how the poor city and the rich port emerged side by side. I explore how the developmental projection that for decades have targeted Buenaventura, intertwine with individual explanations of poverty which combined with racial stereotypes, to disconnect poverty from the functioning of the port. In this the poor are once more

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<sup>512</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3847 de 2015 "Plan Todos Somos PAZcífico: Concepto favorable a la Nación para otorgar garantía al patrimonio autónomo 'Fondo para el desarrollo del plan Todos Somos PAZcífico', para contratar operaciones de crédito público externo hasta por la suma de USD 400 millones, o su equivalente en otras monedas, destinados a su financiamiento parcial y; declaración de importancia estratégica del programa de inversión que se financiará con estos recursos"* (2015) 19.

<sup>513</sup> Arturo Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press 2008) 47.



blamed for their own poverty. These narratives have also effected a relation of subordinations between the port and the poor: the port as a representation of local and national prosperity demands sacrifices, such as the sacrifice of a population which is no longer needed and which impairs government attempts to create a good investment climate.

Buenaventura is situated on Colombia's Pacific coastal region in the western part of the country. It covers a coastline of approximately 1,300 kilometres and contains around ten million hectares of tropical rain forest. Its lowlands host one of the most humid and diverse ecosystems of the world. Myriad meandering rivers and brooks cut across the mangrove landscape, creating mazes difficult to navigate.<sup>514</sup> The urban area of Buenaventura is divided into two main zones: insular and continental. The main port facilities, the city centre and most governmental buildings are located in the insular area (the *Island of Cajascal*)<sup>515</sup> while most poor neighbourhoods are located in the continental region along with lands of interest for the expansion of the port. The *El Pinal* bridge connects both areas.

In the 17<sup>th</sup> century, Spanish conquerors arrived in the lowlands of the Pacific coast of Colombia attracted by the alluvial gold mines of the region. Spanish colonisation of the Pacific region had proved difficult due to its extreme terrain and the tendency of the indigenous population to rebel. Yet, the prospects of gold finally attracted Spanish settlers to the area. The Spanish occupation transformed the population of the region as arduous labour exploitation decimated indigenous peoples and African slaves were brought in to fill the labour shortage.<sup>516</sup> Wade notes that “[b]y the late 18<sup>th</sup> century, indigenous people were outnumbered by black slaves and *libres*, blacks that have become free, usually through self-purchase with resources gained from gold-panning on their own account on their days of

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<sup>514</sup> See a complete description of the Pacific lowlands of Colombia in Ulrich Oslander, *The Geographies of Social Movements. Afro-Colombian Mobilization and the Aquatic Space* (Duke University Press 2016) 8-9.

<sup>515</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* (Centro Nacional de Memoria Histórica 2015) 225.

<sup>516</sup> Peter Wade, 'Introduction. The Colombian Pacific in Perspective' (2002) 7 *Journal of Latin American Anthropology* 2 4.

rest.”<sup>517</sup> Following the independence process in the early 19th century, the Pacific lost its former economic importance because of the hardship that exploiting its resources imposed.<sup>518</sup> The territory began to be imagined as a rich, but dangerous land which only “savages”, African-descendants and indigenous peoples, could inhabit. During this period manumitted or *libre* blacks were officially allowed to settle in the empty lowlands of the Pacific littoral, a territory in which maroons (fugitive slaves) had already made their home.<sup>519</sup> Racial mixture (*mestizaje*) was limited in the region, compared to other parts of the country.<sup>520</sup> As a result, the region began to host the largest black population of the country becoming the “black region par excellence of Colombia.”<sup>521</sup> As race and difficult geographical conditions created an image of the Pacific as backward and “uncivilised,” its peoples were excluded from the political project that was taking shape in the centre of the nascent republic.<sup>522</sup>

Circulation of knowledge about mining and agricultural techniques among black and indigenous populations enabled the emergence of subsistence practices organised around agriculture, hunting, fishing and gold panning. This economic system involved productive activities of high mobility in spatial and temporal terms giving birth to a form of occupation of the territory without fixed borders.<sup>523</sup> Water has been a crucial factor in the construction of a fluid relationship between people and space. The lowlands of the Pacific region are an aquatic space, as described by Oslender. In his words:

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<sup>517</sup> *ibid* 4.

<sup>518</sup> Enrique Rodríguez and José Fernando Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' (2002) *Revista sociedad y economía* 49, 51-52.

<sup>519</sup> Jacques Aprile-Gniset, *Poblamiento, hábitats y pueblos del Pacífico* (Universidad del Valle 1993) 12-13 (as referred in Escobar, *Territories of Difference: Place, Movements, Life, Redes* 46). As Wade explains, given the strenuous conditions of the terrain, it was difficult for the Spaniards to exert control over the slaves and stop them from running away. Most of them fled upstream and settled along the countless rivers of the Pacific jungle. Wade, 'Introduction. The Colombian Pacific in Perspective' 4.

<sup>520</sup> Wade, 'Introduction. The Colombian Pacific in Perspective' 4.

<sup>521</sup> *ibid* 5.

<sup>522</sup> Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 52.

<sup>523</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 37-39. Escobar, *Territories of Difference: Place, Movements, Life, Redes* 45-46.

The aquatic space refers to an assemblage of always shifting relations in which everyday life patterns in the region are deeply entangled with a range of aquatic elements, such as the physical and symbolic presence of the sea, intricate river networks, streams, waterfalls, mangrove swamps, high levels of precipitation, significant tidal ranges, and frequent large-scale inundations.<sup>524</sup>

Kinship lines develop along rivers. Families build settlements along the river basins, where they live and work in different times of the year according to the tides and seasons. The river is the main road that connects people to their neighbours, friends, and relatives. It is “the site providing dwelling, shelter, and a living space, and also the site for performing family.”<sup>525</sup> In this way black communities have developed a sense of belonging to the river where they are born; the river has become “a central point of reference in identity formation.”<sup>526</sup> People refer to themselves a born in a particular river rather than born in a settlement or village. Drawing on the local oral tradition, Oslender explains that the river is the source of emotional attachment and of a particular sense of belonging; he calls it an “aquatic sense of place.”<sup>527</sup>

For centuries, Buenaventura has been the connecting point for the indigenous and black communities of the Pacific littoral. The number of navigable rivers that flow into the Pacific Ocean at this point connecting the network of villages built along the littoral and the riverbanks made it an excellent setting for economic and cultural exchange. Its natural wealth also provided multiple means of subsistence to its inhabitants, turning Buenaventura into an attractive settlement. The dense network of rivers and streams in the area have facilitated the

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<sup>524</sup> Oslender, *The Geographies of Social Movements. Afro-Colombian Mobilization and the Aquatic Space* loc 594.

<sup>525</sup> *ibid* 32.

<sup>526</sup> *ibid* 28-34.

<sup>527</sup> *ibid* 34.

integration of rural and urban life, since the foundation of Buenaventura in the early 19<sup>th</sup> century.<sup>528</sup> The initial settlers established in the *Cajasal Island*, where they recovered land from the sea by filling and draining. A renewed interest in the Pacific region for purposes of gold mining and the commercialisation of natural resources such as *tagua* (ivory palm), rubber, and cacao emerged in the late 19<sup>th</sup> century after a long civil war. This enabled conservative political forces who promoted a unitary republic to come into power.<sup>529</sup> National and local elites began to imagine the Pacific region as a storeroom of natural riches to be extracted and exploited. It demanded the (white) colonisation of the area in order to take proper advantage of its resources and incorporate the region into the national economy. Concessions to foreign enterprises and some local elites, who could make the necessary investments, were at the centre of the strategy.<sup>530</sup> At the same time, the port became crucial for the plans linking the new country to global commercial networks. Against this backdrop, the national government commissioned the construction of the first dock.

Foreign corporations, recipients of concessions or attracted by commercial interests, played an important role in “modernising” the region. They brought with them novel architectural styles, up to date mining technologies, and a logic of accumulation which overlapped with the local logic of subsistence. The new commercial activity triggered the development of large infrastructure projects, such as the Pacific railway, inaugurated in 1915, which connected Buenaventura to Cali, the main (white) city in the region. The first modern dock was concluded six years later, while the construction of the road that would offer a transport alternative to the railway began in 1926.<sup>531</sup> The railway and the new dock prompted sugar cane and coffee exports, which later on became prominent sources of income for the national economy.

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<sup>528</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 40-41.

<sup>529</sup> See Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 52 Wade 2002 5.

<sup>530</sup> *ibid*, 52s.

<sup>531</sup> *ibid* 53, 57.

The flourishing port boosted the economy of the region and attracted new waves of migrants, contributing to the consolidation of Buenaventura as a city.<sup>532</sup> Their arrival also intensified a de facto socio-spatial segregation: the African-descendants were kept separated from the port and the traders who were mainly foreigners at the time. While the former, in accordance with their traditional lifestyle, settled in intertidal areas and built wooden hamlets, the latter built wealthy neighbourhoods and the commercial infrastructure required for the functioning of the port. The clash between developmental aspirations of the city and the black neighbourhoods soon became evident. In the first urban plan for Buenaventura (1932), there were calls for the eviction of black slums. The plan suggested that black people's 'shacks' infringed upon urban aesthetics. The City's initial urban regulations also introduced high construction standards which only white and rich inhabitants could fulfil.<sup>533</sup>

### 3.2. *National Development*

In the 1950s, the national government took over management of the port.<sup>534</sup> In 1959 the national corporation Ports of Colombia (Colpuertos) was created with the objective of nationalising and centralising the management of the most important ports. With the arrival of Colpuertos in Buenaventura, control of commercial activities was handed over by foreign elites to local bureaucrats, forcing the former to leave. At the same time, Colpuertos became an important source of secure employment for local inhabitants. It played a crucial role in the redistribution of income in the city by hiring of local services. As a large number of local inhabitants found secure jobs in the flourishing port, the living conditions of the local population improved. The jobs gave many *Bonaverenses* access to social citizenship in the form of healthcare, education and pensions. These are remembered as the golden years of

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<sup>532</sup> *ibid* 57.

<sup>533</sup> Aprile-Gnisset, *Poblamiento, hábitats y pueblos del Pacífico* (as cited in Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 57).

<sup>534</sup> Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 57.

Buenaventura. People who did not get access to secure employment, mainly black and indigenous populations, remained excluded from social citizenship, yet benefited from the money which the port pumped into the informal economy. These dynamics attracted new waves of migrants, mainly from rural areas of the Pacific region, which led to a dramatic process of expansion which accelerated in the 1970s as the construction of new roads connecting Buenaventura to other parts of the Pacific was concluded. So the 1960s and 1970s witnessed not only the growth of the population of Buenaventura, but also an important improvement in their living conditions. Buenaventura became the largest black city in Colombia, as African-descendants from rural areas migrated to the city port.

It is in these same years that the discourse of development made its appearance in the region. In the 1960s, local elites (mainly) from Cali began to demand public investment to modernise the region (including the port infrastructure) with the aim of promoting timber, sugar cane and coffee exports.<sup>535</sup> In line with old representations of the Pacific as a savage territory, the developmental drive was coupled with a representation of the region as a backward and forgotten territory inhabited by tribal groups (indigenous *and* black communities) unable to take advantage of its natural wealth. In light of the economic development experienced by a number of Asian countries, national elites began to realise the economic potential of the Pacific region. The expected developmental interventions began to emerge in the late 1970s. Plans to turn Buenaventura into a hallway for the intense traffic of goods and services and a focal point for the integration of Colombia into pan-Pacific and trans-Pacific exchanges were crafted.<sup>536</sup> In 1977 for instance, a development plan for Buenaventura was created with the goal of providing the city with the social and physical

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<sup>535</sup> Alvaro Pedrosa, 'La institucionalización del desarrollo' in Arturo Escobar and Alvaro Pedrosa (eds), *Pacífico: ¿Desarrollo o diversidad? Estado, capital y movimientos sociales en el Pacífico colombiano* (Pacífico: ¿Desarrollo o diversidad? Estado, capital y movimientos sociales en el Pacífico colombiano, Cerec & Ecofondo 1996.)

<sup>536</sup> *ibid* 71-72.

infrastructure required for the expansion of the port. It talked about new roads, warehouses and other facilities necessary for improving the efficiency of the port.

The representation of the Pacific as a forgotten, underdeveloped and marginalised region intensified in the 1980s as demands for trade liberalisation increased. Such representation opened the institutional and political space to new modernising projects led by multilateral institutions, corporations and the state. The dynamic of exploitation of natural resources by foreign capital through concessions which predominated up to the 1970s was then replaced by a modernising dynamic based on accelerated economic growth, urban expansion, ports' development and intensive extractive industries. President Belisario Betancourt, elected in 1982, declared the Pacific region one of the main national developmental targets, a declaration followed by the construction of a military facility, the establishment of an office for the promotion of trade in Tokyo, and the introduction of the first integrated development plan for the Pacific littoral (Pladeicop) in 1983. This was the first time that the Pacific was properly represented as a "developmentalizable entity".<sup>537</sup> The type of development envisioned by Pladeicop relied on physical infrastructure, industrialisation, technology transfer and training of the local population. In Buenaventura, the World Bank and the Inter-American Development Bank funded a number of infrastructure projects aimed at converting from a traditional port to a modern container hub. These institutions also began to demand privatisation (as had occurred in Chile), labour flexibilisation and tougher policies against unions. These changes were required in order to reduce operations costs and attract private investors.<sup>538</sup>

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<sup>537</sup> Escobar, *Territories of Difference: Place, Movements, Life, Redes* 159.

<sup>538</sup> Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 61-62.

### 3.3. Privatisation

The 1980s also saw the opening of the political space to local political forces. A constitutional amendment passed in 1986 authorised the democratic election of municipal mayors, together with a decentralisation drive which later on was consolidated in the 1991 Constitution. These diluted the power of the national government in Buenaventura. At the same time that local elites acquired more decision-making power, networks of corruption emerged and competed for the administration of tax revenues and royalties produced by the port.<sup>539</sup> Colpuertos became dominated by local political forces, which began to extract rents for their own benefit. In the 1990s, Pladeicop was replaced by two new development plans: the Pacific Plan and the Biopacific Project. They complemented the 1980s development strategy with a focus on large-scale infrastructure investments (including modernisation of the port of Buenaventura) and conservation-related concerns, respectively. In other words, in the 1990s the Pacific as a target of development was understood through the lens of sustainable development.<sup>540</sup> As will be explained in more detail in the fourth section, the sustainable development lens informed the Constitution adopted in 1991, in which the Pacific coast was represented as a rich region in terms of natural resources, biodiversity and multiculturalism. At the same time, the new Constitution saw in the Pacific a strategic location for purposes of trade liberalisation (in line with its neoliberal inspiration) and extraction of resources (including the exploitation of its biodiversity for pharmaceutical-related uses).

In this context the 1991 Law 01 was passed, which ordered Colpuertos' liquidation and trusted the administration of all national ports to private corporations under concession schemes. The turn to privatisation had begun in the 1980s when Colpuertos was turned into a public commercial enterprise, a legal arrangement which granted greater power to local elites and private operators. The process concluded in the 1990s when the firm was closed

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<sup>539</sup> *ibid* 61.

<sup>540</sup> *ibid* 63-64; Escobar, *Territories of Difference: Place, Movements, Life, Redes* 157.



down and was replaced by the Regional Port Society of Buenaventura, a public-private corporation in which private capital, composed mainly of import and export businesses, had an 83% share.<sup>541</sup> It was granted a license to operate the port for twenty years, renewed in 2008 for the same period. The privatisation of national ports was part of a more general wave of privatisation encouraged by President Cesar Gaviria (1990-1994), which found legal support in the new Constitution adopted in 1991. Besides the privatisation of ports, Gaviria's strategy contemplated a new role for the state: from operator to enabler and regulator. Subsequently, a new regulatory agency for the port sector was established, while state sponsored projects for improving port infrastructure were put in place - even though port revenues are now owned by private enterprises.

Several infrastructure projects, funded by the national government, foreign governments and international financial institutions, followed the privatising drive. The 1996 Conpes Document 2840 contemplated a number of infrastructure projects aimed at increasing the productivity of the port. Under the title "Integral Access to the Pacific," projects included the improvement of railroads and motorways, modernisation of the port's infrastructure, and construction of specialised docks.<sup>542</sup> In 2001, Buenaventura was declared a "Special Economic Zone for Exports" in order to attract investors as a means to promote new exports. The new regulation involved tax benefits and more labour flexibility for new businesses.<sup>543</sup> The key words were competitiveness and efficiency.

The conservationist trend that prevailed throughout the 1990s suffered a sharp curtailment in the 2000s as the region experienced an aggressive return to extractive

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<sup>541</sup> Inge Helena Valencia, Laura Silva Chica and Alejandro Moreno Moreno, 'Violencia, desarrollo y despojo en Buenaventura' 9.

<sup>542</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 2840 de 1996 "Proyectos de desarrollo de infraestructura con financiamiento del gobierno japonés"* (1996).

<sup>543</sup> Law 677 of 2001 created the 'Special Economic Zones for Exports' with the objective of 'creating special legal conditions for the promotion, development and implementation of processes of production of goods and services for exportation' (article 1). See also <http://www.investincolombia.com.co/investment-incentives/special-economic-zones-for-exports.html>, retrieved 1 June 2018.

industries. The decade witnessed a rapid expansion of African palm plantations, industrial shrimp farming and a new wave of alluvial gold mining concessions. These industries grabbed large tracts of land, mostly expanses of forest or mangroves swamps previously devoted to traditional production systems, creating myriad socio-environmental conflicts. This is something I will return to in the next section. Beginning in the early 1990s, African palm cultivation and palm oil production became one of the country's principal export strategies.<sup>544</sup> This was strengthened during Alvaro Uribe's presidency (2002 – 2010), who in the context of the growing global market of biofuels, managed to turn Colombia into the fourth largest global palm oil producer by 2007. African palm was conceived in Escobar's words as the 'arrowhead of capital and state action in the development of the region and its much-touted insertion into the Pacific Basin economies.'<sup>545</sup> The eagerness for industrial African palm cultivation caused land concentration, destruction of primary forest, and massive displacement of people. While in 1989 fourteen thousand hectares were planted, by 1996 the number had increased to thirty thousand hectares.<sup>546</sup> The pace of land appropriation increased after 1999, with the arrival of paramilitary forces to the Pacific littoral. They helped large palm enterprises, most of them controlled by large capital groups from the interior of the country, to clear the land and discipline labour.<sup>547</sup> Again, this will be returned to shortly.<sup>548</sup>

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<sup>544</sup> The introduction of African palm in the Pacific region began earlier, in the 1960s, when some governmental institutions concerned with the improvement of agriculture brought the seeds to the country. An experimental farm was created in the southern lands of the Pacific region near Tumaco and soon after the crop extended to other areas with not much success. See Escobar, *Territories of Difference: Place, Movements, Life, Redes* 76.

