

## Economic Policy in Latin American Constitutions\*

*Jorge M. Farinacci Fernós\*\**

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\*\* B.A. & M.A. (University of Puerto Rico-Río Piedras), J.D. (University of Puerto Rico Law School), LL.M. (Harvard Law School), S.J.D. (Georgetown University Law Center); Associate Professor, Interamerican University of Puerto Rico Law School.

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## I. INTRODUCTION

There are many different types of constitutional approaches to economic policy and rights around the world. Latin America hosts several of these, which can be lumped into three main categories: (1) capitalist (*laissez-faire* or top-down reformist), (2) neutral (silent or incidental), and (3) post-liberal (mixed social-democratic, collectivist communitarian, or state socialist). In turn, these approaches and categories are historically, though not inherently, related to particular processes of constitutional creation, which vary from those that are elite-led to more popular-driven.

During the last decades, Latin America, a key component of the Global South, has become a testing ground for constitutional creation. While the 19<sup>th</sup> Century was mostly characterized by the importation of the U.S. constitutional model, including the emphasis on presidentialism and classic liberal rights of a primarily political nature,<sup>1</sup> the last fifty years of Latin American

<sup>1</sup> See Rett R. Ludwikowski, *Constitutionalization of Human Rights in Post-Soviet States and Latin America: A Comparative Analysis*, 33 GA. J. INT'L & COMP. L. 1, 9–10 (2004).

constitutional development has moved in a very different direction, mostly towards a substantive approach to economic matters.

In fact, one of the defining characteristics of most modern Latin American constitutions is the inclusion of provisions that directly govern economic policy or even entrench a basic or preferred economic system for each country. Depending on the elite or popular nature of the particular constitutional making process, the actual content of these provisions varies considerably.<sup>2</sup> In any event, a more detailed and integrated study of the economic policy provisions entrenched in Latin American constitutions is warranted.

First, most of the region's constitutions can actually be characterized as substantive.<sup>3</sup> This is so, notwithstanding the historic U.S. influence and the initial practice of copying its constitutional structure, which was characterized by a silent or, at best, an incidental approach to economic matters. In other words, whether aggressively *laissez-faire* or categorically socialist, Latin American constitutions are hardly neutral when it comes to economic policy. This generalized tendency is very revealing since it signals that, whether left or right, there seems to be a shared understanding in the region that constitutions should not be completely oblivious to such an important issue like economic policy.

Second, the variety of the actual content regarding specific economic policy within each of the substantive constitutions is also worthy of scholarly attention, including its connection with the constitutional creation process. Such attention can also reveal the different ideological views that are currently flowing in Latin America, culminating in their inclusion in each country's constitutional structure. As it pertains to the process of actually creating a constitution, Latin America also encapsulates substantially different approaches, which, in turn, impact the actual content of the constitutionalized economic policy.

This Article analyzes the economic provisions found in Latin American constitutions, particularly as they relate to general economic policy and specific individual or collective rights of a socio-economic nature.<sup>4</sup> This analysis

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<sup>2</sup> See *id.* at 11.

<sup>3</sup> See Jorge M. Farinacci-Fernós, *Post-Liberal Constitutionalism*, 54 TULSA L. REV. 1, 32 (2018) (discussing the difference between substantive or teleological constitutions and framework constitutions). While framework constitutions are limited to establishing the structure of government and including some basic political rights, substantive or teleological constitutions focus on addressing substantive policy issues that impact society, including economic, labor, environmental, and social issues. *Id.*

<sup>4</sup> This Article does not analyze whether these provisions have actually been implemented by the relevant governmental, social, political, and judicial actors. See, e.g., Jorge M. Farinacci-Fernós, *When Social History Becomes a Constitution: The Bolivian Post-Liberal Experiment and the Central Role History and Intent in Constitutional Adjudication*, 47 SW. L. REV. 101 (2017) [hereinafter Farinacci-Fernós, *When Social History Becomes a Constitution*] (presupposing the inherent value of analyzing the textual provisions of Latin American constitutions that relate to economic matters, independently of their effective implementation). A final note: this Article only

proceeds in two ways. First, by classifying each constitution within one of the main categories identified previously, in an attempt to give a general overview of the current situation in Latin America. Second, by discussing how each constitution deals with several specific issues, such as labor rights, property, social services, and concrete economic organization.

This Article also attempts, albeit briefly, to trace these different constitutional experiences and approaches towards economic policy to particular creation processes. The hypothesis is that constitutions that adopt a capitalist approach to economic matters have mostly been elite-led. In contrast, those that adopt a post-liberal approach have mostly been popular-driven. Those constitutions in the middle (silent or incidental) vary in terms of their creation process: the more their orientation is towards silence tends to signal a more elite-led process, while those that incorporate incidental progressive approaches to economic issues tend to be more popular-driven. There is also a historical component at play here: former U.K. colonies tend to imitate the British tradition of limiting constitutional text to issues of political structure and rights, completely excluding socio-economic matters.

In other words, elite constitutional processes *tend* to generate more conservative, classically liberal, and private property-friendly documents, while popular constitutional processes *tend* to generate progressive, post-liberal, and socially oriented instruments. This Article explores this tentative correlation, although most of the focus is on the substantive issues regarding economic policy. Once the initial link has been established, future studies on the issues related to the creation process should follow.

This Article is organized as follows: Part I discusses the different types of constitutional approaches to economic policy and rights, particularly the main categories identified earlier: (1) capitalist (*laissez-faire* or top-down reformist), (2) neutral (silent or incidental), and (3) post-liberal (mixed social-democratic, collectivist communitarian, or state socialist). It also briefly addresses particular creation processes. Part II classifies the individual constitutions of Latin America, as well as their creation processes, using the categories outlined in Part I. Part III analyzes specific economic policy issues, such as labor rights, the question of property, and social services, and surveys each country's approach to these issues.<sup>5</sup> Part IV offers some final thoughts.

## II. CONCEPTUAL OVERVIEW

### A. Constitutional Approaches to Economic Issues

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analyzes constitutions of sovereign countries. This explains why, for example, Puerto Rico was not included. For a more in-depth analysis of the Puerto Rican constitutional experience in terms of many of the issues discussed in this Article, see Jorge M. Farinacci-Fernós, *Originalism in Puerto Rico: Original Explication and Its Relation With Clear Language, Broad Purpose and Progressive Policy*, 85 REV. JUR. U.P.R. 203 (2016).

<sup>5</sup> See Ludwikowski, *supra* note 1, at 87 (offering a general comment with regards to socio-economic rights in Latin American constitutions).

### 1. Capitalist Constitutions

Capitalist constitutions explicitly adopt an economic system based on private ownership over the means of production, free-market distribution mechanisms, and private enterprise as the main driving force of economic activity.<sup>6</sup> By the same token, these constitutions severely limit the direct economic role of the state and other forms of socially oriented economic entities,<sup>7</sup> as well as provide strong protections for private property.

Yet some capitalist constitutions diverge in terms of the existence of an entrenched social safety net that offers important concessions to the working classes, both in terms of social services and individual rights, particularly in the labor context. This requires separating capitalist constitutions into two specific manifestations: (1) *laissez-faire* and (2) top-down reformist or reformed capitalism.

#### *i. Laissez-faire*

*Laissez-faire* or neoliberal constitutions are the “purest” form of capitalist entrenchment. It refers to the adoption of substantial constitutional protections for private enterprise and ownership in the economic sphere while, at the same time, aggressively diminishing the role of the state *both* in terms of its direct economic activity,<sup>8</sup> and, more importantly here, in terms of social protections to the popular classes, particularly urban and rural workers.

In that sense, *laissez-faire* constitutions solidify private enterprise as both the leading force for general economic activity *and* the actual operation of social services. As to the former, it is part of the approach of capitalist constitutions in general. As to the latter, *laissez-faire* constitutional systems give an explicitly leading role to private actors in supplying important social services such as education, healthcare, and social security. This is a keystone feature of the neoliberal model. As we will see, top-down reformist constitutions, while severely limiting the role of the state when it comes to direct economic activity, are not as strict with regards to the role of the state in the administration of the social safety net.

Also, unlike their top-down reformist counterparts, *laissez-faire* constitutions intentionally omit important socio-economic rights belonging to the non-proprietary classes, particularly workers. This goes to the heart of the *laissez-faire* project: aggressive constitutional protection to private enterprise

<sup>6</sup> Susan D. Fendell, *Public Ownership of Public Utilities: Have Stockholders Outlived Their Useful Economic Lives?*, 43 OHIO ST. L.J. 821, 853 (1982) (“Capitalism is an economic system in which all or most of the means of production are privately controlled and operated for profit”).

<sup>7</sup> This is called the *subsidiary* principle, which means that the state’s direct economic activity is secondary to private enterprise. See generally Ewa Poplawska, *The Principle of Subsidiarity Under the 1997 Constitution of Poland*, 1997 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 107 (1997).

<sup>8</sup> See Fendell, *supra* note 6, at 853 (“*Laissez-faire* capitalism operates without government regulation or control”); Alfred C. Aman, Jr., *The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy*, 31 VAND. J. TRANSNAT’L L. 767, 777 (1998).

and property, and intentional constitutional omission as to the rights of the working classes.

*ii. Top-down reformist*

The top-down reformist approach, also known as reformed capitalism, also explicitly entrenches the capitalist economic system in the constitutional text. In that sense, there is a constitutionally guaranteed leading role for private enterprise in the economic sphere and strong protections for private ownership of the means of production, at the expense of direct state economic activity. But, unlike the *laissez-faire* model, reformist constitutions do not completely exclude the state from administering a generous social safety net. Moreover, they also incorporate important socio-economic rights and protections for the working classes and the poor.

