

Social Policy and the New Development State:

The Case of Colombia

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I. Introduction

Since the 1990s, the design and provision of social policies in Colombia has undergone substantial transformations. In general, these transformations seem to reflect a regional trend to combine a selective enforcement of constitutionally protected economic, social and cultural rights,¹ with a reliance on conditional cash transfers² as the most effective way for the state to channel social services to segments of society who were excluded before (e.g., informal workers, or marginalized identity groups). At the same time, scholars and policy makers in the development field have identified these transformations in the design and provision of social policies in Latin America as part of a series of institutional changes pointing towards the emergence and consolidation of a new conception of the role of the state in the development process.³

The overarching tone of the literature on the New Development State is celebratory, pointing at success stories particularly the case of Brazil and the *Bolsa familia* program.⁴ In a previous article, Diogo Coutinho, a coauthor in this book, describes this program as one that has been effectively able to redistribute resources within the Brazilian society and because of this, has been a motor of economic

¹ Victor Abramovich y Christian Courtis. Los Derechos Sociales como derechos exigibles. Madrid : Editorial Trotta, 2004; Varun Gauri, Daniel M. Brinks. Courting social justice: judicial enforcement of social and economic rights in the developing world. Cambridge; New York : Cambridge University Press, 2008;

² Much has been written about cash transfers in the region, among them the most useful are: Orazio Attanasio, Erich Battistin, Emla Fitzsimons, Alice Mesnard and Marcos Vera-Hernández. “How effective are conditional cash transfers? Evidence from Colombia”. THE INSTITUTE FOR FISCAL STUDIES, 2005, in: <http://www.ifs.org.uk/publications/3214>; Jairo Nuñez y Laura Cuesta. “Evolución de las políticas contra la pobreza: de la previsión social a las transferencias condicionadas”. CEDE, Universidad de los Andes, Bogota, 2006.

³ David Trubek & Alvaro Santos (Eds.), *The New Law and Economic Development: A Critical Appraisal* (2006); Kevin Davis and Michael Trebilcock, *The Relationship Between Law and Development: Optimists versus Skeptics*, *American Journal of Comparative Law* (2008); Thomas Carothers (ed.), *Promoting The Rule Of Law Abroad: In Search Of Knowledge*; Kenneth Dam, *The Law-Growth Nexus: The Rule Of Law And Economic Development*; Erik G. Jensen and Thomas C. Heller (eds), *Beyond Common Knowledge, Empirical Approaches to the Rule of Law* (2003); David Trubek, “Development States and the Legal Order: Towards a New Political Economy on Development and Law” available at <http://wage.wisc.edu/uploads/Working%20Papers/NPED%20&%20Law%20Nov%202008.pdf>. For a bibliography of the new political economy of development discussed in Section II, go to the LANDS website: <http://www.law.wisc.edu/gls/lands.html>.

⁴ The Bolsa Familia program is discussed in another chapter of this research project.

development. According to Coutinho and others⁵, the Bolsa Familia program together with a strict control of inflation and a significant increase in the minimum wage have decreased the level of inequality in Brazil, broadening people's access to the market and therefore promoting economic growth⁶.

More specifically and according to the different authors who describe this New Developmental State in Brazil, it is through a renewed and different state design of social and economic policy that an inclusionary model of development has been set forth. This renewed and different state design is related to institutional building, the use of law and an increase in the reach of traditional social security schemes. In terms of the Bolsa Familia Program, the beneficiary families are very carefully targeted, it is managed in a decentralized manner through municipalities and it has small administrative costs. Parallel to the increase in the scope of the program and as mentioned above, there has been a sustained increase in the minimum wage, formal jobs have been created and traditional social security benefits have been augmented⁷.

A significant number of studies have attempted to synthesize these new developments to correlate success in achieving developmental goals with particular policies, practices and institutional innovations. According to David Trubek, the new developmental state is characterized by an increased participation with the private sector along with a reliance on the private sector as the motor of investment (as opposed to state owned enterprises). In addition to this partnership, there is a shift in the role of the state: from autocratic direction of the economy, to coordinator of different institutional arrangements, director of investment, coordinator of projects,

⁵ Glauco Arbix & Scott B. Martin, "Beyond Developmentalism and Market Fundamentalism in Brazil: Inclusionary State Activism without Statism". Workshop on "States Development, and Global Governance", Global Studies Center and the Center for World Affairs and the Global Economy (WAGE), University of Wisconsin-Madison, March 12-13, 2010 available at http://www.law.wisc.edu/gls/documents/paper_arbix.pdf, pg. 5.

⁶ In Coutinho's words: 'As discussed above, Brazil is one of the most unequal countries in the world, both in terms of concentration of income and wealth and in terms of access to opportunities. In recent years (overall,) it has seen an overall reduction in inequality at a pace of 1.2% per year between 2001 and 2007. In this period, the Brazilian Gini fell from 0.593 to 0.552, the lowest recorded in Brazilian history. This is due, explain specialists, to a combination of three factors: inflationary control (inflation has been stable since 1994 with the *Plano Real* stabilization package), increases in the minimum wage (of approximately US\$ 50.00 in 1995 to roughly US\$ 205.00 in 2007) and targeted social programs, mainly the PBF.' (Diogo R. Coutinho, "Linking Promises to Policies: Law and Development in an Unequal Brazil", *The Law and Development Review*, Manuscript 1055, available at http://www.law.wisc.edu/gls/documents/diogo_coutinho_paper.pdf, pgs. 18-19.)

⁷ For a detailed explanation on this virtuous combination see Arbix and Martin (note 5), p. 18-20

promoter of innovation and new product development (as opposed to creating incentives to import technology through foreign investment), sponsor of productive foreign investment instead of speculative one and an increased attention on providing social services to those outside of the market⁸.

From the analysis of the NDS characteristics described by Coutinho, Arbix and Trubek summarized above, law will have to fulfill certain requirements that at time seem contradictory: to be flexible and at the same time provide stability for investors; to be open to participation in the regulatory process of those affected by the rules and at the same time protect the institutions from being captured by interest groups and finally, the incorporation of new forms of participation and transparency that go beyond the classical model of law (where Congress represents the voice of the people) and provide avenues for responsive regulation that is accountable to the public.⁹

The combination of transformations in economic and social factors requires unpacking the set of ideas we have about the role of law in these shifts¹⁰. Even though there has been a considerable amount of literature describing the economic and social dimensions of the new developmental state, there has been much less trying to unpack the multiple roles that law and legal reasoning have played; the way in which law

⁸ For a detailed account of these transformations see Trubek (note 3), pgs 11-18

⁹ Trubek (note 3) pgs. 22-23.

¹⁰ This discussion about the role of law is greatly influenced by Duncan Kennedy's work, specifically: *Three Globalizations of Law and Legal Thought: 1850-2000* in David M. Trubek, and Alvaro Santos (eds.) *The New Law and Development a Critical Appraisal*, Cambridge University Press, 2006, pgs. 19-74 and *The Stakes of Law, or Hale and Foucault!* in Duncan Kennedy, *Sexy Dressing etc. essays on the Power and Politics of Cultural Identity*, Cambridge University Press, 1993, pgs. 83-126 and David Kennedy's work on law and development, specifically 'Law and Development Economics: Toward a New Alliance' available at: <http://www.law.harvard.edu/faculty/dkennedy/publications/Law%20and%20Development%20Economics%20Aug15Draft%20Stiglitz%20volume.pdf> and 'The "Rule of Law," Political Choices, and Development Common Sense' in David Trubek & Alvaro Santos (Eds.), *The New Law and Economic Development: A Critical Appraisal* (2006). David Kennedy explains the importance of unpacking our ideas about law in the following terms: 'Our economic and sociological ideas about development routinely have ideas about law embedded within them. Economists share a set of background ideas about what law is, what it can do and how it might be used. Often these ideas about law lie hidden in assumptions about the state and the appropriate instruments for policy making.'

structures the market¹¹; the interaction among different the branches of government when targeting a development policy¹²; the recent clash between policy design and social and economic rights as well as the choices that policy makers, legislators and judges make about the best way to reach a development goal¹³.

In other words, this relationship with law will entail looking at the shifts or rigidities of the modes of legal reasoning, the interaction between the different legal regimes at a particular time and the change in the relevance of certain actors (the executive, lawmakers, judges, administrative agency directors, frontline case workers). In addition, the analysis of the changes in law will include observing if the legal institutions and tools have been significantly transformed¹⁴ in order to achieve the desired social transformations.

¹¹ In the US legal tradition, Robert Hale was one of the first legal theorists to explain to what extent the market is a legal arrangement. Duncan Kennedy discusses Hale's contribution in: *The stakes of law or Hale and Foucault!* 'In the 1920's and 1930's, the legal realist institutionalist economists and most particularly Robert Hale, worked out an analysis of the role of law in the distribution of income between social classes. That analysis retains its power today. The basic idea is that the rules of property, contract, and tort law (along with the criminal law rules that reinforce them in some cases) are 'rules of the game of economic struggle'. As such, they differentially and asymmetrically empower groups bargaining over the fruits of cooperation in production.' (Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, p. 83) The relevance of this idea for the law and development tradition is clearly explained by David Kennedy in the following terms: 'The turn to law is important. Capital is after all, a legal institution- a set of entitlements to use, risk and profit from resources of various kinds. Law defines what it means to 'own' something and how one can successfully contract to buy or sell. Financial flows are also flows of legal rights. Labor is also a legal institution- a set of legal rights and privileges to bargain, to work under these and not those conditions, to quit, to migrate, to strike, to retire and more. Buying and selling are legal institutions-rooted in what it means to own or sell in a given legal culture, in the background legal arrangements in whose shadow people bargain with one another over price. Markets are built upon a foundation of legal arrangements and stabilized by a regulatory framework. Each of these many institutions and relationships can be defined in different ways-empowering different people and interests. Legal rules and institutions defining what it means to 'contract' for the sale of 'property' might be built to express quite different distributional choices and ideological commitments. One might, for example, give those in possession of land more rights-or one might treat those who would use land productively more favorably.' Kennedy, 'Law and Development Economics: Toward a New Alliance' (note 10), pg. 2.