<sup>545</sup> *ibid.* 71.

<sup>546</sup> *ibid.* 79.

<sup>547</sup> *ibid.* 79-81.

<sup>548</sup> Escobar points out that next to industrial African palm plantations, local inhabitants have designed other techniques to grow the crop which cannot be described as exclusively capitalist or, put it differently, that represent an alternative to the capitalist logic that have dominated African palm cultivation in the region. He describes the local farming practices in the following way: '... cultivation practices there are entirely different. Rather than planted in regular rows, the palm trees are dispersed throughout the farm, interspersed with other food crops, such as plantain and cocoa. This does not mean that the palm trees are planted randomly because *agricultores* have an accurate mental map of the entire farm as well as an understanding of the associations among the various trees and crops. Farmers take into account not only the type of seeds and soils, but also the regimes of shade and temperature around each plant, including weeds (e.g., vines). Black farmers thus tend to reproduce in their plots the heterogeneity and complexity found in primary or secondary forests. For government technocrats, such complexity appears irrational, disordered, and ignorant (e.g., cega 1999: 35 –37). For the

The enthusiasm for industrial shrimp farming arrived in the Pacific in the late 1980s. As industrial fleet fishing came under attack for its environmental effects, international development institutions began to dream of projects of large-scale aquaculture. In the late 1980s they began to provide technical assistance for industrial aquaculture as well as to fund projects worldwide.<sup>549</sup> The shrimp industry took off in the Colombian Pacific region in the late 1980s, thanks to generous public subsidies and support from international development institutions. As in the case of African palm plantations, large economic groups from the interior of the country established very large shrimp farms. Their creation has meant the destruction of large tracts of mangrove swamps, which were uprooted to make room for vast ponds. Many of these areas have been enclosed, preventing local communities from navigating or using them for traditional production practices.<sup>550</sup> In turn, shrimp processing plants are known in the region for their precarious labour conditions: without secure jobs, ‘workers stand on a wet floor for the entire day, are paid *a destajo*, that is, according to the weight of the shrimp they are able to process (clean, behead, peel, and devein), and often end up with severe back pain and bloody hands’.<sup>551</sup> In short, shrimp farming has involved the destruction of mangrove areas, their fragile ecosystems, and the traditional production and cultural practices associated with them.<sup>552</sup>

These extractive activities created a new demand for port services which was translated into new projects for the expansion and modernisation of the 2001 port. Law 677 turned Buenaventura into a Special Economic Zone of Exports, with the aim of attracting foreign investment, in particular for purposes of developing export-oriented industrial

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farmers, it is a way of ensuring food supply and the reproduction of the domestic group, while generating some surplus for the market.’ Ibid 82.

<sup>549</sup> See *ibid* 86.

<sup>550</sup> See *ibid* 86-90.

<sup>551</sup> *ibid* 87-88.

<sup>552</sup> As in the case of non-industrial African palm cultivation, communities from the Pacific have developed their own techniques for shrimp farming and organised collective enterprises to distribute work and the profits. Escobar also considers these experiences as examples of resistance to capitalist logic and of alternative ways of organising economic life. See *ibid* 95-101.

enterprises.<sup>553</sup> Furthermore, in the early 2000s, a Master Plan for Buenaventura was designed with technical and financial support from the Government of Spain. This projected the construction of a logistic and customs area and an industrial park. The 2005 Conpes document 3342<sup>554</sup> gave way to the construction of a Zone for Logistic Activities and outer harbour facilities. In 2006, the Pacific railway's tracks were renovated, while in 2008, the Spanish corporation TCBuen was granted a concession for the construction and operation of a container facility in the continental area of the town. The construction concluded in 2012 after several confrontations with the local community and the eviction of many slum dwellers. In 2017, the new Sweet Water Port facility was inaugurated.

The new developmental drive was also prompted by the free trade agreement signed with the United States in the early 2000s and the Pacific Alliance, a commercial agreement which seeks further trade integration between Colombia, Mexico, Chile and Peru. These new treaties created additional pressures for expanding the port and improving its connectivity. These were translated into new infrastructure projects, such as the Sweet Water Port. As the port has expanded and flourished, living conditions in Buenaventura have plummeted.

### *3.4. The Port & the City*

The privatisation of the port marked a turning point in its history. It prompted a definitive rupture between the local community and the flourishing economy of the port.<sup>555</sup> On the one hand, labour conditions were severely blemished. Casualisation and precarisation became common. Workers are now hired through third parties without stable labour conditions and social security protection, as a number of fines imposed by the Ministry of

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<sup>553</sup> Congreso de la República de Colombia, *Ley 677 de 2001 "Por medio de la cual se expiden normas sobre tratamientos excepcionales para regímenes territoriales"* (2001).

<sup>554</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3342 de 2005 "Plan de expansión portuaria 2005-2006: Estrategias para la competitividad del sector portuario"* (2005).

<sup>555</sup> Valencia, Silva Chica and Moreno Moreno, 'Violencia, desarrollo y despojo en Buenaventura' 9.

Labour to some port operators for hiring permanent workers have demonstrated.<sup>556</sup> Technological changes have led to a drastic decline in the number of available port-related jobs. This decline is being intensified by the growth of the population and the crisis of the informal economy which used to provide employment to a vast sector of the population. As unemployment skyrocketed, competition among workers increased, reducing the payment they are willing to accept. Hence, average salaries of port workers have decreased significantly, moving from 6.3 times the minimum wage in the 1980s, to 1.8 times in the early 2000s.<sup>557</sup> Alternatively, many people found a source of income in the shadow economy.<sup>558</sup> Drug trafficking, arms smuggling, criminal militias, among other activities, have become prime sources of income for youth. Furthermore, the development of the port has translated into evictions, displacement, water pollution and brutal violence – as will be analysed in the following section. To make things worse, no product or raw material exported through the port is manufactured in Buenaventura.<sup>559</sup> The town lacks industry, while its informal economy is facing a severe crisis as the port has stopped pumping money into local businesses and some small industries such as fishery and timber have almost disappeared. The businesses that surround the port are run by white elites from Cali and other white regions. They do not reside in Buenaventura and take all their revenues with them.<sup>560</sup> All these factors have contributed to the high levels of poverty for the people of Buenaventura.

To this day, the city hosts three parallel economies: On the one hand, the port economy linked to logistic, financial and hospitality services; on the other, the retail economy run by the locals and based on activities such as agriculture, fishing, forestry and ecotourism.

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<sup>556</sup> Cindy Viviana Aurora Moreno, 'Buenaventura a la deriva: historia de un puerto en contravía de su pueblo 1945 hasta el presente.', Universidad del Valle 2013) 154-157.

<sup>557</sup> *ibid* 22.

<sup>558</sup> Gearóid Ó Loingsigh, *La reconquista del Pacífico: invasión, inversión, impunidad* (First edn, Proceso de Comunidades Negras - PCN 2013) 99.

<sup>559</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 52.

<sup>560</sup> Valencia, Silva Chica and Moreno Moreno, 'Violencia, desarrollo y despojo en Buenaventura' 9.

While the former is capital intensive and depends upon external factors, the latter is labour intensive and based on traditional economic activities, connecting Buenaventura to the villages of the rural areas of the Pacific. Moreover, while the former is flourishing and expanding, the latter is experiencing a profound crisis in a context of unemployment, poverty and inequality levels significantly above the national average.<sup>561</sup> The illegal economy, based on drug trafficking, arms smuggling, oil stealing, and mercenary services, among others, must be added to this list. Run by actors such as the FARC, paramilitary groups and recently the criminal gangs known as *Bacrim*, it has become an important source of income for the locals, but it is also implicated in their impoverishment as the illegal economy is also implicated in evictions, displacements, and land speculation in connection to the expansion of the port facilities.

### *3.5. Contemporary Development Plans*

Since the mid-2000s, as poverty and social unrest escalated in Buenaventura, it entered the national government's agenda, at least at the rhetorical level. A set of policy papers and social plans has been crafted aimed at improving the living conditions of the people of Buenaventura. As in the other cases studied in this thesis, investment-led economic development, in this case symbolised by the port, is portrayed as the main solution to poverty, while poverty is represented as a problem to the extent that it hinders attempts to create a good investment climate. These documents are also riddled with individual-based explanations of poverty which end up responsabilising the poor population of Buenaventura for its own fate.

For instance, in 2006, the CONPES launched a policy paper with the title "State Policy to Improve the Living Conditions of the Population of Buenaventura." The

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<sup>561</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 56-58.

document formulates a diagnosis of poverty in the port-city and introduces four strategies to alleviate it: achieving the Millennium Development Goals, promoting regional economic development and competitiveness (with an emphasis on entrepreneurialism), enhancing human capital and physical infrastructure, improving of equality and solidarity, and finally, strengthening of governance and democracy.<sup>562</sup> These strategies are basically an inclusive growth formula. The document is full of data and descriptions of how poor people live in Buenaventura. Even though there are some attempts to formulate causal explanations, they rely mainly upon local factors. According to the policy paper, poverty is caused by unemployment and deficient institutional capacity. The former originates in people's lack of "employability" and 'entrepreneurial attitudes' due to low levels of education and 'self-esteem problems associated with their marginality.'<sup>563</sup> In the case of the forcibly displaced population that have settled in the port-city, the document also draws attention to the importance of changing their "values". Their former engagement in illegal or low-paid economic activities (the document just assumes this), has resulted in their "devaluation of life, degradation of work and loss of the value of personal effort." This means that they must be helped to "assume a new attitude towards themselves and their context, recovering the duties and obligations of a citizen in charge of his own... development."<sup>564</sup> In turn, poor institutional capacity, which prevents growth and development from reaching the lower classes, is represented as a problem of low levels of democratic participation and accountability, combined with a lack of communication and cohesion between public and private sectors.<sup>565</sup> In this way, poverty is represented as disconnected from the operation of the port and as a problem of lack of individual, ethical and cultural capabilities and local institutional weaknesses.

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<sup>562</sup> See Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3410 de 2006: "Política de estado para mejorar las condiciones de vida de la población de Buenaventura"* (2006). 21-22.

<sup>563</sup> See *ibid* 15.

<sup>564</sup> *ibid* 34-35.

<sup>565</sup> See *ibid* 15-16.

Most recently, the National Development Plan for the period 2014-2018 devoted an entire section to the problems of the Pacific littoral and to design territorially-specific solutions to its most pressing problems. For the national government, the high levels of deprivation of the region are connected to the dynamics of violence and illegality which have prevailed there during the past two decades. Forced displacement has led to the concentration of impoverished populations in cities like Buenaventura, giving birth to new slums and ghettos.<sup>566</sup> This situation has been facilitated by a culture that is tolerant and even conducive to illegal activities. As a general diagnosis of the relationship between poverty and conflict in the country, the document refers to the emergence of “customs and practices likely to not comply with the rules and social agreements.”<sup>567</sup> Hence the solution to poverty, besides increasing competitiveness and improving human capital formation (the old formulas), lies in eradicating the culture of illegality that spread throughout this territory.

The problematisation of poverty as an obstacle to investment can be clearly appreciated in the integrated regional development plan “Todos Somos Pazcífico,” created in the aftermath of the massive mobilisations that took place in Buenaventura in 2014. I will come back to these demonstrations further on. In this document, the national government asserts that poverty in the Pacific littoral is one of the most critical problems of the region and points out that “this context represents a limitation at the international level,” in particular, “within the framework of strategies such as the Pacific Alliance; the Colombian Pacific is less competitive than the other countries of the alliance.”<sup>568</sup> Then the document compares the poverty of the people with the natural wealth of the region, implying that in

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<sup>566</sup> Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2014-2018 "Todos por un nuevo país. Paz, equidad, educación"*. (2015) 845.

<sup>567</sup> *ibid* 449.

<sup>568</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3847 de 2015 "Plan Todos Somos PAZcífico: Concepto favorable a la Nación para otorgar garantía al patrimonio autónomo 'Fondo para el desarrollo del plan Todos Somos PAZcífico', para contratar operaciones de crédito público externo hasta por la suma de USD 400 millones, o su equivalente en otras monedas, destinados a su financiamiento parcial y; declaración de importancia estratégica del programa de inversión que se financiará con estos recursos"* 19.



spite of the abundance of resources, people have been unable to turn it into wealth. This shows a weakness in the ability of the region to compete. The solution then is to improve competitiveness.

At the local level, similar individualised explanations and solutions to poverty have been formulated. For instance, the Territorial Development Plan passed in 2001 associates precarious housing conditions with black people's cultural practices. The document emphasises the importance of making people aware of the safety risks of building hamlets in intertidal areas together with traditional housing techniques.<sup>569</sup> For the municipal government, traditional construction styles are incompatible with modern urban infrastructure and create obstacles for housing improvement plans. Housing policies in Buenaventura represent traditional construction techniques as backward and dangerous, as they involve proximity to the sea, the use of traditional materials (such as timber) and design that is incompatible with modern utilities. In the 2007 CONPES document 3476, relocation and subsidised housing programmes are coupled with urban renovation projects. This includes the construction of a promenade in the intertidal areas which were supposed to be vacated by the relocation schemes.<sup>570</sup> The promenade, ostensibly designed to attract tourism, is also justified as a means to prevent relocated people from returning to their previous settlements which are categorised as particularly at risk to tsunamis.<sup>571</sup> In this way, the housing policy assumes black people's culture to be backwards, discredits their housing practices and ignores their existential and cultural connection to the sea.

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<sup>569</sup> See Article 142. Concejo Municipal de Buenaventura, *Acuerdo No. 3 de 2001 "Por el cual se adopta el Plan de Ordenamiento Territorial para el Municipio de Buenaventura, Valle del Cauca"* (2001) 61.

<sup>570</sup> The Conpes 2007 document 3476 introduces a mega-housing project that would provide shelter to more than 3,400 households, most of them relocated from the intertidal areas of the *Cajascal Island* in the proximities of the port, that is, an area of interest for urban renovation purposes. See Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3476 de 2007: "Importancia estratégica de los macroproyectos de vivienda de interés social en Cali y Buenaventura"* (2007).

<sup>571</sup> *ibid* 7.

These narratives about poverty disconnect impoverishment from the port and the whole project of development of the country based on privatisation and trade liberalisation. In turn, its causes are found in individual explanations and local factors associated with cultural weaknesses and individual failure. In this way, the poor people of Buenaventura, most of them black people, are constituted as undeserving poor, that is, as a population which do not deserve support from either the state or the port. These narratives are connected to the representations of the port. Not only is it not responsible for the poverty of the locality, but it is seen as the only possible means to develop the region. Thus, attempts to generate a solution to the problem of poverty actually generate a hierarchical relation between the port and the poor. While the former is elevated to a superior interest which demands great efforts and sacrifices on the part of the state and the people, poverty is portrayed as an independent phenomenon. It is disconnected from the economy of the port and even obstructs the port's flourishing. Therefore, the poor have no right to claim social and economic justice, and in turn, have to adapt to the requirements of the port or simply disappear. This is another instance of the sacrificial neoliberal citizen described by Wendy Brown.<sup>572</sup>

This section has also suggested that social policy plays a secondary role in governmental policies regarding Buenaventura; it becomes relevant only insofar as it helps to create a better investment climate by means of shaping labour and containing social unrest and criminality. The lack of social provisions, the way the communities have been historically neglected and the manner they have been subordinated to the requirements of development are means by which precarity has been produced in Buenaventura; this is another instance of the precarisation Lorey refers to as a technique of neoliberal governmentality.<sup>573</sup> To put it simply: it is not only that poverty has been a by-product of development; but also that the

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<sup>572</sup> Wendy Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution* (First edn, Zone Books 2015). Her views about the neoliberal sacrificial citizen are examined in chapter two.

<sup>573</sup> Isabell Lorey, *State of Insecurity. Government of the Precarious*. (First edn, Verso 2015).

state has been actively implicated in the production of precarity through negligence and poor social provision. Violence is another factor which contributes to this precarisation, but I will look at it in the next section. Precarisation by means of governmental neglect and poor social services is consequently part of a necropolitics which seeks to manage the redundant population vis a vis the current needs of the port.

#### **4. Violence of Development / Security of the Port**

In the mid- to late-1990s, the violence of the Colombian civil war spiralled out of control in the Pacific lowlands. The escalation of violence is not just a coincidence. As Escobar suggests, violence has been a technique traditionally deployed by the state and other actors to regulate conditions of production (including nature and labour) to capital; in other words, to create the conditions for capital to flourish. Violence in Colombia is embedded in this logic since colonial times. As Hobsbawm and Molano argue, the history of Colombia is characterised by a close relationship between processes of land colonisation and violence.<sup>574</sup> Escobar, Oslender and others also note that the rise of violence in the Pacific lowlands of Colombia in the late 1990s is part of a global trend through which capital has re-accommodated to seek new sources of profit. But, as Escobar highlights, both the State and non-state actors resorted to violence in the Pacific region because of “the assertive persistence of different regimes of production/signification (black and indigenous cultural practices),”<sup>575</sup> that is, resilient forms of being together contrary to the logic of orthodox development and capital accumulation. Violence was deployed to domesticate those other forms of being and living, which have resulted in a strong political mobilisation across the region. Alongside this materialist conception of the violence, I also want to put forward the argument that the extreme violence experienced in Buenaventura has to do with its symbolic

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<sup>574</sup> Oslender 2008 91, referring to Hobsbawm and Molano.