This helps explain the “top-down” characteristic of this model. First, the state has a pivotal role in national life. Unlike *laissez-faire*, this constitutional system does not create a weak state. On the contrary, it creates a relatively strong state *that intentionally avoids engaging in direct economic activity*. Reformist constitutions redirect state activity to social services, where it still plays a leading role. Second, there is a sense of paternalism at play here. While the state privileges private enterprise as the main engine of economic activity and offers strong protections to private property, it also makes considerable concessions to the popular classes, particularly when it comes to labor rights and conditions.

Yet this approach can best be characterized as “top-down,” precisely because, in general, it mostly deprives the working classes of actual economic power. The social and labor protections that appear in the constitutional text are not the result of a successful labor movement, but of the unilateral concession of the state as part of a corporatist or social-contract view of society. This means that the prevailing ideology is not of open hostility to the working classes or the poor, but one that encourages cooperation between the classes for the greater national interest. In other words, while *laissez-faire* capitalism takes sides in the class struggle, reformist capitalism attempts to partially transcend class antagonism by favoring owners while also protecting workers and the poor.

2. Neutral Constitutions

Neutral constitutions neither entrench a particular economic system nor announce a favorite among them. But that neutrality does not automatically suppose complete silence as to economic issues, especially with regards to individual socio-economic rights and the constitutional entrenchment of a social safety net. That is why neutral constitutions should be further divided into silent and incidental varieties. Still, both share the same basic characteristic: they do not signal a constitutional preference for a specific economic system overall.

*i. Silent*

These are a rare breed in Latin America. In fact, the only real examples that are included in this Article cannot accurately be described as “Latin” at all: Jamaica and Belize. But, because there is important overlap between Latin America on the one hand and the Caribbean and South and Central America on the other, it is beneficial to include these experiences in our analysis.

As previewed earlier, wholly silent constitutional systems on the continent tend to be descendants of the British tradition that limits constitutional text to matters of political structure and individual rights.<sup>9</sup> While by no means an inherent characteristic, there is a noted tendency on the part of those countries that were former British colonies in the Western Hemisphere to follow the British tradition.

Because of their silence, these constitutions are easy to define; they simply omit any direct, or even indirect, reference to economic issues, particularly with regards to policy, models, or systems. They are also silent when it comes to basic socio-economic rights. This is not necessarily an ideological stance, as is the case with *laissez-faire* constitutions, but a matter of legal culture that relegates these types of rights to statutory enactment and the arena of ordinary politics. It should be noted that, notwithstanding its operative silence, the Constitution of Belize does incorporate some very general economic goals in its Preamble.

#### *ii. Incidental*

Like their silent counterparts, incidental constitutions do not entrench a single or preferred economic system. Likewise, they hardly address general economic policy matters at all. But unlike their silent brethren, incidental constitutions do address *some* economic issues, mostly through the mechanism of individual socio-economic rights.

In turn, these individual economic rights can be implemented or enforced *independently* of which economic system is eventually adopted through the ordinary political process. In other words, regardless of whether this process produces a capitalist or socialist economic model, these rights will be relevant and operational.

Thus, the value of characterizing these constitutions as “incidental” is that they are not completely silent on economic matters but are still mostly neutral as to the specific questions of general economic policy or preference. The limited provisions that are related to economic issues, particularly socio-economic rights, are universally applicable and, more importantly, fully compatible with most economic systems.

### 3. Post-Liberal Constitutions

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<sup>9</sup> See Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 MICH. L. REV. 391, 448 (2008) (finding examples of this constitutional practice in the United States, Canada, Australia, New Zealand, and the United Kingdom).

Post-liberal constitutions propose some sort of break with neoliberal economic policies in favor of a more socially oriented system. They represent an alternative to liberal capitalism while preserving the basic tenets of modern constitutionalism, particularly in the political sphere.<sup>10</sup> Specifically, post-liberal constitutions allow or require direct state intervention in economic activity and give social and public entities a leading role in economic development. Additionally, they incorporate comprehensive public services and substantial socio-economic rights addressed at urban and rural workers, as well as the poor. As a result, while there is some legal protection for private property, the constitution conditions its existence on its social function and purpose, as well as the common good.

Unlike capitalist constitutions, though, the post-liberal current is considerably broad in terms of its internal articulations, which vary from mixed social-democratic in its most moderate version to state socialism at the other side of the spectrum. As such, the post-liberal label is much more flexible, united in a general rejection of neoliberal policies and of the primary role of private enterprise and ownership as the hallmarks of the economic system.

#### *i. Mixed social-democratic*

This type of constitution establishes an economic system that combines private enterprise with substantial state and socially oriented economic activity.<sup>11</sup> In some instances, the state sector can even be dominant, but there is still considerable space for private initiative. This mixed approach to economic activity is combined with (1) comprehensive state-led social services, such as education, healthcare, and housing, (2) state domination over strategic industries such as oil, mines, and natural resources, and (3) a substantial list of individual and collective socio-economic rights that favors workers and the poor.

This combined effect requires us to include mixed social-democratic constitutions within the post-liberal family. While there is no express or complete rejection of the capitalist model in terms of ownership, production, and distribution, these constitutions embark on a very different path from their capitalist counterparts by way of the substantial role given to the state both with regards to its economic activity and public services, as well as the legal protection for the popular classes. Depending on what happens in the ordinary political process, the constitution allows for an even greater role for state and socially oriented economic activity, leaving private enterprise as a secondary actor.

#### *ii. Collectivist communitarian*

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<sup>10</sup> See Farinacci-Fernós, *Post-Liberal Constitutionalism*, *supra* note 3.

<sup>11</sup> See Ioannis Katsaroumpas, *De-Constitutionalizing Collective Labour Rights: The Case of Greece*, 47 *INDUS. L.J.* 465, 471–72 (2018) (describing social-democratic constitutions as those that “desire to regulate the imbalance in private law relationships and not just to control the exercise of public power as in the case of liberal constitutions”).



This approach is relatively new in the Latin American experience. It started with the constitutional experiments in Bolivia and Ecuador at the beginning of the 21st Century.<sup>12</sup> It is based on a sharp rejection of the neoliberal model and, instead, embraces an economic system based on (1) giving state, social, and communitarian entities a leading role in economic activity, (2) the aggressive redistribution of economic and political power to the popular classes, (3) a substantial network of public services, and (4) socio-economic rights addressed at workers, indigenous communities, and the poor.

Collectivist communitarianism has its roots in the proposals for a “21st Century socialism” that moves away from the classic Eastern Bloc approach to economic organization under state socialism.<sup>13</sup> It is also based on the culture, ideas, and practices of indigenous communities that combine solidarity, environmental sensitivity, and collectivism.

The collectivist communitarian model does not eliminate private enterprise completely. But it does announce an evident preference for socially oriented economic projects and a radical redistribution of wealth and power. In that sense, this model perfectly embodies the post-liberal label, in that it retains some elements of the previous liberal order yet decides to embark on a clearly different path that privileges public and social ownership over reliance on private projects as the main engine of the economic system.

### *iii. State socialist*

This model is based on the “real socialism” of the socialist bloc during the Cold War. It is an offspring of the Soviet model, based primarily on state property and central planning.<sup>14</sup> In that sense, it is explicitly ideological with respect to its socio-economic goals and the class nature of the state and constitutional order.

This approach has experimented with substantial changes in recent years, particularly with respect to giving some constitutional recognition to non-state property and activity, albeit in a clearly secondary role.

## *B. Constitutional Creation Processes*

### 1. Elite-Led Creation

This refers to constitution-making processes that are directly guided by privileged or powerful minority sectors of society, including the proprietary

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<sup>12</sup> See Daniel M. Brinks & William Forbath, *Commentary: Social and Economic Rights in Latin America: Constitutional Courts and the Prospect for Pro-Poor Interventions*, 89 TEX. L. REV. 1943, 1954 (2011).

<sup>13</sup> See Elena M. De Costa, *Does Democracy Translate Across Borders? Participatory Democracy and the New Left in Latin America: An Experimental Approach to Democratization*, 35 ST. LOUIS UNIV. PUB. L. REV. 257, 278 (2016).

<sup>14</sup> See Fendell, *supra* note 6, at 854 (“Socialism . . . means not only that the means of production are publicly owned, but also that they are managed by the public for the benefit of the public—not for the benefit of a small class of people”).

and business classes, as well as the military. They are also characterized by an over-dependence on professional advisors that are charged with turning the worldviews of these elites into concrete legal text. As a practical matter, these processes tend to limit popular participation, both in terms of actual presence in the drafting or deliberative tasks of the representatives of the popular classes, and also regarding the actual content of the constitutional text, which tends to mirror the elite worldview and not necessarily those of the public at large.

Constitutional creation processes carried out during right-wing military dictatorships or other similar authoritarian regimes that have close ties with powerful economic sectors are examples of this phenomenon. Since the population at large was mostly relegated to a passive role, these processes tend to lack democratic energy. Elite-led processes are hardly examples of exercises in “constitutional politics,” which Bruce Ackerman characterizes as the “highest kind of politics,” precisely because of its democratic credentials.<sup>15</sup>

## 2. Popular-Driven Creation

Not surprisingly, a popular-driven constitutional creation process runs in the opposite direction. This type of process has two distinct characteristics.

First, it tends to directly include representatives from the popular classes in terms of their actual physical presence during drafting and deliberation. It also means that the policy preferences of the broader population will be front and center during the framing process, instead of just the worldviews and interests of a privileged minority.

Second, and as a result, these processes tend to be highly democratic and participatory. In turn, these characteristics instill important additional benefits to the process. As Elkins, Ginsburg, and Blount explain, “[p]ublic involvement in constitution making is increasingly considered to be essential for the legitimacy and effectiveness of the process.”<sup>16</sup> As a result, “[t]he maxim that constitution making should be participatory has become one of the most prevalent in the field.”<sup>17</sup> Popular processes incorporate these elements.