¹² As I will describe further along in this article, the executive branch has had an enormous amount of power when deciding the form and content of social policies in the Colombian context. Nevertheless, this power has different styles of restraints from both the judiciary and the legislature that have varied in force and efficacy over time.

¹³ It is not obvious that a development policy should naturally be pursued by public law or that criminal law is the only way to prevent undesired behavior.

¹⁴ The approach used in this chapter in order to analyze the shifts in the legal institutional design is partly influenced by Kathleen G. Noonan, Charles F. Sabel and William H. Simon, *The Rule of Law in the*

A cursory comparison of the outcomes of conditional cash transfers as implemented in different countries in Latin America reveals a wide margin of variation. In the particular case of Colombia, social policies structured to combine conditional cash transfers and constitutional adjudication seem to have had a marginal effect on improving the conditions of its beneficiaries or the structural characteristics of the economy, as measured by rates of inequality,¹⁵ unemployment and informality.¹⁶ This makes the study of the Colombian case particularly relevant for the ongoing conversation about the role of the state in the development process. It invites a number of important questions about the conditions for successful implementation of these policies, and about the nature of the relationship between new social policies, institutional innovation, and achievement of developmental objectives.

In this paper, I argue that the adoption of new social policies, even if consistent with regional best practices, does not necessarily co-relate with positive developmental outcomes. More specifically, I argue that the success of new social policies is not only path dependent but also seems to be determined by two additional, interrelated factors. On the one hand, on the specific political choices and economic development models that made the adoptions of these policies possible. In this sense, conditional

Experimentalist Welfare State: Lessons from Child Welfare Reform, available at:

http://www.law.wisc.edu/gls/documents/social_policy1.doc. In this article, they describe essential features of the experimentalist welfare state, namely, a critique of top down rules; the search for a relationship between the administrative center and local units which takes into account the specific characteristics of the local and reforms that are monitored, fine tuned and carefully sequenced.

¹⁵ Recent statistics from Cepal point that Colombia is the second most unequal country in Latin America (Brazil being the first). This makes Colombia one of the nine most unequal countries in the world. Cepal, Panorama Social de América Latina 2008, December of 2008, available on: http://www.eclac.cl/publicaciones/xml/2/34732/PSE2008_Cap1_Pobreza.pdf; and Armando Montenegro y Rafael Rivas, *Las piezas del rompecabezas: desigualdad, pobreza y crecimiento*, Taurus, Bogotá, 2005. P. 37.

¹⁶ Statistic from the ILO point out that the rate of unemployment in Colombia has never been below 10% and has reached 16% in 2008, higher than the average of all Latin America. In addition, Colombia is characterized by very high rates of informality, since 1988 informality in Colombia has reached 60 % of the population. See in:

http://www.dane.gov.co/daneweb_V09/index.php?option=com_content&view=article&id=183&Itemid=17 and http://www.ilo.org/global/What_we_do/Statistics/lang--en/docName--WCMS_087893/index.htm

cash transfers adopted in the context of a political choice to reduce structural and historical inequality are incomparable to ones adopted as a measure to help families in moments of crisis, reduce the burden on the government's budget, treat poverty as a localized phenomenon ultimately linked to individual/household fortunes, or strengthened in order to enhance the political capital of a very powerful executive. On the other hand, the legal tools, modes of legal reasoning, interaction between the different branches of government as well as between the central administration and the municipalities, through which conditional cash transfers are provided in Colombia, are far from being flexible, contextual and decentralized and continue the same centralized, rule based, inflexible trend that characterized welfare state policies since the 1960's.

I will pursue these arguments in five steps. In the following section I provide a detailed description of *Familias en Acción*. In section III I describe the historical evolution of social policies in the Colombian context in order to lay out the path dependency argument. Thus, in this section I propose an analytical framework to understand the design and content of these welfare type regulations and their transformation through time. In section IV I briefly relate social policy transformations to economic development ideas. This relationship is essential for my argument, because as the Brazilian case shows, transformative social policies work when combined with specific economic development objectives. In section V I lay out how legal reasoning, the understanding of law and the interaction between diverse legal regimes changed or remained the same. This will be done in order to highlight both the importance of understanding legal transformations in a more nuanced and layered way and at the same time to evaluate the possibilities of transformation when law remains the same. Finally in the last section I propose some conclusions in terms of the success and failure of the New Law and Development Social Policy: *Familias en Acción*.

II. Familias en Acción: an example of NDS or a weak attempt at attacking marginal poverty?

A. History and Design

Familias en Acción was devised by the National Council for Economic and Social Planning (Conpes). Conpes produces policy documents whose objective is to serve as government consulting documents for economic and social development¹⁷. Nevertheless, it adjudicates enormous amounts of resources and the policies it designs haven't been challenged in Court up to this date.

On June 28th, 2000, Conpes document 3081 was adopted. This document established the conditional cash transfer program which would come to be known as Familias en Acción,¹⁸ authorizing the Government to request loans of up to 320 million dollars from multilateral financial institutions. Five years later, through Conpes document 3359 of June 17th, 2005, the National Government was authorized to request a foreign loan of 85 million dollars in order to consolidate and extend the program.¹⁹ In 2007, through Conpes document 3472, the number of target families was increased to 1.5 million.²⁰

Familias en Acción did not begin as a comprehensive social policy that would enable the formation of human capital or improve health and education among the poorest classes. It was not initially viewed, as other conditional cash transfer programs

¹⁷ According to the National Planning Department: El Consejo Nacional de Política Económica y Social — **CONPES** — fue creado por la Ley 19 de 1958. Ésta es la máxima autoridad nacional de planeación y se desempeña como organismo asesor del Gobierno en todos los aspectos relacionados con el desarrollo económico y social del país. Para lograrlo, coordina y orienta a los organismos encargados de la dirección económica y social en el Gobierno, a través del estudio y aprobación de documentos sobre el desarrollo de políticas generales que son presentados en sesión. In: <http://www.dnp.gov.co/PortalWeb/tabid/55/Default.aspx>

¹⁸ El Camino Recorrido Diez años Familias en Acción (2009). Acción Social, DNP. Disponible en: <http://www.accionsocial.gov.co/documentos/FA/EL%20CAMINO%20RECORRIDO%20WEB.pdf>

Pág. 77

¹⁹ Ibid. Pág. 78

²⁰ Ibid. Pág. 79

had been, as a long-term strategy to “reduce poverty and increase human capital”.²¹ This program began as a shock recovery measure, put in place to mitigate the impact of the economic crisis that began in Colombia in 1999. In this sense, Conpes document 3081 describes this program as “part of the Strategy for Economic and Social Recovery, designed to mitigate the impact of recession and fiscal policy measures on the most vulnerable population”.²²

Although the program itself was created by the Pastrana administration (1998-2002), it was later that the program became a central element of governmental policy. During the Uribe administration (2002-2010), the program was strengthened,²³ by including 920,000 beneficiary families from 848 municipalities in 2006.²⁴ This enlargement of the program showed a shift in focus from mitigation and shock-recovery, to long-term social policy. Thus, President Alvaro Uribe started justifying the program in terms of long-term and permanent policy goals, such as preventing school absenteeism and improving the country’s “social fabric”.²⁵ This shift in focus also meant a turn in emphasis and quantity: whereas the program had 200,000 beneficiary families in 2002, in 2010 there were approximately 2,900,000 households receiving the subsidy from the Government.²⁶

Familias en Acción underwent a transformation going from a limited shock recovery measure to a comprehensive social policy. This is one of the characteristics

²¹ Pablo Villatoro. “Conditional cash transfer programmes: experiences from Latin America”. CEPAL Review No. 86, August 2005, p. 83. Describing the five conditional cash transfer programs studied therein (in Brazil, Nicaragua, Mexico and Colombia) as enacted “to reduce poverty and increase human capital in the form of education, health and nutrition.”

²² Conpes 3081, available at <http://www.dnp.gov.co/portalweb/portals/0/archivos/documentos/Subdireccion/Conpes/3081.pdf>: “La Red de Apoyo Social, como parte de la Estrategia de Recuperación Económica y Social del Plan Colombia, es un programa diseñado para mitigar el impacto de la recesión económica y el saneamiento fiscal sobre la población más vulnerable.”

²³ Cómo Cambió la Política, 31 de julio del 2010. Semana. Disponible en:

<http://www.semana.com/noticias-nacion/como-cambio-politica/142438.aspx>

²⁴ El camino recorrido diez años de familias en acción. P. 147.

²⁵ Presidente Uribe inició inscripción de 100 mil Familias en Acción en Bogotá http://www.presidencia.gov.co/prensa_new/sne/2007/julio/28/02282007.htm

²⁶ Ibid.

that distinguish it from other similar programs such as *Bolsa Familia* in Brazil and *Progres-Oportunidades* in Mexico, which were from the outset seen as part of long term strategies to form human capital and overcome extreme poverty. *Bolsa Familia* underwent a transformation from a localized program in Campinas, to a centralized governmental strategy in 2003.²⁷ However, even in its inception as the *Bolsa Escola* program, it was seen as a non-temporary strategy to encourage attendance to school.²⁸ *Progres-Oportunidades* was also designed, at its very beginning, as “a strategy to support rural families in extreme poverty”.²⁹ In contrast, Familias en Acción was initially designed as “a temporary social safety net created in 2000 by the Colombian Government to cushion the effects of economic recession and fiscal policy adjustments on the welfare of the most vulnerable populations”.³⁰

The second distinguishing feature in its design is that the surrounding policies were less ambitious in terms of income redistribution and poverty reduction than those of the Brazilian government. While the Government prided itself in the increasing coverage of Familias en Acción, it did not try to adopt other measures that would interface with this program, as were adopted in Brazil. For instance, the Lula government in Brazil increased the minimum wage in approximately 330% (from 63.88 dollars in 2003 to 275.05 dollars in 2010)³¹. The Uribe administration in Colombia did so by 55% in the same time period (from 116.90 to 251.83 dollars)³², and in a controversial labor reform eliminated many workers’ benefits as a way to increase demand for

²⁷ Villatoro, p. 86.