<sup>575</sup> Escobar, *Territories of Difference: Place, Movements, Life, Redes* 94, 108.

role as the border and as a privileged site for the formation of investors' expectations. This section focuses on how violence has advanced and escalated in Buenaventura since the late 1990s. It shows how violence has been instrumental in creating the conditions for neoliberal development, while development, at the same time, has brought with it other forms of violence. Even though for organisation reasons I refer to development, violence and contestation in different sections, they relate to each other in a dialectical manner. They are mutually constituted, an idea to which I will return to this.

#### 4.1. *The Violence of Civil War*

Up to the late 1990s, the Pacific region remained isolated from the enduring Colombian civil and political conflict. Even though the Revolutionary Armed Forces of Colombia (FARC) arrived at the Pacific littoral in the 1980s, it was not until the late 1990s that the group intensified its activities in the region.<sup>576</sup> Under pressure from illegal crops eradication efforts funded by *Plan Colombia* in the southern lands of the country, the guerrilla group strengthened its presence in Buenaventura looking for new sources of income. In particular they sought to capitalise on the illegal economies of the region, primarily coca leaf cultivation and drug trafficking.<sup>577</sup> They were responsible for the first wave of forced displacements in the region.

Following the intensification of the FARC's attempts to control territory, military and paramilitary forces made their first significant appearance.<sup>578</sup> Supported by local

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<sup>576</sup> Escobar, 'Desplazamientos, desarrollo y modernidad en el Pacífico colombiano', 57 Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 160.

<sup>577</sup> Luis Carlos Castillo, 'Acción colectiva y resistencia negra en el Norte del Cauca y Sur del Valle' in Luis Carlos Castillo G. and others (eds), *Etnicidad, acción colectiva y resistencia: El norte del Cauca y el sur del Valle a comienzos del siglo XXI* (Etnicidad, acción colectiva y resistencia: El norte del Cauca y el sur del Valle a comienzos del siglo XXI, First edn, Universidad del Valle 2010) 173.

<sup>578</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 107-109; Oslender, 'Violence in development: the logic of forced displacement on Colombia's Pacific coast' 758; Escobar, 'Desplazamientos, desarrollo y modernidad en el Pacífico colombiano', 57; Oslender 2008 87-91.

businessmen and the military, paramilitary troops were deployed in an attempt to dispute the territorial control and influence over the population that FARC had gained in the previous years.<sup>579</sup> Their arrival heralded a period of intense violence, characterised by massacres, selective killings and forced displacements of population. The first military-paramilitary massacre in the Pacific region occurred in December 1996, in the municipality of Riosucio (the Department of Choco), when military airplanes indiscriminately bombed the town at night. In the following days, chased by paramilitary search troops, approximately 20,000 Afro-Colombians fled the area, many of them reaching as far as Bogota. In the following years many more massacres occurred, thousands of people were forcefully displaced and other were subjected to confinement in their own lands. Oslender describes how the severity and cruelty of the violence exerted in the Pacific littoral turned entire regions into landscapes of fear. Terror and fear were stamped on both victims (their bodies and minds) and landscapes. In line with Escobar, Oslender shows how the creation of landscapes of fear attempted not only to displace black communities or destabilise their traditional forms of production, but also to destroy the foundations of their cultural and epistemological viability; they attempted to destabilise their whole social system and world view.<sup>580</sup>

The 1991 Constitution recognised collective land rights for the black communities of the Pacific lowlands. This provided them with apparent security of tenure, but also meant that violent displacement would become the key to 'clearing' the land. The violence began soon after the first collective titles were granted. It proved successful in at least the following respect. To begin with, it had the effect of preventing new requests for collective titles. Collective titling would entail restrictions on commercial and extractive activities that previously would only have required the acquiescence of national and regional governments. This would compel enterprises to negotiate with communities in line with the international

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<sup>579</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 163.

<sup>580</sup> Oslender 2008 79, 90.

regulations on previous and informed consent. Furthermore, there was an emerging constitutional case law that recognised the right of indigenous and black communities to be consulted before extractive activities or development projects take place in their territories. Collective titling would also foster the formal definition of property boundaries. This would prevent the creep of extractive activities within protected areas. Hence, the military and paramilitary arrival at the Pacific littoral was instrumental in halting political mobilisation in the form of processes of collective titling.

The massacres and other forms of violence exerted by military and paramilitary groups also served the purpose of facilitating the arrival of new transnational extractive industries to the Pacific lowlands. As documented by Escobar, Oslender and others, during the 2000s a new wave of extractive industries reached the Pacific, encouraged and supported by President Alvaro Uribe. As explained in the previous section, the conservationist trend that the 1990s witnessed was replaced in the 2000s by a return to the logic of massive extraction and exploitation of natural resources. African palm plantations, shrimp farming and a new wave of alluvial gold mining extended throughout the territory.<sup>581</sup> Paramilitary forces, in collusion with the military and other public authorities, prevented communities from requesting collective titles. Instead they forced them to cooperate with new industries, or simply ‘cleared’ the land by threatening or actually carrying out massacres. As a result, many of these extractive projects were established in lands collectively owned by black and indigenous communities, while the local population was forced to cooperate with them.<sup>582</sup>

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<sup>581</sup> Beginning in the early 1990s, African palm cultivation and palm oil production became one of the country’s principal future export strategies. . This strategy was intensified during Alvaro Uribe’s presidency. Thus, in 2007, Colombia had been turned into the fourth largest palm oil producer in the world. Oslender, 'Violence in development: the logic of forced displacement on Colombia's Pacific coast' p. 760 For a detailed account of the expansion of African palm plantations and shrimp farms in the Pacific see Escobar, *Territories of Difference: Place, Movements, Life, Redes* chapter 2.

<sup>582</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* p. 107-109 Oslender, 'Violence in development: the logic of forced displacement on Colombia's Pacific coast' 758-759; Ulrich Oslender, 'Another History of Violence. The Production of “Geographies of Terror” in Colombia’s Pacific Coast Region' (2008) 35 *Latin American Perspectives* 77 91-92.

Buenaventura proved to be a fertile milieu for illegal economies to flourish, due to a combination of natural wealth, strategic location,<sup>583</sup> the prosperous port and the large unemployed and impoverished population.<sup>584</sup> The illegal economy attracted both guerrilla and paramilitary groups. The violence brought about by these groups has produced devastating effects: According to official data, in the years between 2000 and 2013 approximately 3,400 homicides, 450 forced disappearances and 25 massacres were committed *in* the city, while between 1990 and 2014, 152,837 people were forcibly displaced.<sup>585</sup> The typical victims of homicide were black men from low-income background most of them workers in the informal economy.<sup>586</sup>

During the 1990s, the FARC penetrated Buenaventura in order to gain control over drug and arms trafficking routes, as well as land suitable for coca crops.<sup>587</sup> Even though the FARC had been present in the area before, the 1990s marked their attempt to control the territory.<sup>588</sup> Capitalising on the unemployment prompted by the privatisation of the port, the consolidation of the drug business in the area, and governmental plans to turn Buenaventura into the main national port,<sup>589</sup> they created a large apparatus that exerted control over an important number of neighbourhoods, rural areas and shipping routes. In the early 2000s, paramilitary groups reached the port funded by new waves of drug traffickers and local businessmen.<sup>590</sup> Their objective was not only anti-subversive, paramilitary groups also provided security services to the economic elites that benefited from the privatisation of the

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<sup>583</sup> Besides the port, Buenaventura's difficult terrain conditions – tropical rain forest and myriad brooks and rivers- make it a suitable territory for guerrilla-style activities.

<sup>584</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 55.

<sup>585</sup> *ibid* 213.

<sup>586</sup> *ibid* 223.

<sup>587</sup> *ibid* 85.

<sup>588</sup> *ibid* 157 – 160.

<sup>589</sup> *ibid* 160-161.

<sup>590</sup> Carlos Castaño, head of the United Self-Defence Forces of Colombia (*Autodefensas Unidas de Colombia* AUC), the association which grouped together paramilitary forces in the 1990s, acknowledged the direct connection between the paramilitary incursion in Buenaventura and local business' interest in securing the port after its privatisation. Valencia, Silva Chica and Moreno Moreno, 'Violencia, desarrollo y despojo en Buenaventura' 11.

port.<sup>591</sup> While the FARC attempted to control the illegal gangs (also a result of the privatisation of the port) by means of mass executions (“social cleansing”), the paramilitary groups created alliances with them. In return, the local gangs facilitated the arrival of paramilitary forces in the region and provided knowledge of the territory which allowed them to control routes to the port and exploit illegal businesses.<sup>592</sup> Capitalising on an anti-subversive discourse, paramilitary groups also created alliances with military forces and other state agents. The military provided protection and transport services to the paramilitaries, while at the same time turned a blind eye to the massacres of civilian accused of being guerrilla sympathisers.<sup>593</sup>

Massacres were the main tool used by paramilitary forces to gain control over the territory and the population. In Buenaventura, the majority of the massacres (20) occurred in three years, between 2000 and 2003.<sup>594</sup> In 2000, nine massacres were carried out in just seven months. Paramilitary troops particularly targeted people forcibly displaced from rural areas and accused of being guerrilla sympathisers.<sup>595</sup> The massacre that occurred in the upper lands of the River Naya in April 2001, rural jurisdiction of Buenaventura, is remembered as probably one of the cruellest. The Naya community was about to obtain a collective title, when 500 fighters of the Calima Block (with the complicity with the military)<sup>596</sup> decapitated and dismembered 45 black peasants and displaced other 3,000 from the riverbank.<sup>597</sup>

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<sup>591</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 86-94.

<sup>592</sup> *ibid* 97-100.

<sup>593</sup> *ibid* 100-102. Ever Veloza, *Alias HH*, a paramilitary leader, provided evidence to the government of military involvement in the *Sabalatea* and other massacres occurred in the Pacific region. Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 233.

<sup>594</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 228.

<sup>595</sup> *ibid* 169-171. The first occurred on 21 May 2000, when after a dreadful campaign in the neighbouring Department of Choco and a few days after committing a massacre in the nearby town of *Sabaleta*, paramilitary fighters arrived at Buenaventura. In the village of *Campo Hermoso* on the bank of the River Dagua, 4 peasants were murdered and other 6 disappeared after being accused of supporting the FARC. Shortly after, the Calima Block (the paramilitary command which operated in Buenaventura) reached the urban area and perpetrated a second massacre in the neighbourhood of *Cajascal*.

<sup>596</sup> The Ministry of Defence was sentenced to pay damages to the Naya community in relation to the massacre. According to the Council of State, the military openly ignored the alerts activated by the Office of the Ombudsman and allowed the massacre to happen. *ibid* 175-176.

<sup>597</sup> *ibid* 175.



Paramilitary groups introduced severe disciplinary rules to control the population. They established curfews, prohibited relationships with people from other neighbourhoods, ruled out homosexuality, punished domestic violence and regulated many other aspects of private life.<sup>598</sup> In this way they created a sense of overwhelming presence and constant vigilance. They also created alliances with local politicians and compelled communities to vote for them. In this way, they managed to manipulate local procurement and other decision-making processes, prevent punishment, and got support from local authorities for their businesses.<sup>599</sup>

Poor neighbourhoods in the continental area of the city were the most affected by paramilitary violence. Besides attempting to control illegal businesses such as drug trafficking, paramilitary fighters were involved in creating the conditions for the development of mega-projects. For instance, in district 5, where the neighbourhoods of *Santa Fe* and *La Inmaculada* are situated, criminality and violence skyrocketed precisely in the same period when the TCBuen facility began to be planned.<sup>600</sup> The community of *La Inmaculada* accuses paramilitary forces of displacing families from areas which were of interest for the TCBuen project and which were ‘recovered from the sea’ by them with great effort.<sup>601</sup> Precisely when TCBuen requested a licence for the construction of the container facility, another massacre was committed in *La Inmaculada*. Twelve young men were invited to participate in a football match and never came back. After their families reported their disappearance, their bodies were found dismembered and with signs of torture in a nearby stream. This is known as the *Punta del Este* massacre. The community accused paramilitary forces, but nobody has been convicted for this crime.<sup>602</sup>

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<sup>598</sup> *ibid* 180.

<sup>599</sup> *ibid* 181.

<sup>600</sup> *ibid* 249-250. See also Gisbert, Pinto and Sulé, *Asedio a las comunidades. Los efectos de una empresa catalana, Grup TCB, en Buenaventura, Colombia* 14.

<sup>601</sup> Gisbert, Pinto and Sulé, *Asedio a las comunidades. Los efectos de una empresa catalana, Grup TCB, en Buenaventura, Colombia*

<sup>602</sup> *ibid* 14.

#### 4.2. *The Emergence of the Bacrim*

The Calima Block demobilised in 2004 following the negotiations held by the national government and the central command of the paramilitary forces. However, the violence against the population did not stop. In fact, in many ways it escalated leading to a new wave of forced displacements. Women from Buenaventura named the years between 2005 and 2007 as the “years of insanity”.<sup>603</sup> Indeed, in 2005 violence began to escalate again in Buenaventura as guerrilla groups and criminal gangs, constituted mainly by ex-paramilitary fighters – known in Colombia as *Bacrim* – battled for the control of territories, populations and the illegal businesses that had previously been identified with the paramilitary forces. Some of the most affected neighbourhoods were precisely the previously paramilitary-controlled areas of *San Luis, El Progreso, Las Palmas, AR9, El Cristal, Rockefeller y Pampalinda*.<sup>604</sup> The massacre at *Punta del Este* marked the beginning of a new type of violence: “without faces and without bodies.”<sup>605</sup> During this period, massacres were replaced by forced disappearances, which created the appearance of reduction of the rates of homicide. In other words, forced disappearances were instrumental in hiding the evidence of the intensity of the war from the media and public opinion. Intra-urban forced displacements and confinement were also characteristic of this period; people were forced to move to other neighbourhoods or simply prevented from travelling across the city, limiting their access to food and other basic supplies.<sup>606</sup> As a result, since the demobilisation of the *Calima Block*, the rate of forced displacements duplicated, and shifted from collective to individual.<sup>607</sup>

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<sup>603</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 187.

<sup>604</sup> Álvaro Guzmán Barney, 'Acción colectiva y región: El Norte del Cauca y el Sur dle Valle (2006-2007)' in Luis Carlos Castillo G. and others (eds), *Etnicidad, acción colectiva y resistencia: El norte del Cauca y el sur del Valle a comienzos del siglo XXI* (Etnicidad, acción colectiva y resistencia: El norte del Cauca y el sur del Valle a comienzos del siglo XXI, First edn, Universidad del Valle 2010) 288.

<sup>605</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 188.

<sup>606</sup> *ibid* 198-199.

<sup>607</sup> *ibid* 235-237.

*Bacrim* violence was particularly intense in areas of influence of some mega-projects. In the Districts 3 and 4 in the insular area, these gangs intensified their activity since 2007 as the Promenade discussed in the previous section began to be designed. In District 6, an ideal location for port-related businesses such as warehousing and lorry parking facilities due to its proximity to the TCBuen facility, *Bacrim* battled for the control of the area.<sup>608</sup> In reaction, police and military presence was strengthened in the port-city. On the one hand, the national government adopted a security plan to curb violence that included the creation of a new police district backed by 200 marines, using state-of-the-art investigation and intelligence technologies. Later the government also introduced a Special Police Commander backed by 900 new police officers.<sup>609</sup> The new plan led in 2008 to the militarisation of several poor neighbourhoods.<sup>610</sup> According to the National Centre of Historic Memory, the militarisation meant the involvement of children, women and teenagers in the conflict, as the military and the police used them to get information about the local gangs. During the militarisation, the threats against local leaders also increased and many of them were assassinated.<sup>611</sup>

#### 4.3. *The Nexus Between Poverty and Security*

As part of President Uribe's 'Democratic Security' policy, Buenaventura was targeted by the National Consolidation policy, this was a policy designed to recover institutional control over the territories most affected by the civil war. Indeed, the demobilisation of paramilitary forces in 2004 was part of President Alvaro Uribe's policy to recover state control over the national territory and to end the internal civil conflict – which he did not recognise as an internal civil conflict but rather as violence exerted by terrorist and criminal groups linked to

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<sup>608</sup> *ibid* 250.

<sup>609</sup> Up to 2006, the police commander of the Department of Valle managed Buenaventura's police force. In 2006, the Police District of Buenaventura is granted autonomy and provided with more resources and staff. Guzmán Barney, 'Acción colectiva y región: El Norte del Cauca y el Sur dle Valle (2006-2007)' 287-286.

<sup>610</sup> *ibid* 232-234.

<sup>611</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 201-202.

drug trafficking and other illegal businesses. His policy of 'Democratic Security' also included a significant increase in military operations across the country, and subsequently, the combination of military and civil efforts to recover institutional control over the territories more affected by the war.

Hence in 2004, following the demobilisation of paramilitary forces and the success of military operations in some regions, Uribe's government began to design a stabilisation policy for recovered territories. The implementation of the policy started with the creation of a coordination office under the direct supervision of the Office of the President and supported by the Government of the United States (part of *Plan Colombia*).<sup>612</sup> The new office was conceived as a civic-military mechanism aimed at coordinating military and welfare interventions in order to maintain control over the recovered territories.<sup>613</sup> Drawing of counterinsurgency theory,<sup>614</sup> the policy also sought to gain the confidence of local residents through the provision of social services and the institutionalisation of participatory mechanisms. The objective was to turn the locals into allies of the military in its fight against

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<sup>612</sup> See Unidad Administrativa para la Consolidación Territorial, *Líneamientos de la Política Nacional de Consolidación y Reconstrucción Territorial* (2014) 14.