## III. CLASSIFYING LATIN AMERICAN CONSTITUTIONS

### A. Overview

In one way or another, most Latin American constitutions address economic issues. With the exception of former British colonies like Belize and

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<sup>15</sup> Bruce A. Ackerman, *The Storrs Lectures: Discovering the Constitution*, 93 YALE L.J. 1012, 1022 (1984).

<sup>16</sup> Zachary Elkins et al., *The Citizen as Founder: Public Participation in Constitutional Approval*, 81 TEMP. L. REV. 361, 361 (2008).

<sup>17</sup> Hanna Lerner & David Landau, *Introduction to Comparative Constitution Making: The State of the Field*, in COMPARATIVE CONSTITUTION MAKING 1, 10 (David Landau & Hannah Lerner eds., 2019).

Jamaica—which are the only members of the “silent” group for purposes of this survey—the rest of the national constitutions in the region take some sort of stand with regards to economic policy or, at the very least, important socio-economic rights.

The largest main group are the capitalist constitutions, with eight. Two important clarifications are warranted, though. First, only one of these can be fairly characterized as *laissez-faire* or neoliberal: Chile. It should be noted that a national plebiscite in Chile massively rejected the current Chilean Constitution, which dates back to the Pinochet regime. As such, there is a high probability that the *laissez-faire* sub-group will soon be totally empty. Second, the remaining seven constitutions, which belong to the top-down reformist sub-group, include numerous, important provisions that deal with labor rights and comprehensive public services. In other words, with the fleeting exception of the Chilean Constitution, the most conservative or rightward constitutions in Latin America nonetheless include significant socio-economic provisions that benefit the popular classes. In that sense, the Latin American constitutional experience does not tend to drift solidly rightward when it comes to economic issues.

The second main group is post-liberal constitutions, with seven.<sup>18</sup> Within that group, the mixed social-democratic subgroup stands out with four, followed by the collective communitarian constitutions with two, and a single state socialist constitution (Cuba). However, as will be discussed later on, it is very interesting that many of the more recently approved constitutions belong to this group. This could signal a recent trend that seems to move leftwards.

Bringing up the rear are the neutral constitutions, with six. As previewed, only two of these are completely silent as to economic issues (Belize and Jamaica),<sup>19</sup> while the remaining four can be classified as incidental. These incidental constitutions, however, also tend to lean leftward, since many of the individual rights provisions that address socio-economic matters tend to emphasize marginalized groups such as workers. They also offer a substantial list of constitutionally guaranteed social services.

In terms of creation processes, there is a great variety. Many of the capitalist constitutions were adopted during the reign of right-wing military dictatorships or authoritarian governments. Others within this group were adopted in deeply divided societies that are characterized by huge wealth and power gaps between the ruling elite and the popular classes. On the other hand, many of the post-liberal constitutions were adopted during periods of

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<sup>18</sup> If Chile were to adopt a new constitution that can be fairly characterized as post-liberal, that would flip the order, as the capitalist group would fall to seven while the post-liberal group would increase to eight.

<sup>19</sup> There are other countries in South America and the Caribbean that do not adequately fit the bill of being “Latin American.” Former British and Dutch colonies are examples of this. The inclusion of Belize and Jamaica serves two main purposes: (1) to avoid total exclusion of these American and Caribbean societies, and (2) to benefit from the contrast between the traditions in these societies and the experiences in Latin America proper.

heightened popular mobilization and engagement, including successful social revolutions. The neutral group, not entirely surprising, is internally diverse.

In terms of geography, some initial patterns seem to emerge. First, Central America seems to be the most conservative region, with many top-down reformist constitutions (Guatemala, El Salvador, Honduras, Panama), a few neutral (Belize, Costa Rica), and only two post-liberal, all of them of the mixed social-democratic kind (Mexico, Nicaragua).

Second, the “Cono Sur” or Southern Cone seems to have the greatest concentration of neutral constitutions (Argentina, Paraguay, Uruguay). And third, we can see that countries with substantial indigenous and rural populations have adopted collectivist communitarian constitutions (Bolivia, Ecuador).

### *B. Diving Deeper: Latin American Constitutions by Type and Process*

This section offers an analysis of the approaches adopted by Latin American constitutions regarding each country’s economic system. While Part III will address specific policy matters, such as property, labor rights, and public services, this section will mostly focus on (1) the *general* statements regarding the economic system of each particular national constitution, and (2) the *specific* issue of the role of state, socially oriented, communitarian, or private entities in direct economic activity. From these two sources, we can offer a general characterization of each country’s constitutional approach to economic policy. Then, in Part III, we dive into the specific details of important economic matters as addressed by these constitutions.

#### 1. Capitalist Constitutions: *Laissez-Faire* and Top-Down Reformist

With the exception of Chile’s soon-to-be-replaced *laissez-faire* constitution, the remaining members of this class belong to the top-down reformist sub-group: Brazil, Dominican Republic, El Salvador, Guatemala, Honduras, Panama, and Peru. As can be appreciated, more than half the countries in this sub-group are in Central America.

It is also important to note that three of these constitutions were adopted during the reign of right-wing authoritarian governments or juntas during the civil wars of the 1980s.<sup>20</sup> That would account for much of their “top-down” substantive characteristics and elite-led natures in terms of creation processes. These three constitutions (El Salvador, Guatemala, and Honduras) are also quite similar in terms of substantive content. The remaining ones are from countries that grappled with conservative authoritarian regimes, such as Brazil (after the fall of the military dictatorship), the Dominican Republic, Panama, and Perú.

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<sup>20</sup> El Salvador in 1983, Guatemala in 1985, and Honduras in 1982. These dates refer to the years in which the current documents were adopted in their original form. All of these constitutions have been amended several times since.

The Brazilian Constitution (1988) approaches its economic policy based on “the social values of labor and of the free enterprise.”<sup>21</sup> It also characterizes “the exercise of social and individual rights, liberty, security, well-being, development, equality, and justice as supreme values of a fraternal, pluralist and unprejudiced society.”<sup>22</sup> Specifically, it identifies the fundamental objectives (1) “to build a free, just, and solidary society,”<sup>23</sup> and (2) “to eradicate poverty and substandard living conditions and to reduce social and regional inequalities.”<sup>24</sup>

Article 170 of the Brazilian Constitution proclaims that “[t]he economic order, founded on the appreciation of the value of human work and free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice.”<sup>25</sup> Specifically, the economic system entrenched in the constitutional text is guided by the following principles: (1) national sovereignty (2) private property, (3) the social function of property, (4) free competition, (5) rights of consumers, (6) protection of the environment, (7) decrease in regional and social inequalities, (8) full employment, and (9) favorable treatment to small business.<sup>26</sup>

Moreover, Article 173 clearly states that “[w]ith the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest.”<sup>27</sup> In other words, the Brazilian Constitution establishes the subsidiary principle that is characteristic of capitalist constitutions. Finally, Article 174 gives the State a strong *regulatory* role in terms of economic development and activities. This is characteristic of top-down reformist constitutions: the state is absent or limited only in terms of its direct economic activity.

From this we can confidently conclude that the Brazilian Constitution (1) privileges private enterprise as the main engine of economic activity, (2) substantially limits the State’s direct intervention in such activity, and (3) gives the State broad regulatory powers to ensure the general welfare.

The Dominican Constitution (2015) establishes a “Social and Democratic State of Law,”<sup>28</sup> based on “the supreme values and fundamental principles of human dignity, freedom, equality, the rule of law, justice, solidarity, fraternal

<sup>21</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 1(IV) (Braz.), <https://heinonline.org/HOL/P?h=hein.cow/zzbr0490&i=1> (English translation).

<sup>22</sup> *Id.* pmb1.

<sup>23</sup> *Id.* art. 3(I).

<sup>24</sup> *Id.* art. 3(III).

<sup>25</sup> *Id.* art. 170.

<sup>26</sup> C.F. art. 170 (Braz.).

<sup>27</sup> *Id.* art. 173.

<sup>28</sup> CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA [C.R.D.] [CONSTITUTION] art. 7 (Dom. Rep.), <https://heinonline.org/HOL/P?h=hein.cow/zzdo0091&i=1> (English translation).

coexistence, social well being, ecological balance, progress and peace, essential factors for social cohesion.”<sup>29</sup> In terms of its economic policy, Article 217 states that “[t]he economic regime is oriented towards the search for human development. It is founded in economic growth, the redistribution of wealth, social justice, equality, social and territorial cohesion and environmental sustainability *within a framework of free competition*, equality of opportunities, social responsibility, participation and solidarity.”<sup>30</sup> Of course, the constitution also establishes a general duty to act according to the principle of social solidarity.<sup>31</sup>

Moreover, Article 218 states that “[p]rivate initiative is free. The State will procure, together with the private sector, a balanced and sustainable growth of the economy, with price stability, tending to [provide] full employment and to increase the social well being . . . .”<sup>32</sup> Most significantly, Article 219 proclaims that

[T]he State will encourage economic private initiative, creating the policies necessary to promote the development of the country. Under the principle of subsidiarity the State, on its own account or in association with the private sector and severally, can exercise business activity with the goal of assuring the access of the population to basic goods and services and [to] promote the national economy.<sup>33</sup>

In summary, the Dominican Constitution (1) privileges private economic activity, (2) establishes a seemingly mild version of the principle of subsidiarity, and (3) incorporates principles of social justice in terms of the benefits of these activities.