²⁸ Ibid.

²⁹ Ibid. P. 91

³⁰ Ibid. P. 89.

³¹ The *Medida Provisória* 116 of 2003 set minimum wage at 240 Reais. The *Medida Provisória* 516 of 2010 had augmented it to 540 Reais. See: http://www.guiatrabalhista.com.br/guia/salario_minimo.htm In the meantime, the inflation rate had been 17% in 2003, and kept below 8% in the years thereafter, see: <http://www.tradingeconomics.com/Economics/Inflation-CPI.aspx?Symbol=BRL>. In the period between 2002 and 2006 Brazil achieved “(l)ower unemployment, higher total employment and a rise in real wages, [which] helped lift household incomes and broaden the base of the emerging lower-middle class”.

³² Decree 3232 of 2002 set the minimum wage at 332,000. Decree 5053 of 2009 had augmented it for 2010 at 515,000. Inflation in Colombia also fluctuated between 4% and 8%, except for 2009 and 2010 in which it went below 4%.

labor.³³ This labor reform included controversial elements such as exempting employers from paying an increased wage for night hours.³⁴ Colombia's use of *Familias en Acción* is a prime example of the short-term use of conditional cash transfer programs without a plan for an "interface with other social programs that [will] affect opportunities and outcomes for the poor in the labor market".³⁵

B. Implementation of the program

Familias en Acción was initially funded exclusively through multilateral loans. These originated from the World Bank and the Inter-American Development Bank. However, as the program progressed, the Government started to increase its own direct funding of the program out of the national budget. In 2007, the Government decided that part of the funding would come from the budget assigned to the Colombian Institute of Family Welfare, an administrative agency in charge of child protection.³⁶ As of 2010, about half of the program was funded through the national budget, half of it through loans. However, the loan requested in 2009 from the IADB is envisaged as the last one to fund Familias en Acción. The Government will then seek to phase out funding from multilateral loans, and bear the burden of fully funding Familias en Acción from the national budget.³⁷

The program is implemented at two different levels. At the central government, two institutions are in charge of the program: Acción Social and National Planning Department, DNP. Acción Social is a special agency that forms part of the Presidency of

³³ Law 789 of 2002.

³⁴ Ibid. Art. 25: "1. Trabajo ordinario es el que se realiza entre las seis h oras (6:00 a.m.) y las veintidós horas (10:00 p.m.). 2. Trabajo nocturno es el comprendido entre las veintidós horas (10:00 p.m.) y las seis horas (6:00 a.m.)."

³⁵ Santiago Levy. Good Intentions, Bad Outcomes. Social Policy, Informality, and Economic Growth in Mexico. Washington DC: Brookings Institution, 2008. P. 6.

³⁶ Law 79 of 1979, Article 20.

³⁷ El Camino Recorrido Diez años Familias en Acción (2009). Acción Social, DNP. Disponible en: <http://www.accionsocial.gov.co/documentos/FA/EL%20CAMINO%20RECORRIDO%20WEB.pdf>, pgs. 234-237.

the Republic.³⁸ Its creation resulted from the merger of the Social Solidarity Network which in previous governments had been tasked with coordinating governmental aid to internally displaced persons and other vulnerable groups, and the Colombian Agency for International Cooperation whose role was to channel international funding for social programs.³⁹ Acción Social's function is to "coordinate, administrate and execute the social programs directed to poor and vulnerable population, and development projects".⁴⁰ The role of Acción Social regarding Familias en Acción is the execution of the program through a National Coordinating Unit (UCN) and several Regional Coordinating Units (UCR). These units interface with municipal authorities at a lower level, in order to implement the program.

DNP is the National Planning Department. It is the administrative body in charge of preparing, following up, and evaluating the results of governmental policies and programs,⁴¹ and like Acción Social it depends directly on the President. Its role in Familias en Acción is to provide the information that forms the basis of decisions in terms of targeted municipalities and families. DNP also plays a central role in designing the program, since this agency provides technical support to the Conpes, and drafts and publishes the Conpes documents, in which the program has been designed and subsequently enlarged.

³⁸ It's long-form name is the "Presidential Agency for Social Action and International Cooperation". Decree 2467 of 2005.

³⁹ Ibid.

⁴⁰ Ibid., Article 5: "La Agencia Presidencial para la Acción Social y la Cooperación Internacional, Acción Social, tiene por objeto, coordinar, administrar y ejecutar los programas de acción social dirigidos a la población pobre y vulnerable y los proyectos de desarrollo, coordinando y promoviendo la cooperación nacional e internacional, técnica y financiera no reembolsable que reciba y otorgue el país."

⁴¹ Decree 2517 of 2009, Article 2: "El Departamento Nacional de Planeación, de conformidad con las disposiciones legales vigentes, tiene como objetivos fundamentales la preparación, el seguimiento de la ejecución y la evaluación de resultados de las políticas, planes generales, programas y proyectos del sector público, así como realizar en forma permanente el seguimiento de la economía nacional e internacional y proponer los planes y programas para el desarrollo económico, social y ambiental del país y para el diseño de las políticas en materia de macroestructura del Estado."

The main features of the program's implementation are: (A) the target population, (B) the procedures in place, and (C) the differential subsidies awarded by the program.

1. Target population and coverage

The program targets (i) families with children (individuals below 18) belonging to Sisben⁴² Level 1, (ii) internally displaced families, and (iii) indigenous families.⁴³ As of 2010 Acción Social, one of the Government institutions in charge of administrating the program, claimed that the program covered a geographical area of 99.54% of Colombia, that is, 1093 out of the 1098 municipalities in Colombia.⁴⁴

2. Procedure to become a beneficiary

The operation of the program in each case consists of two separate phases, described by Acción Social as (1) "identification and selection" and (2) "further proceedings".⁴⁵ The first phase has to do with the government's own selection of target municipalities and beneficiary families, while the second one deals with the beneficiaries' interaction with the government.

a) Identification of Municipalities and Families Beneficiaries

In the first place, a selection of target municipalities which takes into account a number of variables, in order to ensure that the subsidies are assigned to families in conditions

⁴² SISBEN is a government database that classifies the needs of the poorest sectors of the population, through an index composed by six categories which score goes from 0 to a 100. This categorization measures different stages of the poverty according to criteria such as: participation in the labor market, income, education, family structure, goods, housing as well as access to basic services such as water and electricity. See <http://www.sisben.gov.co/Default.aspx>

⁴³ Disponible en:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=204&conID=157&pagID=271>

⁴⁴ Disponible en:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=204&conID=157&pagID=275>

⁴⁵ Available at:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=204&conID=157&pagID=276>

of poverty⁴⁶. The availability of local financial institutions (i.e. bank offices in town) for the cash transfer and the supply capability of healthcare and educational services in the relevant municipality are also taken into account as “preconditions for operation”.

Then, the National Government undertakes a process of negotiation with the local governments of the selected municipalities. This negotiation seeks to define the conditions of local operation of the program, by setting the obligations of the local administrations and making their commitment official, through a participation agreement signed by the mayor and a representative of Acción Social.

Lastly, eligible families are entered into the program. The families make a commitment to comply with the specified conditions for the cash transfers, including attendance to school and the fulfillment of nutritional indicators for children.

b) Implementation Procedures:

First, the subsidies are paid in favor of the beneficiary families. In order to ensure payment, the family must have signed up and fulfilled a process of verification of compliance with the conditions for payment. The subsidy is paid to the mothers in the family, through a financial institution.

Second, proceedings for modifications or complaints may be initiated. Modifications may be entered in case some of the family’s circumstances (e.g. number of children) change.

Third, actions are taken towards the strengthening of institutional capacity and promotion of education and family health in the relevant municipalities. The special needs of beneficiary families, particularly those with children between 0 and 6 years of age, are taken into account.

⁴⁶ Ibid.

Fourth, compliance with conditions is verified. Compliance with requirements on entry to the educational system, class attendance, and growth and development, is a precondition for continued payment of the subsidy. Mothers must ensure regular attendance to class by their children, avoiding a bimonthly absence rate of more than 20%. With respect to health, mothers must ensure 100% attendance of the minors to medical check-ups related to growth and development. Mothers must also attend training workshops as scheduled by the municipality.

3. Types of subsidies

Subsidies are differentiated by the beneficiary municipality and family⁴⁷. The first classification is by type of municipality. Secondly, subsidies are differentiated by the target population for each type of funded service (nutritional and educational).

⁴⁷ Available at:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=204&conID=157&pagID=282>

“1. SISBEN Level 1 not living in large cities and internally displaced persons:

(i) Nutrition subsidy: For children between 0 and 7 years old, this subsidy is awarded per family, regardless of the number of children. The amount is \$50.000/month.

(ii) Educational subsidy: This subsidy is awarded for children between 7 and 18 years of age, and is given per child in the family. The amount is \$15.000/month for elementary school and \$30.000/month for middle school and high school.

2. SISBEN Level 1 living in Cali, Medellín or Soacha:

(i) Nutrition subsidy: same as above.

(ii) Educational subsidy: the amounts are \$15.000/month for elementary school, \$25.000/month for middle school, \$35.000/month for high school except the last year, and \$40.000/month for the last year of high school.