<sup>613</sup> As Neocleous reminds us, capitalism has always been about securing the insecurity that capital accumulation creates, being the poor a traditional enemy of security. Hence welfare interventions have proved to be an important tool in bringing about security. Mark Neocleous, *Critique of Security* (Edinburgh University Press 2008) 8. Hence it was not surprising the return to old counterinsurgency strategies with a high welfare component with the aim of bringing about security in the recovered territories.

<sup>614</sup> The new policy responded to the rise to prominence of counterinsurgency thinking in the 2000s and the turn towards 'stabilisation operations' in US policy regarding internal conflicts. According to counterinsurgency theory, 'insurgencies invariably deploy the same methods, which seek to subvert and mobilise the local population and turn it against the government. Insurgents need the population to provide recruits, supplies, and intelligence, and to act in ways that undermine the existing political order. Thus, COIN also has its own 'fundamentals', which seek primarily a counter-mobilization of the population – David Galula's 'first law', of mobilizing a pro-government minority against the insurgent minority, which in turn will demonstrate to a neutral majority that the incumbent's cause is winning. A fundamental technique in COIN practice, then, is to be able to achieve a high degree of local knowledge and an understanding of the population. This will allow them to isolate the illegal groups and secure the population through programmes to improve their quality of life and to 'ameliorate the existing contradictions within the targeted society' See Jorge E. Delgado, 'Counterinsurgency and the limits of state-building: An analysis of Colombia's policy of territorial consolidation, 2006–2012' (2015) 26 *Small Wars & Insurgencies* 408–411. Similarly, "stabilisation operations," following a diagnosis of 'fragile states', are aimed at enhancing institutional presence and the provision of basic social services through civil-military cooperation in order to bring about development in the long term. See Fundación Ideas para la Paz, *Balance de la Política Nacional de Consolidación Territorial* (Fundación Ideas para la Paz 2011) 12–14.

guerrilla groups.<sup>615</sup> It was not the first time that counterinsurgency strategies were introduced in Colombia, yet it was the first time that civic institutions were integrated into a military plan.<sup>616</sup>

The policy was upgraded into the Policy of Consolidation of Democratic Security in 2007,<sup>617</sup> at the onset of Uribe's second term. Later it was translated into the National Plan for Territorial Consolidation, nicknamed *Salto Estratégico* (Strategic Leap) in 2009.<sup>618</sup> The policy was updated to strengthen its social component following the military surge to confront guerrilla forces which characterised Uribe's first term.<sup>619</sup> The theoretical underpinning was the "Integrated Action Doctrine" developed by the Ministry of Defence. It consisted of a set of principles aimed at guiding civic-military cooperation, emphasising the importance of security for development and poverty eradication, as well as the urgency of a coordinated action among security forces (including police and anti-narcotic agencies), and agencies responsible for social and economic policy.<sup>620</sup> Thus, besides military goals, the policy included objectives such as attracting foreign investment and promoting an effective social policy as means to reduce poverty.<sup>621</sup>

Two strategies were combined under this policy. Firstly, military personnel got involved in activities related to social policy (such as the provision of basic social services like healthcare), and the construction of basic infrastructure in remote areas (such as roads and health facilities). Secondly, the policy discursively reinforced the link between security

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<sup>615</sup> The formation of networks of informants was a central aspect of Uribe's Democratic Security strategy. On the one hand, civilian participation in counterinsurgency activities is what, according to Uribe, made "Democratic Security" democratic." On the other, by turning civilians into part of the state, the aim was to create the sense that the state was strengthening its presence in weak or precarious territories. María Clemencia Ramírez, 'Maintaining Democracy in Colombia through Political Exclusion, States of Exception, Counterinsurgency, and Dirty War' in Enrique Desmond Arias and Daniel M. Goldstein (eds), *Violent Democracies in America Latina* (Violent Democracies in America Latina, Duke University Press 2001) = 96-97.

<sup>616</sup> Fundación Ideas para la Paz, *Balance de la Política Nacional de Consolidación Territorial* 5.

<sup>617</sup> Ministerio de Defensa Nacional, *Política de consolidación de la seguridad democrática PCSD* (2007).

<sup>618</sup> See Presidencia de la República de Colombia, *Directiva Presidencial No. 01 de 2009* (2009).

<sup>619</sup> Fundación Ideas para la Paz, *Balance de la Política Nacional de Consolidación Territorial* 16.

<sup>620</sup> Ministerio de Defensa Nacional, *Política de consolidación de la seguridad democrática PCSD* 31-32.

<sup>621</sup> See Presidencia de la República de Colombia, *Directiva Presidencial No. 01 de 2009*.

and development, a link that Uribe's administration actively promoted since the beginning of his government. Security in the form of military intervention was represented as the precondition for developing isolated territories. Moreover, the military was represented as fulfilling not only security but also welfare functions. These strategies attempted to grant legitimacy to military interventions as well as to gain people's trust according to the belief that illegal groups had created a culture of illegality which led people to support their causes. In short, in line with counterinsurgency strategies and the new 'comprehensive approach' to conflict developed by international institutions and the US government in the mid-2000s, these strategies sought to 'gain the hearts and minds' of the locals.<sup>622</sup>

Buenaventura was prioritised by the consolidation policy in 2009.<sup>623</sup> The prioritisation of the port-city implied an increase in military operations along with the introduction of a regional consolidation plan. The latter included programmes in the areas of humanitarian intervention, justice, social and economic development, governance and property ordering.<sup>624</sup> For instance, the housing project 'San Antonio' was part of the consolidation interventions undertaken in the region. It was designed to provide shelter to the poor population relocated from the intertidal areas of the *Cajascal Island* as part of urban renovation and risk management efforts.<sup>625</sup> The housing project was part of an effort to

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<sup>622</sup> See Betina Reis, 'El concepto de la cooperación civil-militar en el caso colombiano' 15 November 2007 <<https://www.alainet.org/es/active/20720>> accessed 30 June 2018.

<sup>623</sup> The policy divided the target territories into three groups: Areas where consolidation should begin, that is, areas of interest to be recovered by the military, areas in transition towards consolidation, and complementary areas. Delgado explains that this division is based on 'the Malayan Emergency 'traffic-light system', which defined the status of the areas to be pacified: insurgent-dominated red areas, yellow areas in transition, and green or stabilized areas'. Delgado, 'Counterinsurgency and the limits of state-building: An analysis of Colombia's policy of territorial consolidation, 2006–2012' 413–414. In 2013 the policy changed and only two types of intervention were established: Integral efforts towards consolidation, which include institutional presence, the introduction of participatory mechanisms and long-term development projects, and gradual-basic efforts, that is, short-term interventions aimed at creating confidence among the population such as the implementation of social programmes and the construction of basic public infrastructure, such as sewage and water facilities. Buenaventura was prioritised in this opportunity as a territory of gradual-basic efforts. See Presidente de la República de Colombia, *Decreto 2332 de 2013 "por el cual se reglamenta el artículo 195 de la Ley 1450 de 2011 y se establecen las zonas y municipios de intervención de la Política Nacional de Consolidación y Reconstrucción Territorial (PNCRT)"* (2013).

<sup>624</sup> See Presidencia de la República de Colombia, *Directiva Presidencial No. 01 de 2009*.

<sup>625</sup> Presidencia de la República de Colombia, 'Plan Nacional de Consolidación' <<http://ccai-colombia.org/files/primarydocs/1011pnct.pdf>> accessed 30 June 2018.

consolidate institutional control over Buenaventura and to prevent further collaboration of the poor population with illegal actors.

Various people manifested serious concerns about these policies. It was accused of turning the military into a development actor, implying that security in the form of public order and development are inseparable objectives. Others claimed that it restricted dissent about development, imposing a sort of coerced form of development to the regions. Many NGOs denounced the policy, arguing that by seeking civilians' cooperation, it turned them into military targets, violating prohibitions in international humanitarian law. For other groups, the policy relied upon a representation of the state as a victim of guerrilla forces, hiding the complexities of the internal civil conflict and the responsibility of the state for how it has unfolded.<sup>626</sup> The consolidation policy has not disappeared since Uribe left office. In fact, President Santos turned it into a central plank of his strategy for fighting coca crops. However, Buenaventura was excised from the list of the prioritised regions.

#### 4.4. *The Problem of the Bacrim*

As previously noted, paramilitary groups mutated into atomised gangs initially named *Bacrim* that exercised violence in a more diffuse but brutal manner.<sup>627</sup> In spite of governmental efforts to distinguish the *Bacrim* from paramilitary forces and defend the success of the peace negotiations held with the paramilitaries,<sup>628</sup> the links and continuities between paramilitary groups and *Bacrim* have been widely documented. The gangs appeared in the regions previously dominated by paramilitary groups – e.g. the Department of Antioquia, kept paramilitary connections to the drug business – as dealers or simply as mercenaries at the

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<sup>626</sup> Ejes de reflexión sobre la recuperación social' (2009) 19 *Revista electrónica la sociología en sus escenarios* 4.  
<sup>627</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 114-116 Human Rights Watch, *La crisis en Buenaventura. Desapariciones, desmembramientos y desplazamiento en el principal puerto de Colombia en el Pacífico* (Human Rights Watch 2014) 12-13.

<sup>628</sup> See María Andrea García Ruíz, Angela María Silva Aparicio and Marcela Julieth Magallanes Montolla, 'Políticas para combatir a los grupos armados posdesmovilización en los gobiernos de Álvaro Uribe Vélez y Juan Manuel Santos' (2018) 92 *Análisis Político* 159 160.

service of drug traffickers. They engaged in similar strategies to control territories, such as intimidation and threatening of social leaders.<sup>629</sup> Yet, the groups also changed their structures and engaged in practices of violence less visible but more effective. Increasingly they used selective disappearances, death threats and selective displacements.

In Buenaventura, *Bacrim* violence reached its peak in 2012 when “chop houses” (places where gangs tortured, killed and dismember people) were discovered in several poor neighbourhoods. ‘Chop houses’ functioned as double sites for collective torture. They were spaces of the most excessive violence, but they were also known throughout the neighbourhoods. In this way, neighbours were forced to become witnesses to the cruelty, and in some sense to become complicit in the silence about this terror.<sup>630</sup> *Bacrim*s sought to control those territories by means of social destabilisation. They targeted social leaders and random local inhabitants (mainly poor black men), in order to create a generalised sense of fear and sorrow.<sup>631</sup> The gangs’ continue to profit mainly from drug and arms trafficking; however, their activities are particularly intense in areas of interest for the expansion of port facilities or urban renovation projects, like the intertidal areas in the *Cajascaal Island* where a promenade is under construction.<sup>632</sup> Social leaders accuse them of working in connection with investors interested in the land and of becoming land speculators themselves.

Fighting *Bacrim*s required new strategies. This was not only because the gangs have adapted their modus operandi to the new context, but also because of national government’s insistence on the distinction between paramilitary groups and *Bacrim*. Therefore, in the early 2010s, at the end of President Uribe’s second term, the consolidation policy was complemented by a new plan aimed at combating these gangs. The new strategy initially

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<sup>629</sup> See Carlos Andrés Prieto, 'Las Bacrim y el crimen organizado en Colombia' Policy Paper <<http://library.fes.de/pdf-files/bueros/la-seguridad/09714.pdf>> 22.

<sup>630</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 209, 215.

<sup>631</sup> *ibid* 227.

<sup>632</sup> Redacción Semana, 'Buenaventura sigue siendo tierra de nadie' (*Semana*, 3 May 2015) <<https://www.semana.com/nacion/articulo/buenaventura-se-le-salio-de-las-manos-del-gobierno/419906-3>> accessed 16 September 2018.



relied mainly upon the police. It understood the problem of the *Bacrim* through particular local conditions, such as poverty, lack of local institutional capacity and cultural issues. According to President Uribe, the war against *Bacrim* demanded an increase in police presence in the affected areas (such as Buenaventura), alongside stronger police powers. The emphasis on the police rather than on the military reflected the national government's categorisation of *Bacrim* as ordinary criminal gangs without political ideology. In this vein, the 2010 Executive Decree 2374 characterised these groups as “multi-crime organisations, independent one from another, which lacking any type of ideology, spread out toward zones where the phases of the drug supply chain meet and where they consolidate alliances with terrorist groups (FARC and ELN) and with other delinquent organisations for criminal purposes.”<sup>633</sup> As ordinary criminals, it was stated that they did not represent a threat to national sovereignty and, consequently, it was a phenomenon that should be addressed by the police as a civil public order institution rather than the military.

In the early 2010s, military cooperation in fighting *Bacrim* was regarded as exceptional, but things changed in the following years as the gangs adapted to the new circumstances and the use of force against them escalated. In 2011, at the start of President Juan Manuel Santos' first term, the Ministry of Defence allowed for military cooperation appealing to the argument that combating these groups was a matter of maintaining public order, a function which is also assigned to the military by the Constitution.<sup>634</sup> Increasingly, the state response shifted as controlling the gangs proved highly difficult and the peace negotiations with guerrilla forces developed. The gangs mutated into highly sophisticated networks. They were extremely brutal in their operation, and were regarded as a security threat to the now demobilised guerrilla fighters.<sup>635</sup> Thus, the Ministry of Defence decided to

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<sup>633</sup> My own translation. See 2010 Executive Decree 2374.

<sup>634</sup> See Ministerio de Defensa Nacional, *Directiva permanente* No. 014 de 2011 (2011).

<sup>635</sup> See García Ruíz, Silva Aparicio and Magallanes Montolla, 'Políticas para combatir a los grupos armados posdesmovilización en los gobiernos de Álvaro Uribe Vélez y Juan Manuel Santos' 165.

call for urgent military intervention claiming that the gangs had become a security threat to the nation.<sup>636</sup> In order to maintain the distinction between paramilitary forces and these gangs, as well as to justify the escalation of force against them, the groups were re-categorised in 2016 as Organised Armed Groups (GAO from its acronym in Spanish), that is, as groups that “under the direction of a responsible command, exert such a control over a part of the territory that allows them to carry out sustained and concerted military operations.”<sup>637</sup> The national government highlighted its international significance of these gangs, particularly crimes such as human, drug and arms trafficking, and distinguished them from ordinary criminal gangs. As the former represented a security threat to the nation, the responsibility for their extermination was assigned equally to the military and the police. In this way, the rules about military-police cooperation regarding criminal gangs shifted, and the militarisation of broad regions of the country was once more authorised.

On 20<sup>th</sup> of March 2014 the Ministry of Defence ordered the militarisation of Buenaventura as a mean to fight *Bacrim* violence. 900 marines, 400 soldiers and 200 police officers together with 10 ‘Humvee’ vehicles were sent to the port-city to patrol the streets. The national government also announced the adoption of an ambitious social plan which would complement the militarisation as a means to prevent criminality.<sup>638</sup> The militarisation extended in particular to poor neighbourhoods, such as the intertidal areas of the *Cajascal Island* and Districts 3, 4, 11 and 12.<sup>639</sup> According to official data, the militarisation led to a

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<sup>636</sup> See Ministerio de Defensa Nacional, *Directiva Permanente No. 15 de 2016* (2016).

<sup>637</sup> Author’s translation. *ibid*

<sup>638</sup> The social plan led to the creation of a ‘Social management office’ for Buenaventura which announced ambitious projects related mainly with the infrastructure development for utilities and healthcare. See Redacción de El País, ‘A mes y medio de presencia militar en Buenaventura, intervención social aún deja dudas’ (*El País*, 27 April 2014) <<https://www.elpais.com.co/judicial/a-mes-y-medio-de-presencia-militar-en-buenaventura-intervencion-social-aun-deja-dudas.html>> accessed 16 September 2018.

<sup>639</sup> See Redacción de El País, ‘Ordenan la militarización del puerto de Buenavnetura’ (*El País*, 20 March 2014) <<https://www.elpais.com.co/judicial/ordenan-la-militarizacion-del-puerto-de-buenaventura.html>> accessed 16 September 2018. Caracol Radio, ‘Militarización en Buenaventura irá hasta que sea necesaria: Mindefensa’ (*Caracol Radio*, 21 March 2014) <[http://caracol.com.co/radio/2014/03/21/regional/1395423060\\_140711.html](http://caracol.com.co/radio/2014/03/21/regional/1395423060_140711.html)> accessed 16 September 2018.

decline in the rates of crime, but *Bacrim/GAO* violence did not disappear as the media reported a year later, when it assessed the effects of the military intervention.<sup>640</sup> The communities continued to be caught in the war between gangs, and after militarisation, the gangs and the military.

#### 4.5. *Protest in this Securitised Context*

Another instance of the violence brought about by development is the use of police and military force to control protests and demonstrations, as exemplified at the outset by the general strike of 2017. In 2010, in the context of the fight against *Bacrim*, the Executive brought a bill before Congress to strengthen police powers in the affected areas. Although not included in the initial bill,<sup>641</sup> the Executive used the legislative debate to propose new regulations aimed at criminalising activities usually employed in demonstrations and other forms of social mobilisation.<sup>642</sup> The Ministry of Interior Affairs and Justice insisted that new rules were required as social protests were increasing in the country and terrorist organisations were infiltrating them. Congress approved the proposal without substantial debate. Law 1453 of 2011 created the new criminal offence of the blockage of public roads.<sup>643</sup>

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<sup>640</sup> James Bargent, 'A pesar de mayor militarización, violencia persiste en ciudad portuaria de Colombia' (*InSight Crime*, 3 February 2015) <<https://es.insightcrime.org/noticias/analisis/mayor-militarizacion-violencia-persiste-ciudad-portuaria-colombia/>> accessed 16 September 2018.

<sup>641</sup> Ministro del Interior y de Justicia, Ministro de Defensa Nacional and Fiscal General de la Nación, *Proyecto de ley número 164 de 2010. Senado "por medio del cual se reforma el Código Penal, el Código de Procedimiento Penal, el Código de Infancia y Adolescencia, las reglas sobre Extinción de Dominio y se dictan otras disposiciones en materia de seguridad"* (Gaceta del Congreso No. 737 2010).