The Salvadorian Constitution (1983) establishes the State’s obligation “to assure to the inhabitants of the Republic . . . economic wellbeing and social justice.”<sup>34</sup> According to Article 101 of the constitution: “The economic order must essentially respond to the principles of social justice, which tend to assure to all the inhabitants of the country a dignified existence of the human being.”<sup>35</sup> Specifically, Article 102 guarantees economic liberty, as long as it’s not opposed to the social interest.<sup>36</sup> Moreover, “[t]he State will encourage and protect private initiative within the necessary conditions to increase the national wealth and to assure its benefits for the greatest number of the inhabitants of

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<sup>29</sup> *Id.* p.mbl. (error in original).

<sup>30</sup> *Id.* art. 217 (emphasis added).

<sup>31</sup> *Id.* art. 75.

<sup>32</sup> *Id.* art. 218 (error in original).

<sup>33</sup> C.R.D. art. 219 (Dom. Rep.).

<sup>34</sup> CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR [C.R.E.S.] [CONSTITUTION] art. 1, <https://heinonline.org/HOL/P?h=hein.cow/zzsv0014&i=1> (English translation).

<sup>35</sup> *Id.* art. 101.

<sup>36</sup> *Id.* art. 102.

the country.”<sup>37</sup> Within this constitutional policy to encourage private enterprise, cooperatives and community entities are particularly favored.<sup>38</sup>

In that sense, the Salvadorian Constitution’s approach to economic policy is a moderate version of the top-down reformist model, emphasizing the harmony between private enterprise and social welfare.

The Guatemalan Constitution (1985) proclaims that the purpose of the State “is the realization of the common good.”<sup>39</sup> While the text has notable libertarian language (“All persons have the right to do what the law does not prohibit”),<sup>40</sup> and it elevates private property rights as an essential part of individual progress and national development, it also stresses their relation to “the benefit of all Guatemalans.”<sup>41</sup> In that sense, the constitution states that “[t]he social interest prevails over the individual interest.”<sup>42</sup>

In terms of the actual economic system, the Guatemalan Constitution states that “[t]he economic and social regime of the Republic of Guatemala is founded on principles of social justice.”<sup>43</sup> The constitution goes on to state that “[i]t is the obligation of the State to guide the national economy to achieve the utilizations of the natural resources and the human potential, to increase wealth and to try to achieve full employment and the equitable distribution of the national income.”<sup>44</sup> In terms of direct economic activity, Article 119 of the constitution incorporates the subsidiary principle: “When deemed as necessary, the State will act by *complementing* private initiative and activity, for the achievement of the stated purpose.”<sup>45</sup> In that sense, the State’s economic activity is primarily of a regulatory nature and one of the State’s main economic objective is to “protect the formation of capital, savings and investment.”<sup>46</sup>

As a result, we can conclude that the Guatemalan Constitution, while stressing the need for private activity to be compatible with the social interest, clearly states that private enterprise shall constitute the main expression of economic engagement. Moreover, the State will merely complement private initiative.

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<sup>37</sup> *Id.*

<sup>38</sup> *See id.* arts. 113–114.

<sup>39</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [C.P.R.G.] [CONSTITUTION] art. 1, <https://heinonline.org/HOL/P?h=hein.cow/zzgt0012&i=1> (English translation).

<sup>40</sup> *Id.* art. 5.

<sup>41</sup> *Id.* art. 39.

<sup>42</sup> *Id.* art. 44.

<sup>43</sup> *Id.* art. 118.

<sup>44</sup> C.P.R.G. art. 118 (Guat.).

<sup>45</sup> C.R.E.S. art. 118 (El Sal.) (emphasis added).

<sup>46</sup> *Id.* art. 119.

The Honduran Constitution (1982) guarantees the “enjoyment of justice, liberty, cultural and social and economic well-being.”<sup>47</sup> It embodies a clear social contract: “The rights of every man are limited by the rights of all others, by collective security, and by the just demands of the general welfare and democratic development.”<sup>48</sup> Specifically, it enshrines class conciliation. For example, it states that the labor laws “shall be based on harmony between capital and labor.”<sup>49</sup>

In terms of its economic system, the Honduran Constitution states that

The Economic System of Honduras is based on principles of efficiency in production and social justice in the distribution of wealth and national income, as well as on the harmonious coexistence of factors of production that make it possible to dignify labor as the principal source of wealth and as a means of fulfilment of the human being.<sup>50</sup>

While the State has a central role in *planning* the economy,<sup>51</sup> “[t]he national economy is based in the democratic and harmonious coexistence of various forms of ownership and enterprise.”<sup>52</sup> Towards that end, “[t]he State recognizes, guarantees and promotes freedom of consumption, savings, investment, employment, initiative, commerce, industry, contract, business . . . . However, the exercise of these freedoms may not be contrary to the social interest nor harmful to morals, health or public safety.”<sup>53</sup> More importantly,

[T]he practice of economic activities primarily belongs to individuals. However, the State, for reasons of public policy or social interest, may reserve to itself the operation of specified basic industries, ventures, and services affected by a public interest and issue economic, fiscal and public security measures and laws to channel, stimulate, supervise, orient and supplement *private initiative* on the basis of a rational and planned economy.<sup>54</sup>

In summary, the Honduran Constitution combines a clear preference for private economic activity with substantial social values such as wealth distribution and social justice, along with a strong regulatory state.

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<sup>47</sup> CONSTITUCIÓN POLÍTICA DE 1982 [C.P.] [CONSTITUTION] art. 1 (Hond.) (English translation on file with Journal).

<sup>48</sup> *Id.* art. 62.

<sup>49</sup> *Id.* art. 135.

<sup>50</sup> *Id.* art. 328.

<sup>51</sup> *Id.* art. 329.

<sup>52</sup> C.P. art. 330 (Hond.).

<sup>53</sup> *Id.* art. 331.

<sup>54</sup> *Id.* art. 332 (emphasis added).



The Panamanian Constitution (1972) emphasizes the need to promote, among others, “social justice” and “general well being.”<sup>55</sup> In keeping with many of the previously analyzed top-down reformist constitutions, Article 50 states that “private interest must yield to the public or social interest.”<sup>56</sup> In terms of the economic system, Article 282 of the constitution states that “[t]he exercise of economic activities corresponds *primordially* to individuals; but the shall orient, shall direct, shall regulate, shall replace or shall create them, in accordance with the social necessities . . . with the purpose of increasing the national wealth and of assuring its benefits to the largest possible number of inhabitants of the country.”<sup>57</sup>

While the State, indeed, has a secondary role in terms of economic activity, the Panamanian Constitution does not incorporate an overly aggressive version of the subsidiary principle, allowing the promotion of private enterprise, as well as the creation of state and mixed entities.<sup>58</sup> Specifically, Article 284 proclaims that “[t]he State shall intervene in any class of enterprise, within the regulation established by the Law, to make effective the social justice to which this Constitution refers” in order to regulate prices, quality, and production.<sup>59</sup> Still, “[t]he State shall see to the freedom of economic competition and free participation in the markets.”<sup>60</sup>

Similar to the previous examples, the Panamanian Constitution attempts to generate a balance between a primarily private-led economy with principles of social justice and a strong regulatory state.

Finally, the Peruvian Constitution (1993) recognizes in every person the right to their “free development and well-being.”<sup>61</sup> As to the economic system, Article 58 mandates that “[p]rivate initiative is free. It is exercise [sic] within a social market economy.”<sup>62</sup> Furthermore, Article 58 proclaims that “[u]nder this regime, the State orients the development of the country, and is active principally in the areas of promotion of employment, health, education, security, public services and infrastructure.”<sup>63</sup> As a result, the “State stimulates the creation of wealth and guarantees the freedom to work and the freedom of enterprise, commerce and industry. The exercise of these freedoms

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<sup>55</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ [C.P.R.P.] [CONSTITUTION] pmb1. (Pan.), <https://heinonline.org/HOL/P?h=hein.cow/zzpa0009&i=1> (English translation) (error in original).

<sup>56</sup> *Id.* art. 50.

<sup>57</sup> *Id.* art. 282 (emphasis added).

<sup>58</sup> *Id.* art. 283.

<sup>59</sup> *Id.* art. 284.

<sup>60</sup> C.P.R.P. art. 298 (Pan.).

<sup>61</sup> CONSTITUCIÓN POLÍTICA DEL PERÚ [C.P.P.] [CONSTITUTION] art. 2(1), <https://heinonline.org/HOL/P?h=hein.cow/zzpe0101&i=1> (English translation).

<sup>62</sup> *Id.* art. 58.

<sup>63</sup> *Id.* art. 58.

must not be harmful to public morals, to [public] health, or to [public] security.”<sup>64</sup>

While Article 60 stresses the importance of “economic pluralism” and that “[t]he national economy is sustained in the coexistence of diverse forms of ownership and enterprise,” it also incorporates a version of the subsidiary principle by stating that “[s]olely authorized by express law, the State may subsidiarily realize business activities, directly or indirectly, for reasons of high public interest or of manifest national appropriateness.”<sup>65</sup>

In summary, the Peruvian Constitution, while stressing the importance of a mixed economy, clearly privileges private enterprise and strictly limits the State’s power to engage in direct economic activity.

As previewed, the only current member of the *laissez-faire* sub-group is the soon-to-be-replaced Chilean Constitution (1980). Article 1 of the constitution proclaims that “[t]he State recognizes and defends the intermediate groups through which society organizes and structures itself and guarantees them the adequate autonomy to fulfill their own specific objectives.”<sup>66</sup> As a result,

The State is at the service of the human person and its goal is to promote the common good, to which effect it must contribute to create the social conditions which permit each and every one of those composing the national community the greatest spiritual and material fulfillment possible, with full respect for the rights and guarantees that this Constitution establishes.<sup>67</sup>

Article 19 stresses the “right to develop any economic activity which is not contrary to morals, to the public order or to national security,”<sup>68</sup> It also explicitly incorporates the subsidiary principle.<sup>69</sup>

While these characteristics are similar to those found in top-down reformist constitutions, the Chilean system is different because it does not combine these elements with a strong regulatory state, a state-run social safety net, or a substantial catalog of individual socio-economic rights, particularly in terms of the working classes.