3. SISBEN Level 2 living in Ibagué, Neiva, Popayán, Santa Marta or Sincelejo:

(i) Nutrition subsidy: same as above for children from 0 to 7 years old. However, there is also a subsidy for children between 7 and 11 years of age, of \$20.000/month per family. If the family has children in both age groups, the subsidy awarded will be \$50.000/month per family.

(ii) Educational subsidy: only awarded for middle school and high-school. The amounts are \$30.000/month for middle school, \$45.000/month for high school except the last year, and \$60.000/month for the last year of high school.

4. SISBEN Level 1 living in Barranquilla, Bogotá, Bucaramanga, Montería, Pasto, Pereira, Villavicencio or Yopal:

(i) Nutrition subsidy: same as above, but the lower age group gets \$50.000/month, whereas the higher age group is awarded \$20.000/month.

(ii) Educational subsidy: the amounts are \$15.000/month for elementary school, \$25.000/month for middle school, \$35.000/month for high school except the last year, and \$40.000/month for the last year of high school.”

As to municipalities, the first group is “SISBEN Level 1 not living in large cities and internally displaced persons”. This category represents the beginning phase of Familias en Acción, in which the program was directed towards rural areas and not large cities. In this group, the nutritional subsidy is awarded for families with children under 7 years of age. The educational subsidy is given for each child in school, but different amounts are given for different school level. Thus, assistance to middle and high school is double the amount of the subsidy of elementary school.

This trend is maintained in the other geographical groups which include larger cities. Families in these cities are awarded different amounts in each type of subsidy. In some large cities, the nutrition subsidy also covers children between 7 and 11 years of age. As far as the educational subsidy is concerned, the trend is to award a larger subsidy as the school level progresses, and thus the external incentives to leave school increase. Thus, in cities such as Bogotá, the subsidy is 15000 (around US \$ 53 dollars) pesos for elementary school, 25000 (around US 90 dollars) for middle school, 35000 (around US\$ 125) for high school except the last year, and 40000 for the last year of high school (around US\$ 140).

A third important feature is that the families’ commitments are not limited to meeting certain indicators in class attendance and nutrition. The mothers who receive the payment must attend compulsory workshops organized by the Government. This feature is particularly relevant to the critiques against the program on the lines of paternalism and gendered effects.

C. Impact and Critiques

1. Arguments in favour of *Familias en Acción*

As I stated above, *Familias en Acción*, is directed to contribute to formation of human capital in low income families through subsidies that award children's assistance and permanency in the educational system.⁴⁸ From that description and an analysis of the government documents that describe the program, conditions which families must comply with are created in order to assure that the money is effectively spent in educational and health improvement for their children.⁴⁹

The subsidies are paid exclusively to mothers, because "women prefer to spend their income on education, health and nutrition for their offspring."⁵⁰ The program is based on the idea that family is the main structure of society. Thus according to official documents:

The program recognizes family as the basic nucleus of society and nationality construction. It promotes and awards responsible mother's, a coherent family organization as well as mother's knowledge on health and care.⁵¹

Along with creating incentives for women's role as family leaders and as care providers, the program is defended because school desertion has diminished, family consumption has increased and child nutrition has improved.

In the last official report on the impact of the program which is from 2006⁵², established that "school desertion rates have been decreasing through time, from 13.097% to 11.01% on both control and treatment towns."⁵³ It also states that:

⁴⁸ Op Cit. El camino recorrido diez años de familias en acción. Pág. 87

⁴⁹ Ibid. P. 88

⁵⁰ Ibid. P. 88 "Los recursos son entregados directamente a las madres, por considerar que sus preferencias en el gasto se orientan al consumo de alimentos y a la salud y educación de sus hijos."

⁵¹ Ibid. P. 89. "El programa reconoce a la familia como el núcleo básico de la sociedad y la construcción de la nacionalidad. Promueve la responsabilidad de las madres titulares, la organización familiar y el conocimiento sobre el cuidado y la atención en salud."

⁵² Acción Social. Evaluación del Impacto del Programa *Familias en Acción* – Subsidios condicionados de la Red de Apoyo Social. 2006. Pp. 22-59 Available at:

..the assistance rate increased 12.1% for beneficiary high school students between 12 and 17 years [...] this difference is related to a 6% decrease of work in children from 10 to 13 years... in rural areas and in urban areas the amount of work time was reduced between 80 to 100 hours a month.⁵⁴

Familias en Acción also increased family consumption, according to the report:

The program increased between 15% and 19% basic goods consumption of target families. The difference is mainly noticed in food, shoes, clothes, school supplies and transportation for education.⁵⁵

Further along and in relationship to nutrition, the impact is described in the following way:

Impact on children nutrition and health was identified in improvements that represent long-term positive effects. Chronic undernourishment in children from 0 to 2 years was reduced about 10%.⁵⁶

Former President Uribe always supported his program saying that the coverage had been increased during his Presidency and that the amount of resources distributed

<http://www.accionsocial.gov.co/documentos/INFORME%20FINAL%20EVALUACION%20DE%20IMPACTO%20PFA.pdf>

⁵³ Ibid. P. 39 “En relación con la tasa de deserción esta ha venido disminuyendo en el tiempo, tanto en los municipios tratamiento, donde pasó del 13.97% al 11.01%, entre la LB [línea base] y el SS [segundo seguimiento], como en los municipios de control.”

⁵⁴ Op Cit. *Nota de Presentación*. “en cuanto a los impactos en la educación y trabajo infantil, la tasa de asistencia escolar se incrementó para los niños beneficiarios en secundaria entre 12 y 17 años en 12.1% [...] en las áreas rurales y en las áreas urbanas se redujo la intensidad de la jornada laboral de los niños trabajadores entre 14 y 17 años entre 80 y 100 horas menos al mes.”

⁵⁵ Ibid. “El programa aumentó el consumo de bienes básicos de las familias beneficiarias entre 15% y 19%. Este incremento se registró principalmente en alimentos, zapatos, ropa, útiles escolares y transporte para la educación.”

⁵⁶ Ibid. Los impactos en nutrición y salud de los niños se identificaron en mejoras que representan efectos positivos de largo plazo. La desnutrición crónica en los niños de 0 a 2 años en las zonas rurales se redujo en un 10%.

had also been increased significantly. In 2007 he defended the program to his critics.⁵⁷ He argued that selection of target families is completely objective and that the process is being monitored by international organizations.

[President Uribe] explained that the million and a half families from SISBEN and three thousand forcibly displaced people that are part of Familias en Acción are chosen from lists and indexes provided by the most professional and unbiased national and international organizations.⁵⁸

The former head of state also rejected the idea that it is a paternalist program because according to him it has an income redistribution effect and it guarantees an educational cycle for thousands of children.⁵⁹

2. Critiques

There have been three basic critiques of the program: i) the program is used to gain political support ii) it is a paternalist program iii) it reifies the role of women within the household and promotes a conservative and traditional view of the family. These critiques present political variations: paternalism is a right wing argument, whereas populism, gender and lack of institutional context are mostly expressed by the left.

a) *Populism*

Familias en Acción was originally designed as a mechanism to face structural adjustment programs⁶⁰. It was a localized program solely devised to help families in

⁵⁷ "Familias en acción no es politiquería" afirma el presidente. Noticias Acción Social. Disponible en <http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=1312&catID=127>

⁵⁸ *Íbid.* "el millón y medio de hogares del nivel uno del SISBEN y los 300 mil de desplazados que estarán formando parte de Familias en Acción, salen de las listas y registros con que cuentan organismos nacionales e internacionales de la mayor solvencia profesional y toda la imparcialidad."

⁵⁹ "Familias en acción no es politiquería" afirma el presidente. Noticias Acción Social. Available at: <http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=1312&catID=127>

⁶⁰ See Jairo Nuñez y Laura Cuesta. "Evolución de las políticas contra la pobreza: de la previsión social a las transferencias condicionadas". CEDE, Universidad de los Andes, Bogota, 2006. p. 6.

moments of crisis, not initially conceived as an all-encompassing social policy that would run parallel to social security programs already in place.

But the program proved to be a very useful tool to get popular support for a powerful leader. As a matter of fact, President Uribe multiplied the amount of resources destined for Familias en Acción in a series of populist measures. This impulse was described in the Presidential webpage as follows:

“President Uribe recalled that at the end of this first term, Colombia will have three million families under the Familias en Acción program, of which 150 thousand will be located in Bogotá.

The President indicated that this number represents a great achievement on behalf of the Government in reducing the levels of poverty reported in the country.

‘Do you know how many families benefitted from the program in Colombia when this Government took office? 220 thousand, that is very little. It was a temporary and experimental program. Do you know how many families will have benefitted by July this year? Three million, three million’, the President added.

The President also stated that ‘Bogotá did not have Familias en Acción, it had zero families under the program. Do you know how many families in Bogotá will benefit from the program in June? 150 thousand families’⁶¹

Familias en Acción, being governed not by law but by Conpes documents not subject to judicial review, and progressively enlarged by the previous administration as a tool to enhance its political capital, may have become the bargaining chip of an authoritarian president. A program that does not produce a legal entitlement for its

⁶¹ ‘El Presidente Uribe reiteró que al finalizar este primer semestre Colombia contará con tres millones de Familias en Acción, de las cuales 150 mil estarán ubicadas en Bogotá.

Indicó que esta cifra representa un gran logro del Gobierno en la búsqueda de reducir los índices de pobreza que se reportan en el país. ‘

“¿Ustedes saben cuántas Familias en Acción tenía Colombia cuando este Gobierno empezó? 220 mil, un poquitico. Era un programa experimental, transitorio. ¿Saben cuántas Familias en Acción tendrá Colombia en el mes de junio? Tres millones, tres millones”, añadió.