<sup>642</sup> See Ministro del Interior y de Justicia, *Intervención del Ministro del Interior y de Justicia Germán Vargas LLeras* (Gaceta del Congreso No. 669 2011) 37-38.

<sup>643</sup> Article 44 reads: "Obstruction of public roads which affects public order. Any person who by illegal means incites, leads, compels or provides means to obstruct temporarily or permanently, selectively or in general, roads or transport infrastructure in a way which threatens human life, public health, food security, the environment or the right to work of others, shall be sentenced to 24 to 48 months of imprisonment, and to a fine of 13 to 75 monthly minimum wages along with inability to claim rights and perform public functions during the sentencing period.

Paragraph: Mobilisations organised with permission from the competent authority in accordance with article 37 of the Constitution are excluded from the scope of this article." (Author's translation).

It also increased sentences for the obstruction of public transport services.<sup>644</sup> Both of these amendments would be highly significant for protestors and strikers.<sup>645</sup>

Article 44 of the act introduced an exception for prosecuting these activities, that is, when public authorities authorise social mobilisations. In decision C-742 of 2012, the Constitutional Court ruled that the article should not be read as granting powers to limit the right to protest. According to the Court, the article should be interpreted as only requiring previous notice to the competent authority with the purpose of enabling it to take appropriate measures.<sup>646</sup> However, a new Police Code passed in 2016 (Law 1801 of 2016) interpreted these issues in a different way. Besides requiring that at least three people give written notice to the local authorities up to 48 hours before the mobilisation takes place, the Code granted powers to the local authorities to regulate how and when the authorisations should be given. Furthermore, it endowed the police with power to disperse crowds when they affect ‘civic coexistence,’ without defining the meaning of this expression.<sup>647</sup> The military was also enabled to support operations for the management and control of multitudes in the cases allowed by the Constitution and the law, another ambiguous

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<sup>644</sup> Article 45 reads: “*Disturbances in public, collective or official transport services*: Any person who by any illegal mean prevents the circulation or inflict damages to a ship, airship, vehicle or any other motorised means destined to public, collective or official transport, shall be sentenced to 4 to 8 years of prison, and to a fine of 13.33 to 75 monthly minimum wages.” (Author’s translation)

<sup>645</sup> Congreso de la República de Colombia, *Ley 1453 de 2011 "Por medio de la cual se reforma el Código Penal, el Código de Procedimiento Penal, el Código de Infancia y Adolescencia, las reglas sobre extinción de dominio y se dictan otras disposiciones en materia de seguridad"* (2011) In 2013, following a wave of massive demonstrations organised by artisan miners, coffee growers, peasants, lorry drivers and indigenous groups, the Ministry of Defence brought before the Congress a new bill proposal with the aim of reforming Law 1453 in order to facilitate the prosecution of the leaders of protests and other forms of social mobilisation. The Ministry proposed to eliminate the word ‘illegal’ from article 44 in order to enable the prosecution of any person who participates in any sort of road blockage. In addition, the Ministry advocated for increasing prison sentences to the leaders caught wearing balaclavas or similar items. Felipe Morales Mogollón, ‘¿Criminalización de la protesta?’ (*El Espectador*, 11 September 2013) <<https://www.elespectador.com/noticias/politica/criminalizacion-de-protesta-articulo-445875>> accessed 18 September 2018. The project was rejected in Congress after intense debates and demonstrations. See Cesar Muñoz Vargas, ‘Se hundió proyecto que buscaba penalizar la protesta social’ (*El Herald*, 19 June 2014) <<https://www.elheraldo.co/nacional/se-hundio-proyecto-que-buscaba-penalizar-la-protesta-social-156518>> accessed 18 September 2018.

<sup>646</sup> Corte Constitucional de Colombia, *Sentencia C-742 de 2012* (2012).

<sup>647</sup> In the face of this ambiguity, the Constitutional Court ruled that the statute shall be read as referring to grave and imminent disruptions of civic coexistence, and when there are not other less burdensome ways of protesting pacifically. See Corte Constitucional de Colombia, *Sentencia C-281 de 2017* (2017).

regulation. In April 2017, the Constitutional Court ruled out these prescriptions.<sup>648</sup> However, the decision would only become enforceable in June 2019, meaning that the prescriptions were in force in 2017 when Buenaventura took to the streets.

The management of multitudes has also been historically characterised in Colombia by the stigmatisation of social mobilisation. The ESMAD is the anti-riot police force which was created in 1999. It has been criticised for its excessive use of force in policing protests and demonstrations.<sup>649</sup> For the Office of the Controller General of the Republic, the problem is that the ESMAD has been granted a great deal discretion with regard to the use of force. For instance, as in the case of the Police Code, the 'Manual of the Police Service for the Attention, Management and Control of Multitudes' of 2009 lacks basic definitions, like the meaning of 'riot'. This allows for a loose interpretations about when the ESMAD is enabled to intervene. For example, it has enabled the ESMAD to use force to unblock roads or evict occupations, even in the context of peaceful protest. The manual stipulates rules on the use of firearms, even though the ESMAD is said not to carry them. Thus, the manual creates a sort of contradiction because it seems to enable the ESMAD to use firearms in particular situations. For the Office of the General Controller, the manual also fails in specifying situations when the use of firearms is permitted as it only indicates that they can be used when other means to control multitudes are insufficient. By lacking an explanation of when the other means are insufficient, the manual grants a great discretion on the use of firearms.<sup>650</sup>

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<sup>648</sup> Corte Constitucional de Colombia, *Sentencia C-223 de 2017* (2017).

<sup>649</sup> For instance, during the wave of demonstrations and protests that took place in 2013 – see footnote 150, the ESMAD was accused of massive human rights violations and abuse in the use of force. , So, a group of NGOs brought before the Inter American Commission a claim against the ESMAD which was discussed in a hearing in October 2013. See Inter American Commission of Human Rights, 'Audiencia: Derechos humanos y protesta social en Colombia' (*Inter American Commission of Human Rights*, 31 October 2013) <<https://www.youtube.com/watch?v=Ey3BfAvNhBw>> accessed 18 September 2018.

<sup>650</sup> Procuraduría Delegada Preventiva en Materia de Derechos Humanos y Asuntos Étnicos, *Seguimiento preventivo al Escuadrón Móvil Antidisturbios ESMAD* (2014) 11-15.

These are the background rules that allowed the intervention of police and military in the general strike of 2017. As narrated at the beginning of this chapter, the ESMAD arrived at the port-city on 17 May. Authorised by this set of rules to disperse the multitude and unblock the roads, the ESMAD fired tear gas, used batons against the crowd and even deployed firearms. The use of force extended throughout the strike days and was particularly intense in the areas connected to the functioning of the port, especially the highway. The ESMAD was backed by the military, which, in view of the economic importance of the port, was understood to be authorised to intervene in order to protect national security and public order. The result were long days of police and military violence against the community.

#### *4.6. Conclusion*

In summary, the poor communities of Buenaventura are caught between the violence brought about by development and the other economies interlinked to the functioning of the port, such as drug and arms trafficking. Violence is instrumental in controlling and taming them, either forcing them to collaborate or displace them in order to make room for new port facilities and development projects. As highlighted by Escobar and others, the world-view and ways of being-together of much of the population of Buenaventura has strongly resisted the rationales of development discourse. Thus, violence has been used in port-city, in order to reshape the local population according to the logic of accumulation. Military and paramilitary violence are directly and indirectly tools to neutralise political claims to land, self-determination and social justice. The criminalisation of protest and power given to anti-riot interventions<sup>651</sup> ensure that avenues of dissent are rendered in the same light as criminal violence.

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<sup>651</sup> On the criminalisation of social protest as a technique for biopolitical immunisation of economic decisions from political contestation see María Carolina Olarte, 'Depoliticization and Criminalization of Social Protest through Economic Decisionism: the Colombian Case' (2014) 4 *Oñati Socio-Legal Series* 139.

## 5. Securitising the Poor

In this section I want to highlight how important the securitisation of the poor population of Buenaventura has been for purposes of justifying paramilitary violence, militarisation and police interventions in the port-city. Drawing on critical security studies, I understand securitisation as the process through which an object (such as a particular population) is discursively constructed as an existential threat to a reference object (development for instance)<sup>652</sup> or simply as a dangerous to that element.<sup>653</sup> Rendering something as a threat legitimises coercive responses in the form of criminalisation, militarisation of territories, police interventions, administrative sanctioning, among others. In Buenaventura the poor population has been discursively constructed as a security threat to the port and ultimately to the welfare of the nation. They have been portrayed first as allies of guerrilla forces and criminal gangs, and secondly as an inherently violent population with natural criminal tendencies. National Development Plans, policy papers, legal regulations and other official documents constantly refer to a resilient culture of illegality which turns the local population into sympathisers and active collaborators of armed groups and criminal gangs. Furthermore, appealing to racial stereotypes, these documents see local inhabitants, particularly the youngsters, as potential criminals.

The first instance of the securitisation of the poor in Buenaventura in this period can be found in President Uribe's democratic security policy and his territorial consolidation plan. As mentioned before this plan was inspired by counterinsurgency theory. It assumed that the population in areas of conflict, especially low-income peasants and poor urban dwellers, have become guerrilla allies. According to official documents, an important aspect of the policy was "social reconstruction". "[D]ue to the long duration of illegal control of

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<sup>652</sup> Barry Buzan, Ole Waever and Jaap de Wilde, *Security. A New Framework of Analysis* (First edn, Lynne Rienner Publishers 1998) 21.

<sup>653</sup> Rita Abrahamsen, 'Blair's Africa: The Politics of Securitization and Fear' (2005) 30 *Alternatives: Global, Local, Political* 55-71.

the territory, illegal armed groups managed to instil and force attitudes and values functional to illegality and the cohabitation with criminality.”<sup>654</sup> In this way, the local population was represented as a security threat to the extent that it not only tolerates illegal groups in their territories but has been indoctrinated to support them.

In this way, the local population in areas such as Buenaventura were framed as collaborators with the guerrillas. During Uribe’s administration the military engaged in actions aimed at changing people’s mind-sets, but also at creating deterrence through a permanent sense of surveillance. Through economic incentives, the military created networks of informants with the objective of preventing people from engaging with the FARC and other guerrilla organisations. The image of the poor peasant and urban dwellers as guerrilla collaborators also justified the militarisation of vast sectors of territory as any person could be a potential guerrilla fighter.

In accordance with this assumption, in 2013, the Executive brought before the Congress a bill proposal with the aim of decriminalising civilian casualties in military operations when it is proved that the civilians were supporting illegal fighters. In the aftermath of a constitutional amendment which sought to create a special tribunal to judge the military for crimes related to the internal civil conflict, the Executive proposed a detailed regulation on how proceedings and sentencing should take place in the new tribunal. One of the most controversial regulations was related to the definition of “legitimate targets” in the context of military operations. The Executive defined “legitimate targets” in broad terms, basically as, firstly, the fighters of illegal armed forces and, secondly, any civilian who directly participates in the hostilities through acts in support of illegal forces and which may cause damage to the population, public goods, state forces or any other public institution. The bill was accused of violating international humanitarian law to the extent that it did not make a

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<sup>654</sup> Unidad Administrativa para la Consolidación Territorial, *Lineamientos de la Política Nacional de Consolidación y Reconstrucción Territorial* 21.



clear distinction between combatants and civilians. Additionally, for the detractors, the regulations not only condemned any collaboration with illegal forces but turned it into a justification to make civilians targets. As the Constitutional Court found the constitutional amendment unconstitutional, the bill proposal lost its legal basis. Yet, the bill is another instantiation of how local poor populations were represented under Uribe's administration: as a security risk who may be sacrificed in military operations.

In the case of the strategy against *Bacrim*/GAOs, the assumption has been that there is a sort of culture of illegality which leads people not only to tolerate criminal activities, but also to regard them as positive. The strategy highlights how the criminal gangs operate in decentralised and diffuse manners, through local, low-level networks, what makes it difficult to prosecute them.<sup>655</sup> This explanation has been supported by research conducted by some NGOs and think tanks. For instance, the Ideas for Peace Foundation (a think-tank funded by a group of businessmen concerned with peace and conflict resolution in Colombia) talks about a 'culture of affability' toward criminal gangs. They argue that the existence of a culture which accepts, appropriates and reproduces values dissimilar to those embraced by the national constitution must be considered when analysing the emergence of *Bacrim*. This implies that such a culture exists and that it has a causal relation to the emergence of the gangs.<sup>656</sup> What I want to emphasise is that the explanation based on the idea of a culture of

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<sup>655</sup> This characterisation has been backed by NGOs and academic sectors. For instance, the NGO Peace and Reconciliation, founded by the demobilised guerrilla thinker Leon Valencia, describes *Bacrim*/GAO as neo-paramilitary groups, yet points out their decentralised operation and how they managed to spread out –they use the word 'democratise'- illegal businesses to new sectors of the population; in other words, they managed to articulate more people –mainly urban poor inhabitants- into their networks. One of its researchers explains that this phenomenon intertwines with ordinary criminality in the urban context. Neo-paramilitary forces hire local criminal gangs, which in turn strengthened due to higher money influx, more capacity to update their war equipment, and accelerated recruiting processes. As a result, the *Bacrim*/GAOs acquired indirect control over the cities and were able to operate in diffuse manners, preventing prosecution. It is in this regard that the new gangs differ from the paramilitary forces from the 1990s and early 2000s. See Sofia León Oñate, 'Sea cabó la primera generación de neoparamilitares, ¿qué sigue?' (2012) <<http://pares.com.co/wp-content/uploads/2016/02/Informe-Bacrim-2012.pdf>> accessed 19 July 2018 7.

<sup>656</sup> The Ideas for Peace Foundation argues that many areas subjected to the policy of territorial consolidation experience a culture of illegality, that is, 'a social environment in which moral, cultural and legal rules are heterogeneous, contradictory or simply unfulfilled for vulgar reasons.' Then it states: 'It is not about a conflict between defined royalties: towards the State, towards guerrilla groups or towards paramilitary forces. It is about dealing with individualistic, opportunistic and contingent strategies of survival which erode solidarity, the

illegality has the effect of rendering any member of the local community as a potential criminal to the extent that he or she shares the same culture. In other words, any member of the community is conceived as a criminal risk. Furthermore, the reference to a cultural phenomenon displaces the structural causes of poverty and insecurity. Instead of colonialism, structural racism, securitisation and neoliberalism itself causing cultures of distrust and a willingness to work beyond the state's law, responsibility lies with the people of Buenaventura themselves. What is more the solutions to this culture are the types of behavioural and cultural disciplining that we saw in the first chapter.

Police regulations on the management and control of multitudes is another instance of the construction of the poor as dangerous. For example, the “Manual of the Police Service for the Attention, Management and Control of Multitudes” of 2009 describes a set of helpful indicators to predict the level of danger that a multitude represents. These indicators are aimed at guiding the ESMAD on making decisions on whether or not to intervene in a particular case, as well as on the types of techniques that should be deployed, especially, progression on the use of force. To put it differently, the indicators are conceived as guidance on whether or not it is likely that a multitude shifts into a mob and engages in a riot. Some of these criteria are social class and culture. According to the Manual, “it is important to consider the socioeconomic, cultural, labour and/or professional category [to which the multitude belongs], because it enables to determine the resources, means and forms of controlling a manifestation.”<sup>657</sup> Likewise, the manual considers the socioeconomic and political circumstances surrounding a manifestation to be an important indicator of the dangerousness of a multitude. It explains that these circumstances, besides representing a cause of the manifestation, ‘could give more or less force of action and reach’ to it. In this

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effectiveness of any system that regulates conducts, and which nourish the imposition of violent forms of domination and control.’ Fundación Ideas para la Paz, *Balance de la Política Nacional de Consolidación Territorial* 7.  
<sup>657</sup> Author’s translation. Policía Nacional de Colombia, *Manual para el servicio de policía en la atención, manejo y control de multitudes* (Policía Nacional de Colombia 2009) 27.

way the manual suggests that the lower the class the more likely it is for the multitude to get involved in a riot or disturbance.<sup>658</sup> These regulations are crucial in understanding the anti-riot police behaviour during the 2017 manifestations. In line with the manual, the class and the political and socioeconomic circumstances that surrounded the demonstrations in Buenaventura, that is, poverty and political discontent were indicators of the dangerousness of the multitude and, hence, evidence of the urgency of ESMAD intervention and the escalation of force.

The narratives of insecurity examined in this section have at least two functions with regard to the people of Buenaventura. On the one hand, they reinforce the representation of the *Bonaverenses* as undeserving of state support, not to mention autonomy and self-determination. In other words, they complement the picture of the undeserving poor. On the other hand, when combined with the representations of the port as a superior interest (see section two of this chapter), they effect the construction of the poor not only as an obstacle, but more importantly as a threat to the project of neoliberal development. It legitimises the use of violence by both state and non-state actors, make them legitimate targets of security schemes, and contributes to depoliticise their political claims.