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<sup>64</sup> *Id.* art. 59 (expressing that the State shall give opportunity for disadvantaged groups and shall promote small businesses).

<sup>65</sup> *Id.* art. 60.

<sup>66</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 1, <https://heinonline.org/HOL/P?h=hein.cow/zzcl0382&i=1> (English translation).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* art. 19(21).

<sup>69</sup> *Id.*

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Table 1 (Intensity of the Capitalist Lean)

No.	Country	Outstanding Characteristics
1	Chile	Strong subsidiarity; no state-led social safety net or rts.
2	Guatemala	Subsidiarity; libertarian; social justice; strong regulatory state
3	Honduras	Subsidiarity; strong priv. protections; state regulation
4	Peru	Mod. subsidiarity; strong priv. protections; state regulation and monopolies
5	Brazil	Subsidiarity; priv. econ. freedoms; strong regulatory state; social justice
6	Dominican Rep.	Mod. subsidiarity; priv. enterprise; social justice
7	Panama	Primarily priv. enterprise; strong regulatory state; social justice
8	El Salvador	No subsidiarity; priv. enterprise protections; social justice

Table 2 (Nature of the Process of Creation)

No.	Country	Comments
1	Chile	Commission under military junta; elite-led
2	Panama <sup>70</sup>	Constitutional Assembly under military government; regime-led
3	Guatemala	Constitutional Assembly and military government; transition
4	Honduras	Constitutional Assembly and military government; transition
5	El Salvador	Constitutional Assembly and military government; transition
6	Peru	Constitutional Assembly after self-coup; elite-led
7	Brazil	Constitutional Assembly after military dictatorship; transition
8	Dominican Rep.	Under democratic civilian government

## 2. Neutral Constitutions: Silent and Incidental

As previewed, neutral constitutions *do not entrench an economic system or even address economic policy in general*. While silent constitutions simply omit all references to economic matters, incidental constitutions do include some

<sup>70</sup> Unlike the other countries under military governments, Panama's military rulers had explicit left-wing tendencies.

related provisions, but mostly in terms of individual socio-economic rights instead of general statements about the economy.

The Argentine Constitution (1994) is largely silent on economic issues, save for important labor protections in Article 14.<sup>71</sup> Article 75 also gives the national Congress broad police powers meant to achieve collective progress and welfare, as well as “[t]o provide for everything relevant to human development, to economic progress with social justice, to the growth of the national economy, to employment creation, to the professional training of workers . . . .”<sup>72</sup>

The Belizean Constitution (1981) is silent on substantive economic matters in terms of its operative provisions.<sup>73</sup> Its Preamble does proclaim that the people

[R]espect the principles of social justice and therefore believe that the operation of the economic system must result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity . . . .<sup>74</sup>

The Costa Rican Constitution (1949) proclaims that “[t]he State will procure the greatest well-being to all the inhabitants of the country, organizing and stimulating production and the most adequate distribution of the wealth.”<sup>75</sup> It also promotes the establishment of cooperatives.<sup>76</sup> While there are no substantive provisions that deal with the economic system in general, the Costa Rican Constitution does address important issues such as labor rights, housing, social security, and public education.<sup>77</sup>

The Jamaican Constitution (1962) only includes very brief references to socio-economic issues, such as public education and the basic protection of general property rights.<sup>78</sup>

<sup>71</sup> Art. 14, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), <https://heinonline.org/HOL/P?h=hein.cow/zzar0068&i=1> (English translation).

<sup>72</sup> *Id.* art. 75(19).

<sup>73</sup> *See generally* BELIZE CONSTITUTION [BELIZE CONST.], <https://heinonline.org/HOL/P?h=hein.cow/zzbz0016&i=1>.

<sup>74</sup> *Id.* pmb1.

<sup>75</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [C.P.R.C.R.] [CONSTITUTION] art. 50 (English translation on file with Journal).

<sup>76</sup> *Id.* art. 64.

<sup>77</sup> *See generally id.*

<sup>78</sup> *See, e.g.*, JAMAICA (CONSTITUTION) ORDER IN COUNCIL, 1962 [JAM. CONST.] §§ 13, 15, <https://heinonline.org/HOL/P?h=hein.cow/zzjm0015&i=1>.

The Paraguayan Constitution (1992) establishes a “social State of law,”<sup>79</sup> and “quality of life shall be promoted by the State through plans and policies that recognize conditioning factors, such as extreme poverty. . . .”<sup>80</sup> Specifically, Article 177 states that “national plans of development will be indicative for the private sector, and of obligatory fulfillment for the public sector,” while binding on the state-led sector.<sup>81</sup> The constitution also includes provisions that deal with issues related to healthcare, education, labor rights, housing, land reform, and private property.

The Uruguayan Constitution (1967) proclaims that all “inhabitants of the Republic have the right of protection in the enjoyment of life, honor, liberty, security, labor, and property.”<sup>82</sup> Aside from specific provisions that deal with matters such as housing, labor, water access, and social security, the constitution is quite silent with regard to economic matters.

Table 3 (Intensity of the Neutral Lean)

No.	Country	Outstanding Characteristics
1	Jamaica	Only brief references to incidental matters
2	Belize	Operative silence; general socio-econ. goals in Preamble
3	Argentina	Mostly silent in general econ. matters; labor rts.
4	Uruguay	Mostly silent in general econ. matters; socio-econ. rts.
5	Costa Rica	Mostly silent in general econ. matters; socio-econ. rts.
6	Paraguay	General socio-econ. language; socio-econ. rts.

Table 4 (Nature of the Process of Creation)

No.	Country	Comments
1	Costa Rica	Assembly after the civil war; called by <i>de facto</i> government
2	Belize	Independence context; British role; parliamentary
3	Argentina	Elite-led; original 19th Century structure; other reforms
4	Jamaica	Independence context; parliamentary
5	Uruguay	Elite-led
6	Paraguay	Elected assembly post-dictatorship

<sup>79</sup> CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY [C.R.P.] [CONSTITUTION] art. 1, <https://heinonline.org/HOL/P?h=hein.cow/zzpy0025&i=1> (English translation).

<sup>80</sup> *Id.* art. 6.

<sup>81</sup> *Id.* art. 177.

<sup>82</sup> CONSTITUCIÓN DE LA REPÚBLICA [C.R.] [CONSTITUTION] art. 7 (Uru.), <https://heinonline.org/HOL/P?h=hein.cow/zzuy0010&i=1> (English translation).

### 3. Post-Liberal Constitutions: Mixed Social-Democratic, Collectivist Communitarian, and State Socialist

One common characteristic shared by virtually all countries with post-liberal constitutions is that these documents were adopted after the culmination of a revolutionary or quasi-revolutionary process which can be described as socially transcendental.<sup>83</sup> We can include in this category the constitutions of Bolivia, Cuba, Ecuador, Mexico, Nicaragua, and Venezuela. The lone outlier is Colombia. Not surprisingly, the countries with state socialist or collectivist communitarian constitutions all share this trait.

While Cuba sits alone in the state socialist category, Bolivia and Ecuador occupy the collectivist communitarian sub-group. The fact that both of these countries have substantial indigenous communities, recent histories of successful social struggles, and of popular-driven constitutional creation processes can help explain their decision to adopt this type of post-liberal constitution. Finally, the constitutions of Colombia, Mexico, Nicaragua, and Venezuela can be most accurately described as mixed social-democratic, albeit with important fluctuations. For example, there are significant similarities between Mexico, Nicaragua, and Venezuela on the one hand, and Bolivia and Ecuador on the other. Yet, the former are not quite as aggressive as the latter in terms of organizing an economic system where the state, social, and communitarian sectors are truly dominant over the traditional private sector.

The Bolivian Constitution (2009) is an overtly ideological document that announces a sharp break with neoliberalism.<sup>84</sup> Its Preamble emphasizes that the Bolivian State is

[A] State based on respect and equality between all, on principles of . . . solidarity, harmony, and equity in distribution and redistribution of the social wealth, the where the search for a good life [*vivir bien*] predominates; based on respect towards the economic, social, juridical, political and cultural pluralism of the inhabitants of this land; and on collective coexistence with access to water, work, education, health and housing for all.<sup>85</sup>

It also explicitly proclaims that its goal is to “[leave]the colonial, republican and neo-liberal State in the past.”<sup>86</sup> As such, Bolivia is to be constituted as a

<sup>83</sup> See Farinacci-Fernós, *Post-Liberal Constitutionalism*, *supra* note 3.

<sup>84</sup> For a more in-depth look of this document and its judicial interpretation, see Farinacci-Fernós, *When Social History Becomes a Constitution*, *supra* note 4.

<sup>85</sup> CONSTITUCIÓN POLÍTICA DEL ESTADO [C.P.E.] [CONSTITUTION] pmb. (Bol.), <https://heinonline.org/HOL/P?h=hein.cow/zzbo0044&i=1> (English translation). For a discussion on what is meant by *vivir bien*, see Farinacci-Fernós, *When Social History Becomes a Constitution*, *supra* note 4, at 147. According to the Bolivian Plurinational Constitutional Court, this principle serves as an “alternative to capitalism, neo-liberalism and any other system that attempts to turn life into a commodity.” *Id.*; *c.f.* T.C.P., 28 Mayo 2014, Sentencia Constitucional 30/2014, at 12 (Bol.).

<sup>86</sup> C.P.E. pmb. (Bol.).