Indicó que “Bogotá no tenía Familias en Acción, tenía cero Familias en Acción Bogotá. ¿Saben con cuantas Familias en Acción queda Bogotá, en junio? Con 150 mil Familias en Acción”. See in:

<http://web.presidencia.gov.co/sp/2009/mayo/29/25292009.html>

beneficiaries, and may be enlarged and diminished at will by the Government, proved to be also a very useful tool for dishonest campaign practices.

As I described previously, many accusations were leveled against the program by academics and politicians. In the 2010 presidential race, the presidential candidate Juan Manuel Santos was accused of using Familias en Acción as an incentive for beneficiaries to attend his mass rallies⁶². The program was used by Santos himself as an argument on his behalf, as Familias en Acción was enacted in its original form when he himself formed part of the Government⁶³.

b) Paternalism

In sum, the program has been greatly criticized by both the right and the left. The critics on the right state that it creates incentives for people not to enter the labor force, it weakens individual resilience and it fosters a paternalistic view of the state. On the left, the critics say that the amount of the subsidy is too small, that it will never make any difference in poor people's lives and that it has been used in order to increase the popular support for President Uribe⁶⁴. As a matter of fact, President Uribe has

⁶² "Gradualmente Santos Dice Que Acabará El 4 Por Mil", 8 May 2010, available at: <http://www.eltiempo.com/archivo/documento/MAM-3956442>. "Santos responded to his contender from the Conservative Party, Noemí Sanín, who accused him of using the presidential program Familias en Acción for political proselitism"

⁶³ "Juan M. Santos: "El tema de los falsos positivos lo han politizado mis adversarios para atajarme"", 29 April 2010, available at: http://www.eltiempo.com/culturayocio/credencial/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-7683947.html. "President Uribe is widely criticized for his 'Familias en Acción' program. Will you continue the program? -Familias en Acción was designed in a Conpes document when Juan Carlos Echeverry, who is now my program director, was Chief of National Planning and when I was Minister of the Economy, which means it is a creature of our creation. We cannot end it before the economy is revitalized. Once we achieve economic equilibrium, we must turn these families into income generators."

⁶⁴ Among these Presidential Candidate Cecilia López..." La política social colombiana no puede seguir basándose en limosnas para los pobres, malos servicios para los pocos trabajadores formales y mercados de seguros en salud, educación y pensiones para los pudientes. Tampoco se justifica que los programas asistenciales del Gobierno acaparen cada vez más recursos públicos y se conviertan en la prioridad mientras que, para la mayoría, la salud está en crisis, la educación es de mala calidad, la seguridad social es privilegio de pocos y el mercado laboral es generador de pobreza. Se agrega la crítica situación social de las costas del país, que se comportan como si fueran parte de las zonas más pobres del África, donde los niños mueren de desnutrición y los servicios de salud y de educación son vergonzosos o inexistentes. Voces autorizadas, nacionales e internacionales, han prendido las luces rojas, pero el Gobierno hace

forced an increase in the number of families benefitted, which has meant that Acción Social (the agency in charge of delivering the subsidy) in October of 2009 had not reached the Presidential goals⁶⁵.

Sometimes these critiques are interrelated. For example, a paternalist program is not able to modify structural problems, and instead it just provides money for poor people. A paternalist critic would say that, if eventually the program runs out of funds, Colombia will continue to have the same rates of poverty.

Gustavo Petro⁶⁶, a former left wing presidential candidate, proposed to continue with the program, but linking it to more comprehensive social policies. For Petro, subsidies are not enough,

Familias en Acción is the first step in the State's direct support to citizens, but it is not enough. I want to complement the program, make it more ambitious in order to have a complete support...⁶⁷

About the program's use for political purposes, Petro stated that "*Familias en Acción*, is a way that Uribe and his followers have used to buy votes and include the money necessary to do so in the national budget."⁶⁸

"mutis por el foro". La política social sigue siendo la cenicienta de este y un instrumento para obtener votos o pagar favores políticos, cuando no la fuente de financiación de las mafias". In: <http://www.eltiempo.com/archivo/documento/MAM-2742953>

⁶⁵ On October 27, 2009 the web page of Acción Social stated that the number of families benefitted by the program (including the displaced population) was 2, 538,754 families, half a million below the goal announced by President Uribe. For complete information see:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=204&conID=157&pagID=267>

⁶⁶ Gustavo Petro webpage. http://www.gustavopetro.com/index.php?option=com_content&view=article&id=72:propuestas-de-gobierno-de-gustavo-petro&catid=41:noticias&Itemid=93

⁶⁷ Interview made by Universidad del Rosario to Gustavo Petro. Available at: http://urosario.edu.co/elecciones/Cuestionarios-Anteriores/Politica_social/Gustavo-Petro/#11

"Familias en Acción es un primer paso en el apoyo directo del Estado a los ciudadanos, pero es insuficiente. Lo que proponemos es complementarlo, hacerlo más ambicioso para lograr un apoyo más integral. Los subsidios se entregarán directamente a las cuentas de ahorro que se abrirán para las beneficiarias, pero agregará la opción del crédito asociativo y productivo[...]"

⁶⁸ Interview. Available at: <http://www.desdeabajo.info/index.php/ediciones/207-edicion-160/7600-entrevista-a-gustavo-petro-enfrentar-al-gobierno-en-su-proyecto-neoliberal-aliarnos-en-la-lucha-contra-las-mafias.html>

This argument is closely linked to the paternalist critique. This critique states that these cash transfers make people dependant on official gifts. This dependency in turn stifles political participation.⁶⁹ Another effect of paternalism is that it could create an incentive for women to have more children.⁷⁰

c) *Critiques of the gendered dimension of the program*

There have been also critiques of the program because of its negative effects over women. According to Maxine Molineux, the stipend is insufficient to overcome poverty and programs depend on the gendered division for its success. Therefore, reinforcing the social and cultural norms through which gender asymmetries are reproduced.⁷¹

The gender critique has been explored in the Colombian context as well. *Familias en Acción* has been criticized because it promotes conservative about the family and women's role within it. According to this critique, these programs effectively distribute resources both within the family and society. In a program like *Familias en Acción*, women have the responsibility to advance all the paper work necessary to be

"El uribismo es Familias en Acción, que tiene su expresión en el cambio tecnológico de la compra del voto, a través del Estado mismo, en el presupuesto."

⁶⁹ Rodolfo Arango. Opinión: Pobreza, miseria y autonomía. Available: <http://www.elespectador.com/columna158167-pobreza-miseria-y-autonomia> "El paternalismo de Estado crea seres proclives a las dádivas oficiales que pasan a depender de ellas. El chequecito mensual para dos millones seiscientas mil familias las torna sumisas. Sus miembros caen en la trampa del clientelismo por sus necesidades y carencias vitales. ¿Cómo no votar por el benefactor para mantener los favores? La dependencia atenta así contra la autonomía individual y la autodeterminación colectiva, sesgando la voluntad libre de los ciudadanos"

⁷⁰ Alejandro Gaviria's Blog. Available at: <http://agaviria.blogspot.com/2007/08/subsidios-y-embarazos.html> "Pero la redundancia no es el único problema de Familias en Acción. El programa podría incrementar las ya de por sí preocupantes tasas de embarazo adolescente. La acción social podría llevar a la multiplicación familiar. Si el Gobierno paga por niño, muchos más niños nacerán"

⁷¹ Maxine Molineux, 'Mothers At The Service Of The New Poverty Agenda: PROGRESA/Oportunidades, Mexico's Conditional Transfer Programme', 2006 *Journal of Social Policy and Administration*, Special Issue on Latin America, Vol 40, 2/3, 2006. P. 441.

beneficiaries. This is not only because of the program's bias explained before (that women usually spend on nutrition, education and health), it is caused by private rules that prevent women access to labor market. For us, more household work for women not only makes more difficult for women to enter the workforce, but it also produces a burden on the type of behavior and identity of women.⁷²

III. Path dependence: historical obstacles faced by transformative social policies

In this section I situate Colombia's social policies in the context of the evolution of the Colombian Welfare State since the 1940s. I demonstrate that similar to many countries in the region, and arguably in the global south, the genesis of the Colombian Welfare state and social policies was intimately linked with a development agenda. In the period between 1940s and the 1990s, the lines between social policies and development policies were very blurry. The state pursued development policy objectives in the Keynesian terms of full employment and stimulation of aggregate demand. Social policy was enlisted to the task and was understood broadly to include policies ranging from workers' social insurance schemes to land reforms. The 1990s

⁷² Helena Alviar and Isabel Cristina Jaramillo. *Feminismo y Análisis Distributivo del Derecho*. Forthcoming publication. "Para nosotros este es un ejemplo claro de un programa que aumenta el trabajo reproductivo en las mujeres: para poder acceder al subsidio tienen que realizarse una cantidad de trámites y visitas que no debían realizarse anteriormente. Estos trámites y visitas se entiende que los realizan las mujeres, no sólo porque el programa presume que ellas son mejores "ejecutoras" de los recursos, sino porque las normas de distribución privada de recursos favorecen el que las mujeres no estén empleadas en el sector formal. Este incremento del trabajo reproductivo en cabeza de las mujeres, por una parte, impide que se corrijan los sesgos dentro del mercado laboral que perjudican a las mujeres (tanto en acceso vertical y horizontal al empleo, como en remuneración), y, por otra parte, aumenta la "vulnerabilidad explotable" de las mujeres, pues al excluirlas del mercado laboral, las hace dependientes económicamente de sus familiares y de los funcionarios públicos a quienes se les asigna el poder para controlar sus conductas. Esta dependencia es explotable de varias maneras. La violencia física o sexuales de los esposos o compañeros permanentes es una de las más comunes, tal y como lo ha reconocido la Corte Constitucional al establecer que las mujeres víctimas de violencia doméstica están en situación de indefensión a razón de su dependencia económica." Kerry Rittich makes a similar argument in *Black Sites: Locating the Family and Family Law in Development*, *American Journal of Comparative Law*, V. 58, Number 4, Fall 2010, 1023.

paradigm for social policies resulted from a series of reform that tended to restrict the domain of social policies and to define it rigidly independently from development policy goals. This didn't mean that development considerations were excluded from the domain of social policies. Many areas of overlap between development policy and social policy persisted throughout the 1990s. Conditional cash transfers are designed by the planning department. The legitimation of these policies continues to rely on arguments drawn from the discourse of economic development. The restriction of the domain of social policy and its gradual distinction from development policy has more subtle manifestations.