## **6. Resistance and Contestation: Constituting a Political Subject**

The previous sections approached the question of how state and non-state actors have attempted to domesticate and manage the local poor population of Buenaventura. They used discursive and non-discursive techniques (namely violence, neglect, poor social provisions and representations of the poor as culturally backward and dangerous). What is distinctive in this chapter is that the poor respond. It is therefore important to return to the type of

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<sup>658</sup> See Procuraduría Delegada Preventiva en Materia de Derechos Humanos y Asuntos Étnicos, *Seguimiento preventivo al Escuadrón Móvil Antidisturbios ESMAD* 12.

political claims and social mobilisations that these techniques have attempted to neutralise. The point of departure, as we saw at the outset, is the general strike of May 2017. This is part of a long history of social mobilisation and political contestation which can be traced back to at least the 1980s. Even though social movements of black people in Colombia emerged in the 1960 around discourses of racial discrimination, it was not until the 1980s that the movements extended throughout the country, abandoning its so far exclusively urban context. This section describes how development, the precarity it brings about and the precarisation effected by state and non-state actors have triggered very active political subjects<sup>659</sup> who resist and contest new dynamics of capital accumulation. As Escobar, Oslender, Asher and others illustrate, there is a close relationship between development, the violence it brings about, and social mobilisation.<sup>660</sup> This is a relationship of mutual constitution, as Asher highlights.<sup>661</sup> Development with its precarity and violence has opened spaces for social mobilisation, set off particular repertoires of contention (in Charles Tilly's words),<sup>662</sup> and given rise to novel ideas about territoriality and togetherness. In turn, resistance and contestation have led neoliberal development to adapt and change its discourses and types of interventions.<sup>663</sup> The aim of this final section is to underscore the novelty and sophistication of social mobilisation in Buenaventura, explore its potential to

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<sup>659</sup> I refer to subjects who connect and disconnect pre-existing identities, knowledge and interventions to problematise, displace and challenge the given social order, as well as to shape other subjectivities, territorialities and forms of being together. As Rancière puts it (cited by Fjeld et al), subjects who endeavour to shift from the position they are supposed to be. See Andrés Fjeld, Laura Quintana and Etienne Tassin, 'Introducción' in Andrés Fjeld, Laura Quintana and Etienne Tassin (eds), *Movimientos sociales y subjetivaciones políticas* (Movimientos sociales y subjetivaciones políticas, Universidad de Los Andes 2016) 1-2.

<sup>660</sup> The relationship between the violence, development and resistance is understood in different ways by these scholars. While Escobar and Oslender focus on how development has triggered social mobilisation and political contestation, Asher argues that there is a mutually constitutive relationship between the two, meaning that it means that the discourse of development is structured by its reception in particular locations and specific conjunctures, but also that '...rather than autonomous expressions of resistance against the state .... black struggles, including understandings of local realities and culture in the 1990s, were at least partially shaped by and through the very discourses of political and economic modernity they opposed' Kiran Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* (Duke University Press 2009) loc 457-460.

<sup>661</sup> *ibid* loc 100.

<sup>662</sup> Charles Tilly, *Popular Contention in Great Britain, 1758-1834* (Routledge 2016) p. 41.

<sup>663</sup> The section focuses on the first side of the relationship, this is to say, how development and violence shape social mobilisation. The second side is not explored here but might be inferred from the previous sections.

halt neoliberal development and contribute to the construction of a fairer way of living together.

### *6.1. Black Activism in the Pacific Region*

In the 1960s, organisations of black people began to emerge in the cities of Colombia. Inspired by the American Civil Rights Movement and anti-colonial struggles in Africa, these organisations chose the *Cimarron*, the runaway slave, as their symbol. The emerging movement promoted a form of identity based on racial features and focused primarily on issues of racial discrimination.<sup>664</sup> The movement was predominantly urban, integrated by educated middle-class people. Although many of its members were originally from the Pacific rural areas, their political activities had few repercussions in the region itself.<sup>665</sup> New orientations in anthropological work on the Pacific region also fed the nascent social mobilisation. While research from the 1950s focused on the description of local black cultural practices, in the 1960s researchers such as Nina de Friedman and Whitten incorporated questions of ethnic relations and discrimination into the analysis of culture.<sup>666</sup> In this way, discrimination and the invisibilisation of black people in Colombia became the emblem of the new black social movement.

In the 1980s, the movement extended to rural and peripheral areas as the developmental drive began to look at black regions for purposes of exploitation of natural resources and other economic interventions. With the help of the Catholic Church, black communities from the lowlands of the Pacific region began to organise against the reckless extractive practices that predominated up to that moment and which intensified at the turn

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<sup>664</sup> Peter Wade, 'Identidad y etnicidad' in Arturo Escobar and Alvaro Pedrosa (eds), *Pacífico ¿Desarrollo o diversidad? Estado, capital y movimientos sociales en el Pacífico colombiano* (Pacífico ¿Desarrollo o diversidad? Estado, capital y movimientos sociales en el Pacífico colombiano, Cerec & Ecofondo 1996) 285-287.

<sup>665</sup> Wade, 'Introduction. The Colombian Pacific in Perspective' 15.

<sup>666</sup> Ibid 9.

of the decade.<sup>667</sup> Up to the 1980s, the majority of the lowlands of the Pacific region, even though ancestrally occupied by black and indigenous peoples, were categorised as *baldios*, that is, as empty and state-owned lands. This categorisation allowed national and local governments to grant concessions to national or international corporations without taking the affected communities into consideration. Hence, communities from the region saw a threat to their territories and traditional forms of life in the new developmental drive.

Plaindecop, the first integrated development plan for the Pacific region, in force between 1983 and 1992, epitomises the new developmental drive.<sup>668</sup> As explained in previous sections, the plan envisioned the Pacific lowlands as a strategic location for extractive industries and trade liberalisation. However, Plaindecop had the positive effect of helping to strengthen local organisations.<sup>669</sup> By promoting participatory procedures, it opened spaces which enabled communities to come together and articulate political demands. Plaindecop also drew on conservationist discourses which saw the Pacific littoral as a rich ecosystem to be protected (and exploited), and in the local black communities the guardians of the natural biodiversity. By empowering the locals as guardians of biodiversity, Plaindecop also encouraged communities to discuss the type of relationship they have developed with their lands and hence new notions of territoriality began to be constructed. In short, Plaindecop and the conservationist trend were crucial in the birth of a political movement which demanded protection of lands ancestrally occupied by black communities, together with the recognition of black communities as an historically neglected ethnic minority and subjected to discrimination.

Yet, as Kiran Asher explains, there was not unanimity within the emerging movement with regard to the type of legal recognition it was looking for. Three broad

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<sup>667</sup> Oslender, 'Another History of Violence. The Production of "Geographies of Terror" in Colombia's Pacific Coast Region' 85.

<sup>668</sup> See previous section of the type of interventions that Plaindecop foresaw.

<sup>669</sup> Rodríguez and Sánchez, 'Imagen de región y procesos de construcción de ciudad en el Pacífico colombiano: los casos de Buenaventura y Tumaco' 61-62.

factions emerged in the early 1990s: First, there was a group which considered collective land titles for black communities as a regressive move. They argued that “blacks were a marginalized minority in Colombia and that special legal measures were needed to promote social, political, and economic equality of all black communities, not just those living in the Pacific region.” Thereby, they argued in favour of affirmative actions for all African-Colombians. The second faction, mainly delegates from the black majority region of Choco, claimed that collective land titles were a matter of urgency as they would “enable local communities to secure their livelihoods and make sound decisions regarding the sustainable use and management of the region’s natural resources.” The third group, delegates from the Organisation of Black Communities, advanced the idea of a “collective ethnic territory” in order to emphasise that what black and indigenous communities from the Pacific required was the recognition of rights that granted them ‘territorial and administrative control over the Pacific region.’ In other words, more than land rights, they demanded political autonomy and territorial control.<sup>670</sup>

Notwithstanding differences and contradictions, by means of protests and political mobilisation – which included the occupation of public buildings,<sup>671</sup> the movement managed to influence the adoption of Article Transitory 55 of the Constitution of 1991 and, subsequently, the approval of Law 70 of 1991 which introduced a collective titling scheme in favour of “black communities”.<sup>672</sup> Yet, it is important to bear in mind that collective land titling was in line with the national government’s agenda of the early 1990s regarding the Pacific coast. Besides appearing democratic and respectful of minorities for purposes of

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<sup>670</sup> Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* Loc 140-163.

<sup>671</sup> Wade, 'Introduction. The Colombian Pacific in Perspective' 15-16.

<sup>672</sup> The new Constitution also recognised Colombia as a multicultural and pluriethnic nation, reserved two seats in the House of Representatives for black delegates for the Congressional period of 1993-1997, and introduced black representation in many institutional spaces such as the Colombian Institute for Land Reform (INCORA for its acronym in Spanish) – in charge of granting land titles to poor peasants, and the ministries of Mining, Environment and Education. Yet, at the same time, the new Constitution enacted many neoliberal reforms which targeted marginalised regions such as the Pacific lowlands for natural-resource extraction and modernisation. See Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* loc 117-127.

international legitimacy, the national government was interested in protecting the biodiversity of the Pacific and recognised that traditional production practices in the region had safeguarded its natural wealth. Hence, the protection of black and indigenous communities as guardians of the ecosystem of the Pacific lowlands through collective title deeds was in line with the conservationist trend of the time.<sup>673</sup> The result of this multiple interests were new regulations which recognised Afro-Colombians' land rights and participation rights, but which also promoted a form of identity akin to the indigenous model of alterity.<sup>674</sup> Black communities were represented as peasants to the extent that collective titles were only conceived for rural areas traditionally occupied by these groups, namely the Pacific lowlands and some areas of the Atlantic Coast and the islands of San Andres and Providencia. As Peter Wade puts it, the new regulations 'cornered black identity into a single region of the country', turning the Pacific coast into *the* location of blackness in Colombia, and forced black identity "to follow an indigenous model," while at the same time ruralised it.<sup>675</sup> As a consequence, black groups settled in urban areas – such as the black communities of Buenaventura – were excluded from the protection of land rights.

In spite of these critiques, the adoption of Transitory Article 55 of the new Constitution and Law 70 were crucial in "bringing blackness into the public eye and creating a national forum for issues around 'black communities' to be debated."<sup>676</sup> It also strengthened black people's political mobilisation but it did so along ethnical lines, engendering a form of mobilisation focused on the construction of black identity. Escobar explains that "it was with the intense process of organizing around AT-55 and the

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<sup>673</sup> See Wade, 'Introduction. The Colombian Pacific in Perspective' 15.

<sup>674</sup> The black people's movement was crucial in the adoption of article transitory 55 which recognised their right to land, yet they were not directly represented before the Constitutional Assembly. In contrast, indigenous groups got two representatives elected for the Assembly. It explains in part why the new constitution embraced a conception of cultural difference based on the indigenous model of alterity. Wade, 'Identidad y etnicidad', p. 285 – 289. Oslender, 'Another History of Violence. The Production of "Geographies of Terror" in Colombia's Pacific Coast Region' 85-86.

<sup>675</sup> Wade, 'Identidad y etnicidad', 292 Wade, 'Introduction. The Colombian Pacific in Perspective' 7.

<sup>676</sup> Wade, 'Introduction. The Colombian Pacific in Perspective' 8.



subsequent Ley 70 [Law 70] that what was to become one of the defining features of the decade for the region as a whole came to the fore, namely, the emergence of unprecedented forms of black identity.”<sup>677</sup> Since then, black movements have relied upon a language of cultural rights, biodiversity and ethnicity to advance their demands, without abandoning issues of discrimination.<sup>678</sup>

### *6.2. The Process of Black Communities*

The Process of Black Communities (PCN for its Spanish acronym), previously named Organisation of Black Communities, has been a central actor in the process of political mobilisation in the Pacific littoral. Born in the early 1990s in Buenaventura to represent black communities in the negotiations that led up to collective land recognition, PCN strongly criticised black people’s engagement with the discourse of multiculturalism and cultural rights prompted by the new Constitution. For them, the recognition of cultural rights was part of a larger strategy aimed at institutionalising problems and controlling opposition to the neoliberal reforms enacted by the same Constitution. However, PCN capitalised on the new regulations and began a crusade to fill them up with a new content akin to black’s people experiences. They attempted to bring together black groups around an “Afro-Colombian” identity and engaged in a collective construction of alternative conceptualisations of development based on black communities’ worldview and their special relationship with the territory. PCN demanded recognition of black people’s right to control their territory, including its natural resources, arguing that it is a precondition for the survival of black culture.<sup>679</sup>

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<sup>677</sup> Escobar, *Territories of Difference: Place, Movements, Life, Redes* 200.

<sup>678</sup> *ibid* 206.

<sup>679</sup> See *ibid* 220. Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* Loc 391.

Asher categorises PCN as a “new social movement,” that is to say, as one of the coalitions of workers, peasants, women, urban squatters, ethnic groups and others that emerged in the 1980s seeking neither inclusion in existing political structures nor participation in “lefty” struggles to overthrow the state. Instead they were “drawing on idioms of traditional popular culture to resist the homogenising forces of modernisation and economic globalisation and to imagine alternatives based on local knowledge.”<sup>680</sup> Indeed, PCN acts as an umbrella organisation or coordinating network (it represents more than 120 varied and diverse organisations and social groups)<sup>681</sup> and has engaged in formulating alternatives to development and capitalism based on black communities’ traditional knowledge and the special relation they have developed with the territory. This is what Escobar calls post-development.<sup>682</sup> They have also capitalised on the contradictions and possibilities offered by official development and democratisation discourses, attempting to use the spaces created by them like participatory procedures) to bring about change. Asher’s description of PCN clearly illustrates this dynamic:

Black activists, especially PCN leaders, were keenly aware of the paradoxes of development’s power and exploited them through the possibilities offered by local, cultural, and, indeed, national conditions. They were equally conscious of the difficulties of organizing for change across their differences and the possibility that the political and economic alternatives they imagined for the Pacific would not come to fruition in the near future. Yet under the shadow of what was coming — perhaps in the hopes of pre-empting it — they seized the moment that the new constitution and Law 70 provided. In this spirit, they

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<sup>680</sup> Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* loc 401-409.

<sup>681</sup> See Wade 2002 17.

<sup>682</sup> See Arturo Escobar, *Encountering development: The making and unmaking of the Third World* (Princeton University Press 2012).

embarked on a process of constructing a movement of “black communities” and of imagining an Afro-Colombian cultural utopia based on the right to be black and different and to have symbolic and material control over land and resources. This process was neither autonomous nor removed from the project of Pacific modernity and development. Rather, it was located firmly within the contradictions and aporias of capitalist development, which must be understood as part of the long-term task of unmaking their destructive effects.<sup>683</sup>

Since the 1990s, PCN has advanced an agenda focused on collective titling, the defence of the territory and the construction of a collective identity along ethnic lines. PCN focused initially on pedagogical campaigns along the riverbanks and promoted the creation of communal councils, an institutional form which Law 70 made a precondition for collective titling.<sup>684</sup> Later on, it became active in international resistant networks such as the World Social Forum and People’s Global Action. Its leaders repeatedly tour Europe and North America, denouncing the violence exerted over black communities, and in 2004 its most prominent female activist, Libia Grueso, was awarded the Goldman Environmental Prize for her work in the defence of the biodiversity of the Pacific region.<sup>685</sup>

Guerrilla, military and paramilitary violence have also had a significant impact on social movements’ ‘repertoires of contention’ in the Pacific region, that is, ‘the way that people act together in pursuit of shared interests’ which might affect the interest of other actors.<sup>686</sup> I find this expression helpful to describe the changes in social movement’s strategies since the 2000s as, on the one hand, it highlights continuity and novelty, that is,

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<sup>683</sup> Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* loc 582-590.

<sup>684</sup> See Escobar, *Territories of Difference: Place, Movements, Life, Redes* p. 220. Asher, *Black and Green. Afro-Colombians, Development, and Nature in the Pacific Lowlands* Loc 391.

<sup>685</sup> See Oslender, 'Another History of Violence. The Production of “Geographies of Terror” in Colombia’s Pacific Coast Region' 95.

<sup>686</sup> Tilly, *Popular Contention in Great Britain, 1758-1834* 41-43.

that the repertoires are both learned cultural creations and innovations in the face of struggle; and on the other hand, the relational nature of the repertoires. Changes in the repertoires result from interactions among a set of actors. Violent actors forced social movements to adopt new means of acting collectively which, while preventing violence, have reconfigured understandings of territory. For instance, to prevent new attacks some communities developed early warning systems to communicate with nearby villages along the rivers and alert them about risks. These systems allowed these communities to hide in the jungle, in places difficult to reach by newcomers until the threats fade away. These ‘micro-displacements’ within the territory draw on communities’ ancestral knowledge of the landscape, a type of knowledge inherited from the runaway slaves from the 19<sup>th</sup> century. Castillo has named this practice “modern cimarronism.”<sup>687</sup> Other groups turned into ‘peace communities’, that is, communities that declared their neutrality in the conflict and took up rules to prevent any type of support or engagement with to war actors.<sup>688</sup> As a strategy of re-territorialisation, in 2007 a number of social organisations promoted the campaign ‘Navigating the Pacific: Resistance to the Emptying of our Territories.’ Members of these organisations navigated along the *Naya*, *Yurumanguí*, *Raposo*, *Cajambre*, *Micay* and *Guapi* rivers with the aim of encouraging practices of resistance among riverine communities. In every town and village, they organised meetings, workshops and cultural activities animating discussions about the effects of the civil conflict on communal life.<sup>689</sup> Social movements also engaged in multiscale strategies ranging from the local to the global. Early warning systems connected not only different villages along river basins, but also communities to international

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<sup>687</sup> Castillo, 'Acción colectiva y resistencia negra en el Norte del Cauca y Sur del Valle' 175.

<sup>688</sup> The peace community of San Jose de Apartado in the Urabá region was one of the most prominent examples. It was founded in March 1997 in reaction to the massacres and forced displacement perpetrated by paramilitary squads in September 1996 and February 1997. It received support from the London-based NGO Peace Brigades International and the San Francisco-based organization Fellowship of Reconciliations. Their volunteers accompanied the communities for years expecting to act as a deterrent to violence. See Oslender, 'Another History of Violence. The Production of “Geographies of Terror” in Colombia’s Pacific Coast Region' 93-94.