“Unified Social State of Pluri-National Communitarian Law.”<sup>87</sup> Its main constitutional values are solidarity, reciprocity, social equity, common welfare, social justice, and the “distribution and redistribution of social wealth and assets for well being [*vivir bien*].”<sup>88</sup>

Article 306 of the Bolivian Constitution states that “[t]he Bolivian economic model is plural and seeks to improve the quality of life and the well being [*vivir bien*] of all Bolivians.”<sup>89</sup> Specifically, the constitution establishes that the “plural economy is comprised of forms of community, state, private and public cooperative economic organization.”<sup>90</sup> Note how the private sphere swims alone in a sea of socially oriented economic activity. Furthermore, all of these forms of economic organization are subject to fundamental constitutional principles, such as “complementariness, reciprocity, solidarity, redistribution, equality, legal security, sustainability, equilibrium, justice and transparency.”<sup>91</sup> The communitarian and social economies combine individual interest with the collective *vivir bien*.

The Bolivian Constitution requires that the country’s economic development be carried out through an “equitable redistribution of economic surplus in the social policies of health, education, culture, and the re-investment in productive economic development.”<sup>92</sup> While the constitution affirms that the State “recognizes, respects and protects private initiative that contributes to the economic and social development and the strengthening of economic independence of the country,”<sup>93</sup> and also guarantees “[f]ree enterprise and full exercise of business activities,”<sup>94</sup> the main components of the economic system are social in nature, whether state, communitarian or cooperative.<sup>95</sup>

Article 312 states that “[e]very economic activity must contribute to the strengthening of the economic sovereignty of the country” and warns that “[t]he private accumulation of economic power to the degree that it might endanger the economic sovereignty of the State shall not be permitted.”<sup>96</sup> As a result, all forms of economic organization, whether state, private, cooperative, communitarian or mixed, “have the obligation to generate dignified work and

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<sup>87</sup> *Id.* art. 1.

<sup>88</sup> *Id.* art. 8(II) (error in original).

<sup>89</sup> *Id.* art. 306(I) (error in original).

<sup>90</sup> *Id.* art. 306(II). The constitution also envisions mixed enterprises that combine several of these forms, including combinations of private entities with socially oriented ones, further exposing the private economy to socially sensitive approaches. *See id.* art. 306(IV).

<sup>91</sup> C.P.E. art. 306(III) (Bol.).

<sup>92</sup> *Id.* art. 306(V).

<sup>93</sup> *Id.* art. 308(I).

<sup>94</sup> *Id.* art. 308(II).

<sup>95</sup> *See id.* arts. 307 (communitarian), 309 (state), 310 (cooperative).

<sup>96</sup> C.P.E. art. 312(I) (Bol.).

to contribute to the reduction of inequalities and to the eradication of poverty.”<sup>97</sup> Finally, Article 313 decrees that the foundations of the Bolivian economic model are: social production, “the fair production, distribution and redistribution of wealth and economic surplus,” reducing inequality of access to productive resources, and *active participation of the communitarian and public economies in productive capital*.<sup>98</sup> This is the stuff of collectivist communitarian constitutions.

While the Bolivian Constitution does not eliminate the private sector, it substantially emphasizes the leading role of socially oriented entities, such as state and communitarian enterprises. Also, there is a strong focus on redistributive and collectivist policies that make the Bolivian Constitution one of the most radical of the continent.

The Colombian Constitution (1991) is probably the least radical of the post-liberal constitutions. According to its Preamble, the State is set up in order to assure to all citizens “life, coexistence, work, justice, equality, knowledge, freedom, and peace, within a juridical, democratic and participatory framework that guarantees a just political, economic and social order . . . .”<sup>99</sup> Specifically, Article 1 proclaims Colombia as a “social State of law Rule of Law State . . . based on the respect for human dignity, on the work and the solidarity of the persons who compose it, and the prevalence of the general interest.”<sup>100</sup> The goals of the State are to “serve the community, promote the general prosperity, and guarantee the effectiveness of the principles, rights and duties consecrated in the Constitution; to facilitate the participation of everyone in the decisions that affect them and in the economic, political, administrative, and cultural life of the Nation . . . .”<sup>101</sup>

As to the economic system, Article 333 of the Colombian Constitution states that “[e]conomic activity and private initiative are free within the limits of the public good.”<sup>102</sup> Moreover, “free economic competition is a right everyone which implies responsibilities.”<sup>103</sup> In particular, private enterprise “has a social function that implies obligations. The State shall strengthen the organizations of solidarity and stimulate the enterprise development.”<sup>104</sup> Article 334 proclaims that the

[G]eneral management of the economy will be under the responsibility of the State. [The State] will intervene, by

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<sup>97</sup> *Id.* art. 312(II).

<sup>98</sup> *Id.* art. 313.

<sup>99</sup> CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] pmbL, <https://heinonline.org/HOL/P?h=hein.cow/zcco0217&i=1> (English translation).

<sup>100</sup> *Id.* art. 1.

<sup>101</sup> *Id.* art. 2.

<sup>102</sup> *Id.* art. 333.

<sup>103</sup> *Id.*

<sup>104</sup> C.P. art. 333 (Colom.).



mandate of the law, in the exploitation of the natural resources, in the use of the soil, in the production, distribution, use, and consumption of goods, and in the public and private services, in order to rationalize the economy with the objectives of achieving in the national and territorial plan, in the framework of fiscal sustainability, the improvement of quality of life of its inhabitants, the equitable distribution of opportunities and the benefits of development and the preservation of a healthy environment.<sup>105</sup>

Finally, Article 366 states that “[t]he general well-being and improvement of the quality of life of the population are social purposes of the State.”<sup>106</sup>

Colombia’s Constitution recognizes an important role for private economic activity. But the general orientation of national economic policy entrenched in the constitutional text envisions a mixed economy or, at least, a market economy *with a clear social objective*. This fact requires its qualified inclusion in the post-liberal camp. It is also the least radical of the constitutions included within this group. As a result, we can fairly characterize its system as mixed social-democratic.<sup>107</sup>

The Cuban Constitution (2019) is explicitly socialist: “Cuba is a socialist State of law.”<sup>108</sup> According to the constitutional text, it is a republic “founded on the work, the dignity, the humanism and the ethics of its citizens for the enjoyment of freedom, equity, equality, solidarity, [and] individual and collective well-being and prosperity.”<sup>109</sup> Article 4 states it plainly: “The socialist system that this Constitution confirms, is irrevocable.”<sup>110</sup> One of the goals of the State is “an ever more just redistribution of wealth.”<sup>111</sup>

In that sense, economic policy is central to the Cuban constitutional structure. According to Article 18, the country operates under a “socialist economy govern[ed] based on the ownership by all the people of the fundamental means of production as the principal form of ownership, and on the planned direction of the economy, which considers, regulates and controls the market as a function of the interest of society.”<sup>112</sup> Moreover, “the State

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<sup>105</sup> *Id.* art. 334.

<sup>106</sup> *Id.* art. 366.

<sup>107</sup> See Arturo J. Carrillo & Nicolás Espejo Yaksic, *Re-Imagining the Human Rights Law Clinic*, 26 MD. J. INT’L L. 80, 103 (2011).

<sup>108</sup> CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [C.R.C.] [CONSTITUTION] art. 1, <https://heinonline.org/HOL/P?h=hein.cow/zzcu0056&i=1> (English translation). The Preamble also highlights the country’s revolutionary history, stating that “Cuba will never go back to capitalism as a regime based on the exploitation of man by man” and that “only under socialism and communism can human beings achieve full dignity.” *Id.* pmb1.

<sup>109</sup> *Id.* art. 1.

<sup>110</sup> *Id.* art. 4.

<sup>111</sup> *Id.* art. 30.

<sup>112</sup> *Id.* art. 18.

directs, regulates and controls economic activity, conciliating the national, territorial, collective and individual interests for the benefit of society.”<sup>113</sup> By the same token, “[s]ocialist planning constitutes the central element of the . . . direction of social and economic development.”<sup>114</sup>

Article 22 of the Cuban Constitution recognizes several forms of property: (1) socialist, (2) cooperative, (3) of the mass organizations, (4) private, (5) mixed, (6) associational, and (7) personal. All are subject to state leadership.<sup>115</sup> Also, “the socialist state enterprise is the principal subject of the national economy.”<sup>116</sup>

Even though the current Cuban Constitution dates from 2019, it is a direct product of the 1959 Revolution. Furthermore, it is estimated that millions of Cubans participated in some way in the deliberations of the constitutional document.<sup>117</sup>

We can easily conclude that the Cuban Constitution fits the label of a socialist state.

The Ecuadorian Constitution (2008) is also an overtly ideological document. Its Preamble proclaims the People to be “heirs to social liberation struggles against all forms of domination and colonialism.”<sup>118</sup> Like its Bolivian counterpart, the Ecuadorian Constitution enshrines the concept of *buen vivir*.<sup>119</sup> Article 1 establishes a “Constitutional State of rights and justice.”<sup>120</sup> Among the primary duties of the State are “planning national development, eliminating poverty, and promoting sustainable development and the equitable redistribution of resources and wealth, to enable access to the good way of living.”<sup>121</sup>

The *buen vivir* principle is the foundation of the constitutional economic order.<sup>122</sup> According to Article 276, the goal is the creation “of a fair, democratic, productive, mutually supportive and sustainable economic system, based on the egalitarian distribution of the benefits of development and the means of

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<sup>113</sup> C.R.C. art. 19 (Cuba).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* art. 22.

<sup>116</sup> *Id.* art. 27.

<sup>117</sup> See Bui Ngoc Son, *You, the People: Cuba’s International Constitution*, 52 N.Y.U. J. INT’L L. & POL. 829, 831 (2020).

<sup>118</sup> CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [C.R.E.] [CONSTITUTION] pmb. (English translation on file with Journal).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* art. 1.

<sup>121</sup> *Id.* art. 3(5).