Two in particular are worth pointing out. *First*, there is the changing understanding of poverty and poverty alleviation from a macro/structural phenomenon that could be addressed through development policy goals and macroeconomic policy instruments, to a localized phenomenon focused on individual/household fortunes that could be addressed by individuals adjudicating entitlements on the basis of the constitutional bill of rights, and conditional cash transfers to households on means-test basis. *Second*, there is the strong role that the Colombian presidency played in setting up the necessary apparatus to implement policy of cash transfers in ways that bring to the foreground the specter of populism and the subjection of social policies to the political considerations of securing a loyal base for the presidency of the republic.

A. Analytical Framework

The description of the rigidities and evolution of the Colombian system is a daunting task and cannot be done without a measure of simplification. In this section, I identify a number of key variables that should facilitate the task of synthesizing almost

sixty years of Colombian social policies. I specifically focus on three issues; namely the definition of social policy, the relationship between social policy and development models, and the correlation between models of social policies and legal technology.

1. The Domain of Social Policy

Since the second half of the 19th century, modern industrial societies have been experimenting with different schemes for the provision of social services with a variety of political justifications. This long history has produced a wide spectrum of alternative models for social policy. For the objectives of this paper, social policy models can be described from three different perspectives: i) relationship between social policies and the market; ii) the nature of individual entitlement; and iii) the role of the state in channeling social services.

In terms of its relationship to the market, in one view, social policies can be understood as set of tools that serve broad redistributive objectives, based on equality, fairness and citizenship. In this model social policies are expected to be a counterweight to the market correcting the market's distribution of resources. This is the notion of social policy that one finds in post WWII European social democracies. In the opposite view, social policy is a marginal mechanism set in place to deal with individual issues (e.g., persons with disabilities) that make it impossible or very difficult to enter the market or ones that cannot be corrected by the market. In other words, and contrary to the social democracy model, social policies leave the question of resource distribution to the competitive mechanism of the market. This model of social policy is characteristic of neo-liberal market reforms of the 1980s.⁷³

Furthermore, an essential aspect of the design and provision of social policies has to do with the nature of individual entitlement to the different social services. Here, there is opposition between social policies premised on services rendered as a matter of citizenship rights and policies that condition the provision of services to work performance, individual responsibility or needs test.

⁷³ Kerry Rittich, Recharacterizing, Restructuring: Law, Distribution and Gender in Market Reform, Kluwer Law International, 2002.

Finally, models of social policy vary in terms of the role of state in the design of policy, and the financing and channeling of social services. On the one hand there are models in which the state has the default responsibility to provide social services through its administrative apparatus. In this model social services are financed from taxes and budget deficits. On the other hand, there are models in which the role of the state is minimal and civil society agents (charitable foundations, religious institutions, and NGOs) play the most important role in financing and channeling social services.

The following chart summarizes this framework:

Table 1: Models of Social Policy

	Right	Left
Relationship to the Market	Social policy intervenes when markets fail.	Social policy is a counter weight to the market's distribution of resources
Nature of Individual Entitlement	individual responsibility or needs test	Citizenship Rights
Role of the State	Marginal role of the state. Important role for civil society (charity, religious institutions, NGOs)	Central to the design, financing and channeling of services.

2. Social Policies and Development Models

The above description, however, is incomplete for the Colombian context, and by analogy, other developing countries. In the Colombian context, any description of social policy is unintelligible without a consideration of the relationship between social policy and economic development models. There is a dynamic relationship between on the one hand processes of economic transformations and, on the other the design of social policies. In any particular setting, the way in which state and political actors have defined the distributive impulse of social policies will interact with broader objectives of economic development. In the same way, the objectives of development policies will have a determinant effect on both the possibilities and the limitations of social ones. Therefore, if the economic development policy of the state is to reach industrialization through an import substitution strategy, the corresponding social policies and legal tools

will be different than if the state is defining development as market liberalization and export led growth. At the same time, if the social thrust of a state is to universally redistribute wealth within a society, this will impact economic development policy by rearranging its priorities, and preferences for policy instruments.

Since its origins in the late 1940s, the Colombian welfare state has been geared exclusively to the working class, with very marginal programs aimed at providing universal services to the population excluded from the market. According to Stephan Haggard and Robert Kaufman:

In Latin America, most states established occupationally based social insurance and health systems that favored formal-sector workers but typically excluded informal urban workers and the rural sector. The provision of basic social services also showed a marked inequity in distribution, reinforcing rather than mitigating long-standing patterns of inequality in the region.⁷⁴

Characterizing the Colombian state as one completely focused on the urban, formal worker and the problems that this entailed is a consequence of the observation of three factors: the economic and political justifications that have been included in the diverse laws and regulations; the targeted population and their benefits, as well as institutional setting created. It is against this basic image that one can make sense of the 1990s transformations.

All along, the system has been thought of as protecting workers from the risks of unemployment, sickness and age. At the same time, programs destined to alleviate poverty or specifically targeted for the poor have been marginal. Since 1945, and up to the mid 1990s policies designed towards alleviating poverty had three basic components: eliminating unemployment through Import Substitution Industrialization⁷⁵, promoting rural migration to the cities in order to increase the work force available for the industrialization process⁷⁶ and redistributing unused land⁷⁷ as well as increasing credits and resources for small landowners in order to make them more productive⁷⁸.

⁷⁴ Stephen Haggard and Robert R. Kaufman, Development, Democracy and Welfare States: Latin America, East Asia and Eastern Europe, Princeton University Press, 2008, p. 4.

⁷⁵ Industrialization was a major policy objective since the early 1940s. According to a leading economic historian, Miguel Urrutia: 'Since the year 1944 Colombian political economy was geared toward creating incentives for industrial production through the promotion of the importation of machinery and some primary products.' Miguel Urrutia 40 años de Desarrollo: Su Impacto Social, Banco Popular, Bogotá, 1990, p. 19. In most economic development documents of the following 30 years, the reference to industrialization and capital accumulation was permanent. National Development Plan: "Planes y programas de desarrollo (1969-1972)", Departamento Nacional de Planeación.

⁷⁶ Many economic planning documents include references to the idea of promoting the migration of excess labor from the countryside to intermediate cities. Just as an example, the National Development Plan of 1970 says: 'rural policy will be oriented and organized around promoting the migration of 'excess'

3. Legal Technology

The typology of social policy models in terms of the definition of the social and the relationship to development models discussed above is still too vague to guide a historical overview of the Colombian Welfare State. An important dimension of social policy remains outside this typology; namely, the dimension of the details of implementation and the legal and institutional arrangements that are necessary for/produced by the different models of social policy. More specifically, law provides the necessary tools to translate policy objectives into specific decisions about the division of labor between the different actors and agencies involved (legislator, executive, administrative bureaucracies, beneficiaries, charitable organization, NGOs, and judges etc). Additionally, the legal structure also determines the distributional outcome of these policies and the limits of their reach.

The following chart summarizes the relationship between economic development ideas, social policies and legal instruments:

Table 2: Social Policies and Development Models

	Idea of Social Policy	Role of the State	Use of Law
ISI	SP is a tool to increase productivity, and stimulate demand; Land reform, subsidies on necessities, public education	Increase the productivity Increase Investment Industrialization	Private law/Public Law Followed by an increase in Public Law and a strengthening of Administrative Action
Dependency	SP is a tool to transform class relations in society; Land reform, universal health care and education	Owns the means of Production Provide Social services De-linking	Public Law Administrative Action Top-down Popular democracy, cooperatives institutions

population in ‘problem zones’ toward intermediate cities...’ National Development Plan: “Plan de desarrollo económico y social (1970-1973)”, Departamento Nacional de Planeación.

⁷⁷ Colombia had very weak experiments with agrarian reform. For more on the basic characteristics of the Colombian agrarian reforms see: Helena Alviar García: Derecho, Desarrollo y Feminismo en América Latina, Universidad de los Andes y Editorial Temis, Bogotá, Colombia. , Octubre 2008; Helena Alviar y Margarita Varón, *Improvement of the confiscated land redistribution processes to the IDPs, MIDAS – USAID, Task Order No. MIDAS-UNIANDES-*, Enero, 2008.

⁷⁸ An example of this measure was the Rural Integrated Development Program (*Desarrollo Rural Integrado-DRI*), designed in 1975, whose objective was to provide small landowners with technological and technical assistance, credits, transportation infrastructure, hospitals and electrification. “The DRI program is not a substitute for land reform but a strategy that, given the impossibility of changing the system of land tenure in some highly populated areas, attacks the problems due to the lack of capital and technology in the country side”. National Development Plan: “Para cerrar la brecha: Plan de desarrollo social, económico y regional (1975-1978)”, Departamento Nacional de Planeación.

Market-oriented Reforms	SP is a safety net Private charity to the poor, the sick and the elderly	Minimal state Macro-economic stability Market as best resource allocator	Private law Negative rights
Post Washington-Consensus	SP is a tool to help people enter the market Cash transfers Corporate social responsibility	Partner with the Private Sector Providing public goods to facilitate innovation	Flexible administrative law Social and Economic Rights

B. Colombian New Social Policies in Historical Perspective

In this section I provide a description of the evolution of social policies in Colombia in order to demonstrate that they have historically and structurally been situated on the right hand side of the spectrum. This creates a path dependence which limits the scope of most policies.