<sup>689</sup> Castillo, 'Acción colectiva y resistencia negra en el Norte del Cauca y Sur del Valle' 177.

networks of NGOs, scholars and politicians. Peace communities were supported by foreign NGOs, who sent volunteers to the region expecting to act as deterrents to violence.<sup>690</sup>

It is important to highlight that many NGOs and social organisations shifted their agendas from the defence of the territory to the defence of human rights and, in particular, the rights of the forcibly displaced population. As highlighted by a leader, it was a shift from organising to live life to organising to defend life.<sup>691</sup> The shift was a mechanism to prevent new attacks and, at the same time, to respond to the humanitarian crisis that violence engendered. The new and restructured organisations also focused on making visible the extreme violence to which the communities were subjected, and on influencing political processes to mitigate the effects of the war.<sup>692</sup> For instance, in response to the crisis, the Association of Displaced Afro-Colombians (AFRODES is its Spanish acronym) was born. Founded in 1999 by a group of forcefully displaced persons from Choco, the NGO became a recognised interlocutor with both national and international institutions. Its main office in the centre of Bogota became the first source of legal and humanitarian support for many Afro-Colombians who arrived in the city.<sup>693</sup>

### *6.3. Repertoires of Contention*

Buenaventura is the space where the highest number of expressions of resistance and social mobilisation against violence and development have taken place since the late 1990s in the Pacific region. According to Castillo, between 1995 and 2007, 221 incidents of social mobilisation occurred in Buenaventura; this represents 56.3% of the incidents that happened in the northern lands of the department of Cauca and the southern region of the department

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<sup>690</sup> See Oslender, 'Another History of Violence. The Production of "Geographies of Terror" in Colombia's Pacific Coast Region' 93.

<sup>691</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 377.

<sup>692</sup> *ibid* 377-378.

<sup>693</sup> See Oslender, 'Another History of Violence. The Production of "Geographies of Terror" in Colombia's Pacific Coast Region' 96.

of Valle.<sup>694</sup> Repertoires of contention have ranged from the creation of peace communities within and outside the urban area, to protests, marches and general strikes. Ethnic and territorial claims have remained central to the strategies of social organisations in the port city, even though they have been adapted to the urban context. Actually, by stating territorial claims within the city, social movements in Buenaventura are reshaping understandings of the city.

After the *El Firme* massacre in April 2001, communities from the River Yurumanguí, with support from PCN and the Catholic Church, declared their river a ‘territory of peace and happiness,’ creating in this way a symbolic barrier to the war. Following the example of the peace communities from Chocó and Urabá, its members agreed on refraining from helping or engaging in any sort of relationship with war actors.<sup>695</sup> In the urban area, the first “Humanitarian Zone” was created in April 2014 in the street known as the *Puente Nayero*. After the dismantlement of a “chop house” in the area, social leaders and local inhabitants supported by a number of social organisations, created this neutral space to protect the life and integrity of 1,000 people. As death threats against social leaders intensified, the community of *Puente Nayero* with support from the Commission for Peace and Justice demanded precautionary measures from the Inter American Commission, which were granted in September 2014. The Inter American Commission ordered the State of Colombia to take appropriate measures to protect the lives of the members of the community, and to properly investigate threats and attacks. Based on the experience of *Puente Nayero*, in February 2015 the creation of a second humanitarian zone began in the urban area of Buenaventura.<sup>696</sup> These initiatives have incorporated territorial claims in the urban area, which have

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<sup>694</sup> Castillo, 'Acción colectiva y resistencia negra en el Norte del Cauca y Sur del Valle'. 159.

<sup>695</sup> *ibid* p. 175 Sadly many community leaders received dead threats and some of them were murdered.

<sup>696</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 421-422.

encouraged local communities to think in the urban space as a vital space, a sort of symbolic extension of their rural territories.<sup>697</sup>

As in many other localities of the Pacific region, new organisations emerged in Buenaventura in response to paramilitary and *Bacrim* violence since the 2000s. Many of them focused on the defence of the rights of children, adolescences and women, who have been affected disproportionately by the war. Public denunciation, memory reconstruction, artistic and recreational programs have been some of their most popular strategies. The National Centre for Historic Memory explains that the incorporation of artistic expressions such as rap, hip-hop, graffiti and photography into the languages of resistance have been crucial to engaging young people. It has been one of the main objectives of the new organisations as children and adolescences are the main target of illegal gangs seeking to create urban armies. These artistic expressions have also been used as a strategy of re-territorialisation. They are helpful for purposes of rehabilitating the time and the spaces affected by the war and re-creating the concept of ‘good-life’ among the youth.<sup>698</sup> In 2011, the *Marcando Territorio* organisation emerged together with the recording studio “MT MUSIC” as a means of strengthening youth artistic initiatives. Many hip-hop groups decided to record a song together to reject violence; the song was titled “Marking the Territory” and became an emblem of the youth movement in Buenaventura.<sup>699</sup> On the other hand, organisations of women have focused on denouncing violence to which women have been subjected, on memory reconstruction, and on providing emotional support to other female victims in order to help them to mourn and recover their autonomy.<sup>700</sup>

The repertoires of contention have also encompassed strategies of re-territorialisation with the aim of reoccupying and providing a new meaning to the territories

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<sup>697</sup> *ibid* 381.

<sup>698</sup> *ibid* 386.

<sup>699</sup> *ibid* 401.

<sup>700</sup> *ibid* 403-404.

affected by terror. The strategies have included; collective disobedience to restrictions on mobility imposed by violent actors, collective occupation of areas controlled by them, defence of public spaces such as public parks and sport facilities, collective refusal to sell or leave people's homes along with legal strategies to protect their ownership, collective intra-urban displacements for short periods of time, cultural activities and ceremonies to change people's image of the areas affected by the conflict.<sup>701</sup>

Many of the proliferating social organisations in Buenaventura began the search for mechanisms of coordination. In 2007, four social organisations including PCN,<sup>702</sup> created an inter-organisation committee with the purpose of encouraging dialogue and coordination between groups working in the region. Since 2010, the committee prioritised litigation before the Constitutional Court. The strategy paid dividends in 2013 when the Court issued a decision in which it highlighted the human rights risks that megaprojects were creating in the town, and restated that previous and informed consent is a State obligation when such projects affect the interests of ethnic minorities. In 2009, more than 20 organisations created the 'Committee for the Defence of Water and Life' seeking to coordinate strategies to protect the right to water.<sup>703</sup> Organisations of women created the 'Network of Solidarity against Violence against Women: Butterflies of New Wings building the Future' which in 2014 was granted the United Nations Nansen Prize for Refugees.<sup>704</sup> Later on, in 2011 a number of human rights NGOs and grass roots organisations created the 'Inter-organizational Committee for the Defence of Territories Recovered from the Sea.' These neighbourhoods, located in intertidal areas and inhabited by poor population, were some of the most affected by *Bacrim* violence in the city. It was there where most 'chop houses' were discovered and

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<sup>701</sup> *ibid* 390-391.

<sup>702</sup> The organisations were PCN, *Rostrros y Huellas*, *Transformando Mentes*, the Jesuit Service for Refugees and Fescodes. *ibid* 387.

<sup>703</sup> *ibid* 388.

<sup>704</sup> *ibid* 406.



were forced displacements were taking place as the land became attractive to developers in connection with the expansion of port facilities.

Marches, protests and strikes have been a central strategy of social movements in Buenaventura. Since the early 2000, most of them have occurred in rejection of violence, labour precarisation and the lack of adequate public infrastructure and public services. 2006 and 2007 were critical years in this regard, as violence escalated due to the emergence of *Bacrim*. Around 190 expressions of collective action materialised in the port city between 2006 and 2007, more than in any other municipality of the region.<sup>705</sup> 73.6% of them occurred in the urban zone, a fact which is correlated to the growth of the urban population as Buenaventura is one of the main receptors of forcibly displaced population. Some of the most important demonstrations, protests and strikes are the following: In May 2007, more than 2,000 people marched against human rights violations.<sup>706</sup> Social discontent led into a general strike in October 2007 (which was forcibly ended by police intervention) and the blockage of the main motorway for approximately 11 days in a joint action of indigenous and peasant movements.<sup>707</sup> On the 9 April 2013, cultural and artistic demonstrations took place for three days. Victims organisations working together with the National Centre for Historic Memory organised cultural and artistic activities to reoccupy and resignify urban territory.<sup>708</sup> In February 2014, the Committee for the Defence of Territories Recovered from the Sea, which changed its name to “Committee Marching to Live with Dignity,” called for a demonstration to demand the ‘burial of violence and life with dignity.’ As the national and regional governments denied the humanitarian crisis, 25,000 people marched to make it visible and to demand urgent state intervention. At the end of the day, a ceremony of burial actually took place to symbolise the end of violence.<sup>709</sup>

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<sup>705</sup> Guzmán Barney, 'Acción colectiva y región: El Norte del Cauca y el Sur dle Valle (2006-2007)' 282.

<sup>706</sup> *ibid* 235.

<sup>707</sup> *ibid* 257-259.

<sup>708</sup> Centro Nacional de Memoria Histórica, *Buenaventura: un puerto sin comunidad* 419.

<sup>709</sup> *ibid* 419-420.

The latter march is the direct antecedent of the May 2017 general strike. Following the 2014 demonstrations, the national government made several promises which were translated into a 'Shock Plan' and soon after the integrated development plan for the Pacific littoral "Plan Todos Somos Pazcífico." By virtue of the former, more than 700 police officers arrived in the port city to improve security levels. Furthermore, the President announced immediate investments in water provision, sanitation and housing. The latter, with the objective of increasing the competitive position of the region as a means to eradicate poverty and violence, promised investments in water and sewage systems, transport infrastructure and electricity networks of up to 3.8 billion pesos. The money would be managed by an independent trust under the supervision of a new agency subordinated to the Office of the President.<sup>710</sup>

Most of these promises were unfulfilled and the constructions under way by 2017 were unsatisfactory in the eyes of the local communities. This was the most evident motivation for the May 2017 general strike. Hence, in the list of requests, the strike committee condemned the national government's emphasis on security rather than on the provision of social services in the aftermath of the 2014 demonstrations. It decried the closure of the only hospital serving the locality, as well as the government's failure in building an operative system of water provision. It questioned the funding allocated to the "Plan Todos Somos Pazcífico," as well as the inclusion of other localities within the scope of the plan.<sup>711</sup> The committee also underlined the unfulfilled promises made long before 2014. The flip side of all developmental projects, at least since the 1990s, has been promises to move

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<sup>710</sup> Consejo Nacional de Política Económica y Social (CONPES), *Documento Conpes 3847 de 2015 "Plan Todos Somos PAZcífico: Concepto favorable a la Nación para otorgar garantía al patrimonio autónomo 'Fondo para el desarrollo del plan Todos Somos PAZcífico', para contratar operaciones de crédito público externo hasta por la suma de USD 400 millones, o su equivalente en otras monedas, destinados a su financiamiento parcial y; declaración de importancia estratégica del programa de inversión que se financiará con estos recursos"*

<sup>711</sup> Asamblea ciudadana por la defensa de Buenaventura, 'Pliego de soluciones' 3-4.

Buenaventura out of poverty; yet, by 2017 the social crisis had deepened. Poverty had reached devastating levels and violence had been exacerbated.<sup>712</sup>

As in previous mobilisations, the strike was mainly against the model of development imposed on the people of Buenaventura, and the violence it has brought about. It was about how the way the national government and local elites conceive development. When combined with racial stereotypes and the colonial legacy of Buenaventura, this not only excludes them from its benefits, but more importantly, it makes them redundant in their own territory and destroys their cultural and physical existence. For the protestors, the development of the port has not translated into better living conditions for the whole population of Buenaventura. The expansion of the port has not improved employment, and in turn, has prevented the recognition of land rights to many communities, in particular to those located in “areas recovered from the sea.” Consequently, development has meant the destruction of people’s ancestral link to the sea and, therefore of their territory.<sup>713</sup> To put this simply, the strike was about the politics of neoliberal development as staged in the port city. This is the existential claim running across all the instances of social mobilisation described in this section.

## **7. Conclusion**

To conclude this final chapter with some optimism, I would like to make two suggestions regarding the strike which may provide some hope on the potential of this type of social mobilisation: firstly, I want to suggest that the strike is illustrative of the type of solidarities which neoliberal precarisation forges. As Butler has discussed, the precarity produced by neoliberalism “is operating, as a site of alliance among groups of people who do not otherwise find much in common and between whom there is sometimes suspicion and

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<sup>712</sup> *ibid* 1-2.

<sup>713</sup> *ibid* 4-5.

antagonism.”<sup>714</sup> In Buenaventura, precarity has brought together different classes, ethnic groups and economic sectors into an alliance to fight the “disposability” of their bodies. The strike was a site of an encounter for groups with seemingly antagonistic interests (unions and the financial sector, formal merchants and street vendors, and even indigenous and black communities which often compete for the recognition of land rights and scarce public funding). These groups found that they share a sense of disposability, the rejection of a life of deprivations and the urgency of a liveable one. By being out on the street, sharing the space and the scarce supplies, by being exposed to indiscriminate police violence, and sharing the absence of a wage, they developed new alliances. They were creating on the streets new solidarities, thinking and performing new forms of being together; borrowing again Butler’s words, enacting “a provisional and plural form of coexistence that constitutes a distinct ethical and social alternative to “responsibilisation.”<sup>715</sup>

The bodies which gathered on the streets for 22 days were also disputing the public space, calling into question the constitution of the port city as a site for the port rather than for the people. In particular, they were reclaiming the public nature of the highway, which although legally categorised as public, is only functional to the port. It only serves the purpose of connecting the port facilities to the regions of production. The highway was the main target of security schemes, as ESMAD interventions during the strike clearly demonstrated. In these two very distinct logics of development were written in the space itself. For the protesters, the highway had become a source of insecurity and exclusion. Projects to modernise and expand it never consulted the population, and always resulted in evictions. The strikers not only blocked the highway, they appropriated this space in a different way: as a recreational site, as a space to gather with friends and neighbours and being together, and in in this quotidian activities, as political space.<sup>716</sup>

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<sup>714</sup> Judith Butler, *Notes Toward a Performative Theory of Assembly* (Harvard University Press 2015) 27.

<sup>715</sup> *ibid* 16.

<sup>716</sup> See *ibid* 71.

In connection with this idea of the public constitution of the space, I think we can also see in the strike a process of political subjectivation which besides antagonising is opening possibilities for transformation.<sup>717</sup> The strike makes evident that the poor are not deprived of political agency. As Butler puts it in discussing Agamben's thesis of the 'bare life,' 'even the life stripped of rights is still within the sphere of the political and is thus not reduced to mere beings, but is, more often than not, angered, indignant, rising up, and resisting.'<sup>718</sup> Indeed, precarity has become the galvanising political event for many recent instances of social mobilisations. A number of aspects reveal the process of political subjectivation taking place in Buenaventura. As in similar mobilisations analysed by Quintana,<sup>719</sup> the strikers are not just using rights in a strategic way; although relying upon an institutionalised language, they are constructing new rights, legitimising unrecognised aspirations and claims by using legal language such as the collective right to the territory within the city or the right to remain.<sup>720</sup> They are also contesting the individualising moral of neoliberalism (borrowing Butler's terminology) by appealing to a language of collective rights.<sup>721</sup> They decry the logic of disposability and displacement put forward by the port, by reclaiming 'the right to remain,' their equality as citizens and their right to a liveable life. But their claims are not only about the provision of goods and services; by contesting the distribution effected by neoliberalism, their demands are universal. They open the space for a new social order.<sup>722</sup>

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<sup>717</sup> I make use of this expression to refer to processes which beside contesting exclusion, seek transformation of the frontiers, practices and rules of the instituted social order. Therefore, as Quintana explains, processes of political subjectivation are antagonistic and transformative. It does not mean a complete opposition to the instituted social order, rather transformation emerges in the cracks and opening of power, by means of creativity and experimentation. The logic of government which is problematised by social movements is sometimes used strategically to oppose the status quo, but more importantly, they are also transformed in the encounter with other logic deployed by them. See Laura Quintana, 'Derechos, desacuerdo y subjetivación política' in Andrés Fjeld, Laura Quintana and Étienne Tassin (eds), *Movimientos sociales y subjetivaciones políticas* (Movimientos sociales y subjetivaciones políticas, Universidad de Los Andes 2016).

<sup>718</sup> Butler, *Notes Toward a Performative Theory of Assembly* 80.

<sup>719</sup> Quintana, 'Derechos, desacuerdo y subjetivación política'

<sup>720</sup> Asamblea ciudadana por la defensa de Buenaventura, 'Pliego de soluciones' 5.

<sup>721</sup> *ibid* 1.

<sup>722</sup> See Quintana, 'Derechos, desacuerdo y subjetivación política' 109.

The strike committee also appropriated the language of legal exception. Exceptionality is the language which the national government usually relies upon to rule Buenaventura, enable militarisation and accelerate the implementation of development projects. But in the strike, the language of legal exception is deployed in a counterhegemonic way. It underscores that the social problems of Buenaventura are a matter of life and death, and thereby, demand urgent intervention against a history of governmental neglect. The emergency would accelerate investment, accelerate the development of adequate healthcare, water, sanitation and education. It would highlight that the ordinary mechanisms employed by the government have not been enough and make evident that the problems overtake the poor institutional capacity of the local government.<sup>723</sup> Summing up, the strikers appropriate the legal terminology, turn it upside down, and in this way, assert their equality as interlocutors of the national government.

I suggest that the strategy of appealing to exceptional measures is problematic to the extent that it portrays poverty and exclusion in the port city as a crisis, that is, as an extraordinary and supervening phenomenon detached from governmental interventions. It is not a sort of unexpected disaster. For the strikers, things have always been bad in Buenaventura. But everything got worse in recent years and turned into a humanitarian crisis.<sup>724</sup> Even though such representation may conceal the structural character of the problems, and in this way may be aligned with governmental discourses, nevertheless the appropriation of this technical language and the striker's attempt to turn it upside down epitomises the antagonistic and transformative character of the process.

To end this section, I would like to highlight how the community of Buenaventura, during the strike challenged the way national and regional governments represent them, in other words, their assigned identities. The strike was a sophisticated form of social

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<sup>723</sup> Asamblea ciudadana por la defensa de Buenaventura, 'Pliego de soluciones' 5-6.