<sup>122</sup> *Id.* art. 275. See also *id.* arts. 340–415 (thoroughly discussing the concept of *buen vivir* and how it applies to all forms of social activity, including public services).

production, and on the creation of decent, stable employment.”<sup>123</sup> In turn, the constitution requires “participation and social monitoring” on economic matters.<sup>124</sup> Specifically, Article 283 states that

The economic system is socially orientated and mutually supportive; it recognizes the human being as a subject and an end; it tends towards a dynamic, balanced relationship among society, State, and the market, in harmony with nature; and its objective is to ensure the production and reproduction of the material and immaterial conditions that can bring about the good way of living [*buen vivir*].<sup>125</sup>

Article 283 also provides that “[t]he economic system shall be comprised of public, private, mixed-economy, grassroots solidarity forms of economic organization.”<sup>126</sup> In turn, “[t]he grassroots solidarity economy shall be regulated pursuant to the law and shall include cooperative, associative and community sectors.”<sup>127</sup> As to economic production, the constitution recognizes “different forms of organizing production . . . in the economy, including community, cooperative, public and private business,” among others.<sup>128</sup>

Concerning economic policy, Article 284 identifies its objectives. Among these are to (1) ensure an adequate distribution of income and of the national wealth; (2) encourage full employment and to value all forms of work, respecting labor rights; (3) maintain economic stability, understood as the highest level of production and employment that can be sustained over time, and (4) promote the fair and complementary exchange of goods and services in transparent and efficient markets.<sup>129</sup> As to fiscal policy, the objectives are: (1) the financing of public services, investment, and goods; (2) the redistribution of income through transfers, taxes, and adequate subsidies; and (3) the creation of incentives for investment in different sectors of the economy and for the production of goods and services that are socially desirable and environmentally acceptable.<sup>130</sup>

As can be appreciated from the previous summary, the Ecuadorian Constitution has important similarities with its Bolivian counterpart: while not completely sidelining the private sector, it does give socially oriented

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<sup>123</sup> C.R.E. art. 276(2) (Ecuador).

<sup>124</sup> *Id.* art. 276(3).

<sup>125</sup> *Id.* art. 283.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> C.R.E. art. 319 (Ecuador).

<sup>129</sup> *Id.* art. 284.

<sup>130</sup> *Id.* art. 285. The constitution also includes provisions that require giving preference to popular and solidary entities (Article 288), and that deal with progressive tax policy (Article 300), progressive commercial policy (Article 304), and socially oriented financial policy (Articles 308 and 309). *Id.* arts. 288, 300, 304, 308–309. For example, Article 309 describes the banking sector as comprising the “public, private, popular and solidary sectors.” *Id.* art. 309.

entities a leading role in economic matters, coupled with redistributive and collectivist policies.

The Mexican Constitution (1917) is the child of revolution, although it has experienced considerable overhauls since then. While its content is clearly post-liberal and it institutionalizes many of the Revolution's achievements, it is not an explicitly ideological document.

As to the economic system, Article 25 proclaims that the State shall have "mastery over national development," including the "planning, conducting, coordination and guidance of national economic activity."<sup>131</sup> and also includes as a goal "the promotion of economic growth and employment and a more just distribution of income and wealth, it shall permit the full exercise of the freedom and the dignity of individuals, groups and social classes."<sup>132</sup> It also defines "competition" as "the conjunction of conditions necessary to generate a greater economic growth, promoting investment and the generation of employment."<sup>133</sup>

Specifically, Article 25 states that "[t]he public sector, the social sector and the private sector, without diminishing other forms of economic activity that contribute to the development of the Nation, shall participate in the national economic development with social responsibility."<sup>134</sup> It also creates an important sphere of direct economic activity, including a state monopoly in the oil industry,<sup>135</sup> and the creation of state-owned productive enterprises. In particular, Article 25 expresses that, "[u]nder criteria of social equity and productivity and sustainability, the enterprises of the social and private sector of the economy shall be supported and promoted [by the State], subjecting them to the modalities that the public interest dictates, and to the use, for general benefit, of the productive means, assuring their conservation and the environment."<sup>136</sup>

The Mexican Constitution gives an important role to its private sector. But it also gives the State a significant role in economic activity in general and direct economic activity in particular. As such, its system can be fairly characterized as mixed, with a palpable social-democratic bend.

The Nicaraguan Constitution (1987) is also the product of revolution, including the "struggles of our indigenous ancestors," and figures like Sandino ("Father of the Popular and Anti-imperialist Revolution") and Carlos Fonseca

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<sup>131</sup> Constitución Política de los Estados Unidos Mexicanos, CPEUM, arts. 25, 26A, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014, <https://heinonline.org/HOL/P?h=hein.cow/zzmx0626&i=1> (English translation).

<sup>132</sup> *Id.* art. 25.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *See id.* art. 28.

<sup>136</sup> *Id.* art. 25.

(FSLN “Chief of the Revolution”), as part of the “liberation of the oppressed.”<sup>137</sup> The goal of the constitution is the “institutionalization of the conquests of the Revolution and the construction of a new society that eliminates all forms of exploitation and that achieves economic, political and social equality for all Nicaraguans, and the absolute respect for human rights.”<sup>138</sup>

On that note, Article 4 guarantees that the State will promote social and political advancements assuring the common good of the people as long as such advancements do not put the people at risk of exploitation, discrimination, or exclusion.<sup>139</sup> The exercise of all constitutional rights are subject “to the just exigencies of the common good.”<sup>140</sup> Article 98 proclaims that “[t]he principal function of the State within the economy is to reach sustainable human development in the country; to improve the conditions of life of the people and to realize each time a more just distribution of wealth in search for the good life.”<sup>141</sup>

In terms of the economic system, Article 99 states that “[t]he exercise of economic activities corresponds primordially to [private] individuals.”<sup>142</sup> Additionally, Article 5 includes as a constitutional principle that the State “recognizes of different forms of property.”<sup>143</sup> However, “public, private, associative, cooperative, community, communal, familiar and mixed [forms of property] must be guaranteed and stimulated without discrimination to produce wealth and all of these within their free functioning must fulfill a social function.”<sup>144</sup> The constitution combines free enterprise with workers’ participation and state economic activity.<sup>145</sup>

In that sense, Article 103 proclaims that “[t]he State guarantees the forms of public, private, cooperative, associative, communitarian, communal, family and mixed ownership; *all of them form part of the mixed economy*, are subordinate to the superior social interests of the nation and fulfill a social function.”<sup>146</sup> Finally, Article 104 states that “[e]conomic initiative is free” and it guarantees “the full exercise of economic activities . . . without greater

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<sup>137</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.] pmb., LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, <https://heinonline.org/HOL/P?h=hein.cow/zzni0086&i=1> (English translation).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* art. 4.

<sup>140</sup> *Id.* art. 24.

<sup>141</sup> *Id.* art. 98.

<sup>142</sup> *Id.* art. 99 (recognizing “the leading role of private initiative”).

<sup>143</sup> Cn. art. 5 (Nicar.).

<sup>144</sup> *Id.*

<sup>145</sup> *See id.* arts. 99, 101.

<sup>146</sup> *Id.* art. 103 (emphasis added).

limitations than, for social motives or [motives] of national interest, the laws impose.”<sup>147</sup>

Like its Mexican counterpart, the Nicaraguan Constitution recognizes an important role for its private sector in the economic system. But it accompanies that role with direct state intervention in the economy, as well as the promotion of socially oriented alternatives. In that sense, it is expressly mixed with a strong post-liberal emphasis.

The Venezuelan Constitution (1999) creates a “Democratic and Social State of Law and Justice,”<sup>148</sup> based on the values of life, liberty, justice, equality, solidarity, democracy, social responsibility, human rights, ethics, and political pluralism.<sup>149</sup> The goal of the constitutional project is “the building of a just and peace loving society.”<sup>150</sup>

As to the economic system, Title VI of the Statement of Motives of the constitution proclaims that “it is not defined in a rigid fashion.”<sup>151</sup> Instead, the economic system shall be based on a set of general principles, including “social justice, efficiency, democracy, free competition and initiative, environmental protection, productivity, and solidarity.”<sup>152</sup> In that sense, the constitution rejects what it labels ideological dogmatism when it comes to economic activity.<sup>153</sup> It does emphasize the importance of combining individual action with the State’s principal role as the regulator of the economy, as well as linking private economic initiative with a “just distribution of wealth.”<sup>154</sup>

Specifically, Article 112 proclaims that “[t]he State shall promote private initiative, guaranteeing the creation and fair distribution of wealth.”<sup>155</sup> Echoing the Statement of Motives, Article 299 states that “[t]he economic regime of the Bolivarian Republic of Venezuela is based on the principles of social justice, democratization, efficiency, free competition, protection of the environment, productivity and solidarity, with a view to ensuring overall human development of the national economy . . . to ensure a just distribution of wealth through participatory democratic strategic planning with open consultation.”<sup>156</sup> Again, the constitution emphasizes the importance of combining public and private economic activity,<sup>157</sup> while promoting small,

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<sup>147</sup> *Id.* art. 104.

<sup>148</sup> CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [C.R.B.V.] [CONSTITUTION] art. 2 (English translation on file with Journal).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* art. 3.

<sup>151</sup> *Id.* tit. VI (statement of motives).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> C.R.B.V. tit. VI (Venez.).

<sup>155</sup> *Id.* art. 112.

<sup>156</sup> *Id.* art. 299.

<sup>157</sup> *Id.*

medium, cooperative, micro-entities, as well as other forms of communitarian association.<sup>158</sup>

In many ways, the Venezuelan Constitution has many similarities with its Bolivian and Ecuadorian counterparts. However, probably because it was adopted earlier, the Venezuelan Constitution is much more accommodating to the private sector. As such, it is more fairly characterized as a mixed social-democratic document.