1. Early Years (1946- 1960)

In the period that goes from 1946-1960, the Colombian economy was based on the export of coffee. At the time, and in line with international consensus, the Colombian government started to pursue a development strategy centered on promoting industrialization, by encouraging savings nationally, and foreign direct investment.⁷⁹ Social policy benefited the working class through minimum wage⁸⁰ and social insurance benefits⁸¹. The social security (understood as a protection from risks

⁷⁹ During this period, the major obstacle to industrialization and development was seen as the lack of investment: 'In previous plans, there was a close relationship between capital accumulation and production, it was concluded that the possibility of increasing growth depended on an increase in capital investment.' "El plan de desarrollo colombiano en marcha", Departamento Nacional de Planeación, Ediciones Tercer Mundo, 1974, p. 58.

⁸⁰ The minimum wage was established in 1945. Ley 6 de 1945, art. 4: "*El Gobierno podrá señalar, por medio de decretos que regirán por el término que en ellos se indique, los salarios mínimos para cualquier región económica o cualquier actividad profesional, industrial, comercial, ganadera o agrícola de una región determinada, de conformidad con el costo de la vida, las modalidades del trabajo, la aptitud relativa de los trabajadores, los sistemas de remuneración o la capacidad económica de las empresas, previo concepto de comisiones paritarias de patronos y trabajadores*". For an extensive study on the evolution of the minimum wage in Colombia see: Luís Eduardo Arango, Paula Herrera and Carlos Esteban Posada, El salario mínimo: aspectos generales sobre los casos de Colombia y otros países, in Borradores de Economía n° 436, 2007, Banco de la República.

⁸¹ These years were characterized by the formal establishment of a general and relatively uniform regulation of labor relations, both for public and private sectors (Law 6/1945). According to this law, social security benefits were conceived as services at the expense of the employer. In 1946, *Ley 90* created the

related to age and health) were managed by a public institution: ‘*Instituto Colombiano del Seguro Social*’ (ICSS) created in 1946.

The period that goes from the late 1940s through the late 80s, the Import Substitution era, was characterized by the extensive use of public law and top down administrative action. Nevertheless, there were transformations in the use of law within this period, where the use of public law debated in Congress and object of judicial review, was slowly but surely replaced by an increase in executive power and therefore an increased relevance in administrative law, with weak judicial review by the ‘Consejo de Estado’.

As a matter of fact, during the period that goes from 1945 through the end of the 1960s, all social policies were laws passed by Congress. The role of the executive branch was minimal and there is hardly any jurisprudence related to contested social security rights. The role of the executive branch was minimal mostly because the ICSS was thought of as an entity regulated by private law that managed public resources. It was supervised by the *Superintendencia Bancaria*⁸², the public commission in charge of regulating and monitoring banks. The *Superintendencia Bancaria* was defined as a technical, apolitical institution, and contrasted with “inflexible law.”⁸³

The following table summarizes the main characteristics of this period:

Table 3: 1946 Law

Law’s objective	“Establishment of the mandatory affiliation social insurance system and the creation of Instituto Colombiano de Seguros Sociales”.
Benefits	<ul style="list-style-type: none"> • Medical care (26 weeks maximum) for non-work related diseases; • Daily allowance for non-occupational diseases and for maternity; • Medical care assistance for the pregnant worker or for the worker’s pregnant wife; • Nursing allowance for worker’s children; • Disability pension; • Retirement pension; • Medical care and compensation for job related diseases;

Colombian Social Security Institute (*Instituto Colombiano de Seguros Sociales*) and established a mandatory social security system for the working class. Arenas Monsalve, Gerardo, El Derecho Colombiano de la Seguridad Social, Legis, 2007.

⁸²Ibid. P. 76.

⁸³ The proposal that justified Ley 6 of 1945 says: “to manage the Social Security system we must create a private, apolitical, purely technical institution whose mathematical department, not an inflexible law, will define the range of contributions for each risk insured...” Oswaldo Cetina, “Derecho Integral de Seguridad Social”, Universidad Externado de Colombia, 1986, p. 104.

	<ul style="list-style-type: none"> • Worker's funeral expenses; • Pension for widow and widower
Beneficiaries	<ul style="list-style-type: none"> • "Shall be covered by the obligatory social security system, all individuals, domestic or foreign, who provide their services to another person by virtue of a contract, express or alleged, for work or apprenticeship, including domiciliary workers and housekeepers" (art. 2)⁸⁴ • Self-employed persons with less than \$1800 income per year (art. 5); • The worker's family members that depend exclusively on him and live with him (art.7). <p>Shall not be covered by the obligatory social security system, the following persons (art. 6):</p> <ul style="list-style-type: none"> • The spouse, the parents and the 14-year-old minor children of the employer; • Other family members of the employer; • Seasonal workers; • Persons who work less than 90 days per year.
Entity in Charge	For the direction and supervision of social insurance system the Instituto Colombiano de Seguros Sociales is created as an autonomous public entity. 'entidad autónoma de derecho social, con personería jurídica, patrimonio propio distinto a los bienes del estado e independiente del mismo' ⁸⁵ (Art. 8)
Resources	Triple contribution system: Insured; Employer and the State

2. The Age of Full-Employment (1960- 1980)

During the period that goes from the late 1960s through the late 80s, industrialization with policies aimed at increasing savings and attracting foreign direct investment, was articulated in the more structural terms of increasing aggregate demand and achieving full employment. Full employment required a more active state and contained the understanding that only through creating the conditions of formal, well paid jobs a virtuous cycle would occur that would increase consumption and demand. Social policies were aimed at poverty alleviation and focused on removing structural barriers to full participation in the market.⁸⁶ The social security system was reorganized and strengthened during this period. The services for the working class were extended to benefits for families, pensions for widows, unemployment insurance and rural workers were included under the social security benefits.

⁸⁴ *ARTÍCULO 2. Serán asegurados por el régimen del seguro social obligatorio, todos los individuos, nacionales y extranjeros, que presten sus servicios a otra persona en virtud de un contrato expreso o presunto, de trabajo o aprendizaje, inclusive los trabajadores a domicilio y los del servicio doméstico.*

⁸⁵ Note the difference with institutional arrangements and executive power after constitutional reform of 1968.

⁸⁶ For example the Colombian National Development Plan of 1970-1973 states: "full employment of human resources would be the fundamental aim of plans and programs of development". Therefore, poverty must be eradicated because "the principal cause of unemployment is the unequal level present in the country". In the same sense, the Plan establishes that the "State must intervene to give full employment of human resources". Colombian National Development Plan of 1970-1973. P. 10-12.

From the late 1960s through the late 80s, there was a major change in the institutional setting and the legal framework that framed the field. In 1968, there was a fundamental constitutional amendment which increased significantly the power of the President. This constitutional transformation was based on the idea that in order to reach the objectives of development (industrialization with some degree of distribution which would increase the demand over goods and services) Colombia needed to transform the organization of the state completely. In order to do this it had to restructure public institutions into a wide range of public and semi-public enterprises (*Sociedades de Economía Mixta, Empresas Industriales y Comerciales del Estado, Establecimientos Públicos*) that shared some characteristics with private sector ones but were run by the central government by technocrats⁸⁷

As a result of this transformation the whole system during this period was put in place through administrative acts (presidential decrees)⁸⁸ with no participation from Congress and no limitations in terms of worker’s rights. In addition, the ICSS was transformed into a public entity regulated by public law. Judges were largely absent from the framework, although there were a range of disputes over the adjudication of pensions.

Table 4: Colombian Social Security (1960- 1980)

Benefits	<ul style="list-style-type: none"> • Medical assistance for rural workers; • Familiar medicine; • Annual contribution of unemployment insurance.
Beneficiaries	<ul style="list-style-type: none"> • Rural workers; • Widows of the affiliated workers; • Families of the affiliated workers; • Unemployed. Public employees.
Entity in charge	Instituto Colombiano de Seguros Sociales ⁸⁹
Resources	Double contribution system: Insured and Employer.

⁸⁷ The administrative reform of 1968 tried to promote a more centralized, apolitical, technocratic institutional setting through the creation of a range of state enterprises.

⁸⁸ “The constitutional amendment of 1968 (...) gave the executive all the initiative in public expenditure without a balance of other State instance (...) The political regime became a presidential dictatorship”. See in: Kalmanovitz, op cit. Tercer Mundo, 1994. P. 442.

⁸⁹ The Decree 433 of 1971 is the first statute that reorganizes the “Instituto Colombiano de Seguros Sociales”. This Decree introduces substantial modifications to the original structure of the entity and transforms it completely into a public law regulated one. Arenas Monsalve, op. Cit., Legis, 2007. P. 91.

3. Liberal Reforms and Colombia's New Social Policies

From the late 1980s through the late 1990s Colombian development strategy shifted from promoting industrialization and full employment to strengthening the competitive mechanisms of the market as the only sustainable way to achieve economic growth. ISI policies were gradually abandoned in favor of free trade⁹⁰ and strong market institution.

The abandonment of full employment as a primary objective of development policy had tremendous impact on social policies. Worker's benefits were eliminated and direct state investment in health and education was diminished. Rural poverty alleviation programs were greatly weakened because of lack of resources. These reforms were accompanied with a privatization of the institutional arrangement that provided the benefits established in the law as well as through the general reduction of the benefits. Poverty alleviation policies changed their macro-economic status, and became more focalized and defined by microeconomics. Social policy shifted from instruments related to promoting formal and total employment⁹¹, rural population⁹² and measures to respond to violence and poverty simultaneously⁹³, to the setting in place of cash transfers originally designed to help out households in times of structural adjustment. Thus, during the nineties, the Fondo de Solidaridad y Emergencia Social was established to provide financial aid for education, health care, sanitation, institutional development, and special protection for women, youth and elderly, as well as emergency employment programs in the cities and the countryside⁹⁴.