<sup>724</sup> *ibid* 7.

mobilisation. Its claims were legally grounded, formulated in the language of government, but at the same time transformative. The strike committee was aware of how the law could be twisted and stretched to accommodate the petitions of the communities. In this way they contested the image of backwardness usually attributed to them. In addition, in spite of the violence and precarious conditions which the demonstrators experienced, people showed their solidarity and remained united and active in protesting until the end of the negotiations. In this way, the *Bonaverenses* challenged the logic of individualisation and responsabilisation that are imposed to them. Besides rejecting the incident of vandalism that occurred at the beginning of the demonstrations, the strikers remained peaceful. They challenged police violence with music, dancing and a festive environment. By doing so, the strikers called into question their image as criminals and as inherently violent. The strikers were aware of how they are constantly portrayed by the law, government and the media. Through the strike they sought to change and assert a different representation by acting in unexpected ways.

## Conclusion

By focusing on three distinct but inter-related instances, this thesis examined the complex and heterogeneous ways through which poverty is governed in contemporary Colombia. It showed that neutralising and shaping the agency of the poor have been central to constituting and securing the political and economic order that neoliberal governmentality seeks to create. The social question, that is how to address poverty as a mean to prevent social unrest, has been central to the development of capitalism. However, poverty has not been problematised and rendered in the same way at every stage of capitalist development. The ways of addressing and governing poverty have been contingent on context-specific power relations. Against this backdrop, the thesis sheds light on the complexities, particularities, contradictions, ruptures and continuities of the government of poverty in neoliberal times in Colombia. To begin with, the research unpacked different trajectories and sites of government. It began at a site familiar for Foucauldian accounts of governmentality, with welfare-security relations where the government of poverty takes place from above. It then engaged with rights, eschewing the abstract critical discussion of rights and instead engaging with the neoliberal process of the evacuation of the sense of economic and social rights. It ended in the terrain of social mobilisation where government operates both downwards and upwards.

Heterogeneous actors showed up throughout the chapters: from the World Bank and Colombian presidents to paramilitary groups and social movements. The chapters work together in an intricate manner, tracing relationships across transnational, national and local scales. At each point the thesis has sought to underline the plurality of forces at play. Each chapter reflected a different logic of the government of the poor (bureaucratic and technical



in the first, juridical in the second and security and police in the third). It also underlined the plural and hybrid technologies of government (conditionalities, sanctions, training, rights, *tutela* writs, violence, criminalisation, etc.), revealing the complexity of the processes. Finally, the chapters showed the heterogeneous and sometimes contradictory subjectivities that programmes of government attempt to constitute (entrepreneurial, resilient, self-reliant, docile, sacrificial and empowered). It has also sought to think about the emergence of subjectivities that exceed government and contest it. Never simply ‘resistance’, these subjectivities play with the same technologies and logics. Yet, amidst complexity and plurality, the thesis also illustrated the continuity of the poverty-security nexus. The following paragraphs highlights the main finding of this thesis:

### **1. Denaturalising poverty**

One of the central aims of this thesis was to “problematise” the manner in which poverty is produced as a “problem” in neoliberal governmentality. As mentioned in the introduction, social phenomena are turned into problems of government which demand interventions through processes of rationalisation which rely upon particular types of knowledges and forms of reasoning. Hence, problems are neither neutral constructs nor natural ways of thinking about phenomena. Power struggles run across the construction of problems, the explanations given to them and the suggested solutions. The thesis showed that the problem of poverty in the case of Colombia has been structured in line with expert knowledge. Economists and psychologists on the one hand, and security experts on the other, have dominated the debates on poverty in recent years. The causes of poverty, in line with these types of expert knowledges, has been found at the level of the individual, detached from the structures of the economy and political institutions. Furthermore, poverty alleviation has been justified in term of a model of development based on competitiveness and investment-

led growth. The thesis also underlined the coercive production of market-friendly subjectivity, the movement of theories and policies from the transnational to the national or the local, and the play of neoliberal techniques across different logics and fields of power (from the juridical to the managerial to the police/military). Other forms of thinking about poverty, inequality, precarity and related subjects have been obscured in official discourses or simply rejected. There has not been room for democratic debate about what poverty is, its causes, the best form of ending it or whether or not it should be the focus of social policy in the first place.

By problematising the construction of poverty in Colombia, and more generally in neoliberalism, this thesis has sought to denaturalise it. In simple words, poverty has emerged from this thesis as a constructed rather than natural phenomenon, contingent upon discourses and expert knowledge which structure interventions, affect hearts and minds and determine the conditions of life for many. This thesis has aimed at underlining the complexity of the process of constructing poverty, without ever losing sight of the simple argument at its core. More fundamentally, by denaturalising poverty, the thesis has sought to open the door to other ways of thinking about social and economic injustice, to other theoretical framings and, more importantly, to turn the field of poverty studies into a site of struggle.

## **2. The Poverty-Security Nexus**

As discussed in the introduction, scholarship on the government of poverty highlights the centrality of poverty to capitalism and the important role that projects of security play in constituting a capitalist order. Neocleous reminds us that capitalism has always been a matter of securing the insecurity that capitalist accumulation creates.<sup>725</sup> Coercive and non-coercive techniques associated with projects of security constitute and guarantee the particular type

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<sup>725</sup> Mark Neocleous, *Critique of Security* (Edinburgh University Press 2008) 8

of order that capitalism demands. Lazzarato and Lorey claim that security plays a pivotal role in neoliberalism in the context of fears of insurgency and revolution.<sup>726</sup> In their account, security plays a double role as a means and an end of government. In line with Neocleous, they claim that techniques of security are deployed to harness and control the poor as a mean to constitute a different order, whereby security is also a feature of the order that is pursued. Likewise, Wacquant points out the punitive tilt that the neoliberal state has acquired in its attempt to secure a particular type of economic and political order. Techniques of security are mobilised to contain and neutralise the social unrest that the material insecurity that neoliberalism generates brings about.<sup>727</sup> In turn, for Hilgers neoliberalism's interest in security entails not only punitive responses but rather the birth of an extremely coercive state.<sup>728</sup> For others, neoliberalism is not only coercive but more fundamentally authoritarian, this is, besides a propensity to coercion, it encompasses limitations on the spaces of resistance and restrictions on participation and democratic deliberation – a preemptive discipline.<sup>729</sup> Yet, as Valverde suggests, there are not single notions of security. Projects of security vary in terms of rationalities, scope and technologies, which articulate in complex manners.<sup>730</sup>

In the context of these discussions, the chapters of this thesis attest to, on the one hand, how projects of security which target the poor are central to neoliberal attempts to secure a different type of order: one based on competition, competitiveness and investment-led growth. On the other, they illustrated the coercive and authoritarian character of these

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<sup>726</sup> Maurizio Lazzarato, 'Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social.' (2009) 26 *Theory, Culture and Society* 109

<sup>727</sup> Loïc Wacquant, 'Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity' (2010) 25 *Sociological Forum* 197

<sup>728</sup> Mathieu Hilgers, 'The Historicity of the Neoliberal State' (2012) 20 *Social Anthropology* 80

<sup>729</sup> Ian Bruff, 'The Rise of Authoritarian Neoliberalism' (2014) 26 *Rethinking Marx* 113; Cemal Burak Tansel, 'Authoritarian Neoliberalism. Towards a New Research Agenda' in Cemal Burak Tansel (ed), *States of Discipline Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order* (States of Discipline Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order, Rowman & Littlefield 2017)

<sup>730</sup> Mariana Valverde, 'Questions of Security: A Framework for Research' (2010) 15 *Theoretical Criminology* 3

projects of security; coercion and authoritarianism is experienced in particular by those in the lowest ranks. The chapters also showed the great diversity of coercive and authoritarian techniques deployed to harness the poor, from sanctions and compulsory training, to rights and criminalisation. By examining the particular case of Colombia, the chapters pinpoint the continuities vis a vis the trends noticed by the literature referred above. Hence the thesis demonstrated that neoliberalism not only relies upon soft forms of power and technologies of government from the distance, it is also a very intrusive and coercive regime, in particular when it comes to the poor.

Colombia was a good site for analysing the poverty-(in)security nexus as it has been a central concern in attempts to pacify the country and build a different order. As mentioned in the introduction, poverty has been considered a threat to political and economic stability for a long time as the internal armed conflict is deeply rooted in it. In short, poverty is a security concern and taming the poor has been understood as crucial for building and maintaining political and economic stability. Colombia is also well placed for purposes of exploring the operations of neoliberalism as it has been deeply influenced by neoliberal discourses and there has been a demonstrated commitment to a neoliberal oriented development model based on competitiveness and investment led growth since the 1990s. In this way, the examination of Colombia adds to the debate on the poverty-(in)security nexus new evidence on the functioning of the link, in particular in relation to the coercive and authoritarian tendencies of neoliberalism when it addresses the poor.

In Chapter 1, poverty emerged as a threat to public order and economic and political stability in the context of the Colombian armed conflict. The chapter revealed the connection between *Familias en acción*, a conditional cash transfer scheme which targets extreme poverty, and *Plan Colombia*, a counterinsurgent and anti-drugs plan supported by the government of the United States. The text showed how economic and political stability is pursued by means of conditional cash transfers which are instrumental in creating people's

support for a government committed to orthodox neoliberal policies. Through the provision of some material relief to the poor, they legitimise presidents committed to privatisation and investors' security. Subsidies also forge alliances between poor populations and the military, and in this way, they constitute a loyal base in the context of the war against guerrilla groups. By means of conditionalities, subsidies also fabricate self-reliant and responsible subjects who internalise the new order of competition and weak social protections, securing in this manner an economic order of perpetual austerity.

In Chapter 2, the question of how to secure an economic and political order of perpetual austerity and investors' security emerges again. In this case, constitutional rules tame the radical pole of social and economic rights in order to guarantee fiscal discipline. Rights are evacuated and reinscribed according to the logic of austerity. Thereby, rights are deployed to govern both courts and right-holders, the former to prevent structural remedies which distort the technical distribution of resources, the former to avoid "unreasonable" claims and diffuse an ethic of work and sacrifice in line with the neoliberal logic of privatisation of social reproduction.

In Chapter 3, the concern for security translates into attempts to create peaceful and stable local conditions which enable the operation of a seaport as the emblem of neoliberal development. Sovereign assertion, violence and coercion pacify an impoverished African-descendent population living the legacy of colonialism. They also clear the land for securing the expansion of the port and endeavour to constitute docile subjects who sacrifice themselves in the name of development and peacefully accept their fate.

Overall, the scenarios examined in this thesis converged in a particular understanding of the order to be secured, this is political and economic stability, whereby stability means, on the one hand the absence of civil conflict and popular politics, and on the other austerity, weak social protections, "technical" allocation of resources and conditions attractive to investors. Yet, the ways of attaining security, as illustrated above, are very different. The

chapters suggest that security is not only a logic of aggression, violence and coercion. Other manners of thinking how security can be produced were documented, such as the counterinsurgency logic of creating alliances between the military and poor communities, the logic of improving the government's acceptance and public image, or the logic of constituting docile and responsible subjects who do not engage in illegal behaviour and denounce crime. Yet, most of these mechanisms are severely coercive (compulsory training, sanctions, criminalisation, militarisation) and authoritarian (isolation of economic decision making, evacuation of rights and the creation of obstacles to the judicial enforceability of social and economic rights).

### **3. Technologies and Techniques**

While the Colombian state sets “security” as its key objective, this tells us little about the technologies and techniques that they might employ. Reflecting on government and security, Valverde notes that “[t]echniques are often borrowed creatively in an ad hoc manner.”<sup>731</sup> Each chapter has developed analyses of different (and sometimes paradoxical combinations) of technologies, techniques and rationalities. Chapter 1 took us to the wider realm of conditional cash transfers. These types of programmes are claimed to be a soft form of regulation to the extent that they are reliant upon incentives and stimuli. Yet, the operation of *Familias en Acción* revealed a different and paradoxical configuration. The programme is both a technology of government and a technology of power, that is to say, besides interventions in the environment, it governs through coercion and discipline. Disciplinary techniques in the form of contractual obligations, surveillance, sanctions and compulsory training, grounded on discourses of “welfare fraud”, deceptiveness and dependency, are combined with discourses of empowerment and agency. A technical and bureaucratic logic of measurement, monitoring and assessments underpins the working of the programme. In

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<sup>731</sup> *ibid* 9

harmony with this way of reasoning, poverty is problematised as an issue of measurable income (or lack of income) and abilities and skills that can be instilled through technical (psychological) tools. However, the programme relies heavily on sanctions, while the distribution of the subsidies is very discretionary.

Chapter 2 focused on rights as techniques of government. It illustrated the use of rights to discipline rights. Departing from the discussion on rights as the language of the state and as means of political struggle, Chapter 2 began with an optimistic story of social and economic rights as techniques deployed to resist labour deregulation, privatisation and other neoliberal reforms. However, the story shifted to how rights were redefined and put to work as the language of the state to govern legislators, courts, social movements and ultimately poor people. In this way, rights emerged as techniques susceptible to manipulation and co-optation. The chapter showed how they operate in a discursive register. On the one hand they define what is possible to say and demand, and on the other shape subjectivities by delineating expectations, roles, entitlements and responsibilities. But rights also operate in a more material manner by creating argumentative burdens and evidence requirements, limiting access to courts and setting the boundaries of injunctions and remedies. In this sense, this chapter brought attention to the juridical logic implicated in governing through rights.

In Chapter 3 security is fabricated through a myriad of technologies. The chapter examined a number of the traditional techniques associated with security (coercion, criminalisation and physical violence) as well as to the sovereign control of the territory. Buenaventura's general strike was neutralised by the spectacular display of tanks, anti-riot police forces and military intervention. These techniques were not foreign to the city, as militarisations had been common in the Colombian Pacific lowlands since at least the 2000s. Local poor inhabitants are often discursively constructed as inherently dangerous and in need of discipline and coercion. Physical violence has been a widespread technique used for

a multiplicity of actors, ranging from the military, to guerrilla forces, paramilitary groups and drug trafficking gangs. However, Buenaventura also spoke about other constellations of techniques. Chapter 3 examined the use of land rights and discourses of multiculturalism to neutralise social movements and attract investors, as well as the empowerment of local communities through environmental discourses as part of an agenda of exploitation of natural and genetic resources. More important perhaps is the emergence counter conducts and other techniques to resist and contest the order that neoliberal governmentality seeks to create. While in Chapter 2 rights were manipulated and hollowed out to avert judicial activism and radical uses in the name of socio-economic justice, in Chapter 3 social movements recode land rights as territorial rights, recover their aspirational and emancipatory potential and take them to new realms and spaces (like to the right to territory in the city). The whole city went on strike to demand not only the end of violence but a mode of development in which the local population is not neglected and subordinated to the needs of the port. In this sense, Chapter 3 attests to the diversity and complexity of techniques implicated in producing security.

#### **4. Subjectivities**

Finally, Finally, this thesis reflected on the subjectivities that programmes of the government of poverty attempt to constitute, but also suggested that alternative subjectivities and counter-conducts are produced in the same process. Chapter 1 and 2 focused on abstract and ideal subjectivities that *Familias en Acción* and austerity discourses advance, and which are part of the machinery of austerity-based and investment-led growth. In Chapter 1 the desired poor subjects emerged as, on the one hand, responsible mothers who sacrifice for their families and out of love internalise the costs of social reproduction, and on the other, entrepreneurial, resilient and responsible subjects who fend for themselves and their families.



In a similar fashion, in Chapter 2, Fiscal Sustainability appeals to an image of responsible, self-reliant and hardworking poor subjects who sacrifice and do not expect the state to come to their rescue. This individualistic and moralising constructions define the poor in terms of absences and suggest that poverty is an individual problem and a failure, shifting in this way the responsibility of poverty onto their shoulders. Of particular importance in this chapter is the attempt to constitute sacrificial subjectivities through right discourses. The chapter showed how rights were narrowed through retrogressive interpretations and turned into downgraded entitlements that only the poor enjoy and which are dependent upon fiscal sustainability. At the basis of this reinscription of rights lays down a different construction of citizenship: in order to be included, citizens must adopt an sacrificial ethos and assume responsibility for their own fate. They must fend for themselves and their families (even if the system does not allow them to do so) and renounce to their social entitlements (pensions, salary benefits, etc.) as a means of contributing to the high public objective of investment-led growth. Hence, the poor are made responsible not only for their own fate, but also for improving the competitive position of the country, in this case, by renouncing aspirations of progressive realisation and enabling a restricted but healthy public budget.

Chapter 3 introduced a twist in this narrative. While some desired poor subjects appeared in the analysis (docile and sacrificial subjects in particular), the chapter concentrated on the political subjectivities coproduced by discourses of poverty and development. Real people (in contrast to the abstract poor subjects of previous chapters) refused their identification as criminal, backward and so forth, and resisted the ideal of docility and sacrifice imposed on them. They emerged as political subjects who not only contested the order that the government of poverty seeks to build and secure, but also imagined a different way of being together.

## 5. Conclusion

To conclude, I would like to highlight that the examination of the government of poverty has a critical value. Foucault reminds us that power relations are reversible. As Solki-Bulley notes, the governmentality lenses allow one to think strategically about government and so, pay attention to “disruptions in its rhythms”, cracks and gaps which leave room for rupture and struggle.<sup>732</sup> Lorey stresses that the reversal of power relations and the flight from them does not mean a complete rupture, reversal “never leads to an outside of power.” Thus, the critical task is to turn to “a self-conduct that tests new modes of living in disobedience.”<sup>733</sup> It would be the beginning of a new politics which departs from the rejection of being governed in one particular way. Hence, to identify how one is governed is key to resistance and struggle.

Against this backdrop, the importance of this research, besides exposing the operations of the government of poverty, lays in making evident its contingency and instability as a means to open possibilities for political struggle. That is why the thesis ended with a discussion on the resistance and contestation of the poor people of Buenaventura. There is an attempt to disrupt the rhythms of the neoliberal development apparatus, the violence and other techniques of government upon which it has rested.

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<sup>732</sup> Bal Sokhi-Bulley, *Governing (Through) Rights* (Bloomsbury 2016) 12

<sup>733</sup> Isabell Lorey, *State of Insecurity. Government of the Precarious*. (First edn, Verso 2015) 102

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