⁹⁰ The National Development Plan of 1990 establishes two principles in terms of macroeconomic policies. First: free trade and an open economy are basic for development. In this sense, it points: "unlike the recommendations of professors and students of the fifties and sixties (...) nowadays, an open economy is identified as a basic strategy for development". Second: State "intervention must not replace the market; it must correct its distortions". See in: <http://www.dnp.gov.co/PortalWeb/PND/PlanesdeDesarrolloanteriores/tabid/66/Default.aspx>

⁹¹ During the 30s were established the basic institutions of labor law, such as a Social Insurance System; the Instituto Colombiano de Seguros Sociales, responsible for the direction and supervision of the former; the Sistema de Subsidio Familiar (SSF); the Servicio Nacional de Aprendizaje (SENA) and the Instituto Colombiano de Bienestar Familiar (ICBF). However, drastic demographic changes and the urbanization process experimented in this period, contributed to the appearance of shantytowns in the cities, and marginalized population in the countryside.

⁹² Examples of those measures are the Caja de Crédito Agrario, the Instituto Colombiano de Reforma Agraria (INCORA) and the Fondo de Desarrollo Rural Integrado (DRI), designed to alleviate rural poverty by increasing credits and resources for small landowners in order to make them more productive. Nevertheless, Colombian agrarian structure remains highly unequal, and the lack of land continues to be an obstacle for development.

⁹³ The Plan Nacional de Rehabilitación (PNR) was created in 1982 to allocate social benefits to people, regions and activities affected by poverty and violence and marginalized of social and economic progress.

⁹⁴ Nuñez y Cuesta. Op.cit. CEDE, Universidad de los Andes, Bogota, 2006. P. 12.

From the late 1980s through the late 1990s many of the worker's benefits were eliminated and direct state investment in health and education was diminished. Nevertheless, this removal of welfare style type policies faced important restrictions. On the one hand, the laws and regulations set in place to minimize the role of the state had to deal with pressing social and economic inequality. On the other hand, privatization and the elimination of subsidies were also restricted by a Constitution that includes a generous bill of social and economic rights as well as with social corporate responsibility codes which historically shaped ideas about protecting the family unit⁹⁵. The extensive bill of social and economic rights, plus special provisions on obligations for the state to guarantee human dignity and provide education and health to all the population provide a backdrop against which any social policy must interact. In addition to this set of rights, the power of the executive in terms of economic and social policy design was greatly limited preventing the President from being able to legislate in certain matters and forcing Congress to regulate most subjects such as labor and pensions⁹⁶. Therefore, the constitution had a very determinant effect over both the content of the norms, the type of regulation appropriated and the role of the judges.

The fact that the Colombian Constitution has an extensive bill of rights and that the Constitutional Court has had progressive rulings in terms of social and economic rights, does not mean that the distribution of resources and power within Colombian society has been transformed. It has meant, though, that the rights of formal workers have been effectively protected in comparison to a situation before 1991 where the rights of the working class were in the law but because of a range of problems including access to justice, they were marginally set in place⁹⁷. In other words, social and economic rights have been able to strengthen the liberal welfare state because they have been used to effectively exercise worker's rights. According to Rodrigo Uprimny, Mauricio García and César Rodríguez's research, roughly 49% of the rulings of the court

⁹⁵ The private sector has influenced the configuration of social policy in at least three ways: first, cooperating with the State on social investment programs that later have become laws; through the creation of independent institutions in charge of social programs; and recently through the establishment of social responsibility codes. Therefore, the dismantling of social policies had to deal with an existing welfare structure promoted by conservative industrialists influenced by catholic ideas of solidarity.

⁹⁶ For an account of the transformations and setbacks in the constitutional process see: Manuel José Cepeda Espinosa, La Constitución que no fue y el significado de los Silencios Constitucionales, Ediciones Uniandes, Bogota, 1994; Humberto de la Calle Lombana, Contra todas las apuestas: historia íntima de la constituyente de 1991, Editorial Planeta, Bogotá, 2004.

⁹⁷ Statistics from the Departamento Administrativo Nacional de Estadística (DANE) point that before 1991, more than 50% of labor trials lasted over a year, and more than 30% of them lasted over two years. La justicia Colombiana en cifras 1937-1994, Departamento Administrativo Nacional de Estadística, p.226.

have referred to worker's related rights: the right to health (28,76%) and right to social security (20,59%)⁹⁸.

Having said this, the 1991 Constitution has provided a limit both for executive branch technocrats as well as legislators in terms of targeting social policies (through an identification system that will be summarized in the following section), reaching universal coverage in health⁹⁹ and education¹⁰⁰ as well as in guaranteeing the minimum wage¹⁰¹.

The program described above, Familias en Acción, is designed and assigned according to the data base which identifies the population in need of aid from the state-SISBEN. Both the functioning of Familias en Acción and the design of the SISBEN index is characterized by a command and control approach, an enormous emphasis on fixed deadlines (to prove that you should be part of SISBEN and therefore capable of getting the subsidy), quantitative measures (such as weight gain and school attendance), specific procedural and documentation requirements (presenting the correct documentation to the major's office), centralized and rule based decisions. These programs are far from fitting into the flexible, decentralized, contextual model described in the introduction by Coutinho, Arbix & Martin or Noolan, Sabel and Simon.

As a matter of fact, if one takes Noolan, Sabel and Simon's description seriously, Familias in Acción has no legal characteristics that would include it as an experimentalist welfare policy. Thus, the decrees (CONPES documents) are far from being based on

⁹⁸ Mauricio García Villegas, Cesar Rodríguez Garavito y Rodrigo Uprimny. ¿Justicia Para todos?: Sistema judicial, derechos sociales y democracia en Colombia. Norma, Bogota, 2009. P. 359.

⁹⁹ In 2008 the Colombian Constitutional Court declared that the right to health should be adjudicated in the same rank as civil and political rights. This ruling is important for three reasons. First, the Colombian Constitutional Court ruled that the right to health is an independent fundamental right. In previous rulings, the right to health had been protected when it was linked to life risks or human dignity. Second, the Court stated that health coverage in Colombia was not universal as it should be and therefore ordered the government to take the necessary measures to ensure universal coverage and to report every six months to the Constitutional Court the progress obtained in relationship to this aim. Third, the Tribunal pointed out that even though there is a contributive and a subsidized regime, there is discrimination inside the system among the members of those regimes. Therefore, the Court ordered the government to unify both regimes.

¹⁰⁰ There are many decisions by the Constitutional Court about this subject, among them the most useful are: T-236 of 2001; T-943 of 2004; C-1109 of 2001; C-673 of 2001; C-925 of 2000.

¹⁰¹ For example, in 2003, the Constitutional Court declared unconstitutional an increase of 2% in the Value Added Tax on products that are considered essential for family subsistence ("canasta familiar"). The Court said that this increase went against the taxation system principles of progressivity and equity and it would affect disproportionately the poorest segments of society since most of their income is spent on the goods included in the canasta familiar. Corte Constitucional, Sentencia C-776 de 2003, M.P. Manuel Jose Cepeda Espinosa. Along the same lines, in 2001, in a highly controversial decision, the Court decided that the salary of low wage public workers could not be increased below the inflation rate. Corte Constitucional, Sentencia C-1064 de 2001, M.P. Manuel Jose Cepeda and Jaime Cordoba Triviño.

overarching principles, core values or guidelines, they are documents that establish the specific means to comply with them and include very little exceptions. In addition, they are designed, decided and elaborated in the Planning Department in Bogotá, with no contextual dimension or no awareness of the frontline workers who decide who enters the SISBEN database and should therefore get the subsidy. Finally, President Uribe's urge to increase under all circumstances the number of families benefitted, is absolutely contrary to the incrementalist approach, which means the adoption of "phased implementation"¹⁰² instead of a radical transformation, decreasing the risk that the central administration would be overwhelmed by the demands of reform.

IV. Conclusion

In the on-going conversation among policy makers and experts in law and development, Colombia's new social policies provide a springboard to analyze more rigorously the relationship between institutional innovation, a policy instrument and the achievement of developmental objectives.

In the evolution of social policy that this paper has described, the combination of constitutional enforcement of economic and social rights and conditional cash transfers constitute its latest stage. The contemporary stage is a tripartite combination of a development strategy shift, a set of localized institutional changes in the social insurance scheme, and a major constitutional reform.

Programs such as Familias en Acción represent a new understanding of the role of the state in the development process. It is new because it goes beyond the public/private distinction since the conditions set in order to receive the subsidy are based precisely on changing the realm of the private. The novelty is also related to the fact that it calls into question the coherence of the great divide in social policy models between paternalism and individual responsibility, and between politics and technocracy. Finally, the innovation comes from the fact that it moves away from the rigidities and increase in state expenditure of the top-down approach; instead relies on malleable orders (CONPES being the ultimate example of this).

And yet, it is precisely these institutional innovations that make the program politically problematic, and with unclear developmental outcomes. When situated in a

¹⁰² Noolan, Sabel and Simon, page. 16.

historical context, Familias en Acción becomes part of the Colombian structural incapacity to redistribute resources among its population. In this paper, this was most clearly illustrated by the tendency of these reforms to restrict the domain of social policy, and to redefine poverty as a localized phenomenon that depends on individual fortunes. More interestingly, an analysis of Familias en Acción in a historical context also reveals that whenever we find institutional innovations, these are better explained by the underlying political and economic conditions in any specific context. This is relevant in the Colombian case since the increase in the number of municipalities and families covered by the program seem to have a relationship with electoral politics and President Uribe's populist style.

In short, placing Colombia's new social policies in their proper historical context bring strong support to the insight according to which the success of new social policies is not only path dependent but also seems to depend on the specific political choices that made the adoptions of these policies possible.

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