Table 5 (Intensity of Post-Liberal Lean)

No.	Country	Outstanding Characteristics
1	Cuba	Explicitly socialist; state econ. activity is dominant; limited priv.
2	Bolivia	Explicitly anti-neoliberal; strong state and communitarian lean; some priv.
3	Ecuador	Explicitly anti-neoliberal; strong state and communitarian lean; priv. role
4	Mexico	Priv. activity with strong state intervention and regulation
5	Venezuela	Explicitly eclectic and mixed; combination of priv. and social
6	Nicaragua	Explicitly mixed; primarily priv.; strong state and social intervention
7	Colombia	Priv. within social objective and common good; state intervention

Table 6 (Nature of the Process of Creation)

No.	Country	Comments
1	Bolivia <sup>159</sup>	Highly popular and participatory; representative of social majority
2	Cuba	Considerable popular debate, deliberation, and participation
3	Ecuador <sup>160</sup>	Participatory; representative of social majority
4	Nicaragua	Aftermath of successful revolutionary process
5	Venezuela	Mass movement for constitutional reform
6	Colombia	Multi-party convention; low electoral participation; civic engagement
7	Mexico	Aftermath of revolutionary process; less so with later amendments

<sup>158</sup> *Id.* art. 308.

<sup>159</sup> See Farinacci-Fernós, *When Social History Becomes a Constitution*, *supra* note 4.

<sup>160</sup> For Bolivia, Ecuador, and Venezuela, see De Costa, *supra* note 13, at 277.

#### IV. THE ECONOMIC DEVIL IS IN THE DETAIL: LATIN AMERICAN CONSTITUTIONS AND SPECIFIC ECONOMIC POLICY ISSUES

Part II classified Latin American constitutions according to their general approaches to economic policy. Now we turn to an analysis of specific economic policy issues, such as private property, healthcare, education, labor rights, ownership of oil deposits, and other natural resources or strategic sectors, among others. In each category, we will address how these constitutions approach these matters. For reasons of clarity, we will attempt to reference each individual constitution by its general economic group. Specifically, we will analyze these issues per group in the following order: post-liberal, capitalist, and neutral.

##### *A. Oil Deposits, Natural Resources, and Strategic Sectors*

The ownership, conservation, and economic exploitation of oil deposits and other natural resources are critical policy issues in Latin America. This is part of the larger issue regarding states' roles in and possible ownership of certain strategic economic sectors. Both post-liberal and top-down capitalist constitutions address these matters and, to varying degrees, entrench state ownership of some of these key parts of the region's economy. The status of the oil industry is one of the most important components of these policies.

The Bolivian Constitution considers natural resources as strategic and they are owned by the People of Bolivia via the State.<sup>161</sup> At most, the State is authorized to subcontract certain aspects to the private sector, but the State retains ultimate control and leads the exploitation efforts.<sup>162</sup> More importantly, all oil deposits, as well as all mines, belong to the People and are subject to state administration.<sup>163</sup> The entire energy sector is considered strategic.<sup>164</sup>

The Colombian Constitution also gives the State ownership over non-renewable natural resources.<sup>165</sup> The State is tasked with directing the exploitation of natural resources.<sup>166</sup>

The Cuban Constitution considers the following as public property belonging to the People: lands that are not privately owned, the subsoil, mineral deposits, mines, forests, waters, beaches, communication lines, and varied forms of natural resources.<sup>167</sup> Public ownership also extends to other property "such as the infrastructures of general interest, principal industries

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<sup>161</sup> C.P.E. art. 348(I) (Bol.).

<sup>162</sup> *Id.* art. 351.

<sup>163</sup> *See id.* arts. 359, 369.

<sup>164</sup> *Id.* art. 376.

<sup>165</sup> C.P. art. 332 (Colom.).

<sup>166</sup> *Id.* art. 34.

<sup>167</sup> C.R.C. art. 23 (Cuba).



and economic and social facilities, as well as others of a strategic character for the economic and social development of the country.”<sup>168</sup>

The Ecuadoran Constitution provides that “[t]he State reserves the right to administer, regulate, monitor and manage strategic sectors,”<sup>169</sup> defined as “those that due to their importance and size, exert a decisive economic, social, political or environmental impact and must be aimed at ensuring the full exercise of rights and the general welfare of society.”<sup>170</sup> The constitution considers the following areas as strategic: energy in all its forms, telecommunications, non-renewable natural resources, transportation, hydrocarbons, biodiversity, and water.<sup>171</sup> The economic exploitation and administration of these sectors will be carried out by public enterprises or mixed enterprises where the State is the majority holder.<sup>172</sup>

Article 27 of the Mexican Constitution proclaims that minerals, oil deposits, and other hydrocarbons are “property of the Nation which is inalienable and imprescriptible and no concessions will be granted.”<sup>173</sup> At most, the State can enter into contractual relations for the exploration and exploitation of these resources.<sup>174</sup> The Nicaraguan Constitution orders that “natural resources are a national patrimony [property].”<sup>175</sup>

The Venezuelan Constitution reaffirms the nationalization of the oil sector.<sup>176</sup> Nationalization also extends to other strategic industries.<sup>177</sup>

As previewed, top-down reformist constitutions also address these matters. For example, the Brazilian Constitution proclaims federal ownership of lakes, rivers, waters, and beaches, while also giving the State a leading role benefiting from “the results of the exploitation of oil or natural gas . . . .”<sup>178</sup> According to Article 176, deposits belong to the State. The Dominican Constitution states that natural resources, including mines and hydrocarbons, “can only be explored and exploited by individuals, under sustainable environmental criteria.”<sup>179</sup> It also considers this activity as having the highest public interest.

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<sup>168</sup> *Id.* art. 24.

<sup>169</sup> C.R.E. art. 313 (Ecuador).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* art. 315.

<sup>173</sup> CPEUM art. 27 (Mex.).

<sup>174</sup> *Id.*

<sup>175</sup> Cn. art. 102 (Nicar.).

<sup>176</sup> C.R.B.V. tit. VI (Venez.) (statement of motives).

<sup>177</sup> *Id.* arts. 302–303.

<sup>178</sup> C.F. art. 20 (Braz.).

<sup>179</sup> C.R.D. art. 17 (Dom. Rep.).

The Guatemalan Constitution identifies waterways, shorelines, subsoils, and hydrocarbon and mineral deposits as belonging to the State.<sup>180</sup> The Honduran Constitution states that natural resources are subject to “public control.”<sup>181</sup>

Article 257 of the Panamanian Constitution identifies as belonging to the State: unused lands, the subsoil, mines, waters, hydrocarbon deposits, and other forms of deposits. These can be economically exploited directly by the State or through mixed entities, or with private parties through contractual relationships.<sup>182</sup> Other spaces like the sea, beaches, rivers, and ports belong to the State and cannot be privately owned.<sup>183</sup> The constitution also addresses ownership and operation of the Panama Canal.<sup>184</sup>

Article 66 of the Peruvian Constitution identifies natural resources as part of the “patrimony [property] of the Nation. The State is sovereign in their exploitation.”<sup>185</sup> Article 112 of the Paraguayan Constitution proclaims that minerals and hydrocarbons belong to the State, and that concessions for exploration and exploitation can only be given for limited periods.<sup>186</sup>

Even the *laissez-faire* Chilean Constitution provides that the State has absolute, exclusive, inalienable, and un-expirable dominion over mines and carbon or hydrocarbon deposits.<sup>187</sup> However, they can be the subjects of concessions.<sup>188</sup>

### B. Land Reform

The issue of land ownership and reform has considerable historical significance in Latin America. This is the result of the experiences of *latifundio* or large estates that controlled vast amounts of lands at the expense of entire communities and rural workers. Several Latin American constitutions include this matter in their text. This section deals with some of those approaches to the issue of land reform. It does not address what all countries have decided to entrench in their respective constitutions.

Article 64 of the Colombian Constitution establishes that “[i]t is the duty of the State to promote progressive access of agricultural workers to the ownership of land, in an individual or associative form . . . .”<sup>189</sup> Article 29 of the

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<sup>180</sup> C.P.R.G. art. 121 (Guat.).

<sup>181</sup> C.P. art. 340 (Hond.).

<sup>182</sup> C.P.R.P. art. 257 (Pan.).

<sup>183</sup> *Id.* art. 258.

<sup>184</sup> *Id.* tit. XIV.

<sup>185</sup> C.P.P. art. 66 (Peru).

<sup>186</sup> C.R.P. art. 112 (Para.).

<sup>187</sup> *See* C.P. art. 24 (Chile).

<sup>188</sup> *Id.*

<sup>189</sup> C.P. art. 64. (Colom.).

Cuban Constitution calls for special regulations regarding land ownership. A similar approach is taken by the Mexican Constitution.<sup>190</sup>

Countries like Nicaragua have entire provisions dedicated to the issue of land reform (*Reforma Agraria*). Article 106 of its constitution states that “[a]grarian [r]eform is the fundamental tool for the democratization of ownership and the just distribution of the land . . . Agrarian Reform shall take into account the socially necessary land-man relation; ownerships are guaranteed to the peasants benefiting from it.”<sup>191</sup> For its part, Article 107 declares that land reform will break apart unused large estates, eliminate any form of exploitation of land workers and indigenous communities, and shall promote forms of property that are compatible with the economic and social goals of the nation as established in the constitution. Finally, Article 111 gives land workers a leading role in the formulation of land policy.

The same can be said about Honduras. Article 343 states that “[l]and reform constitutes an essential part of the global strategy for the Nation’s development...and shall be executed in such a manner that it assures the effective participation of peasants on equal conditions as other productive sectors, in the process of economic, social and political development of the Nation.”<sup>192</sup> Article 344 defines land reform as

[A] comprehensive process and an instrument for the transformation of the agrarian structure of the country, aimed at replacing *latifundio* and *minifundio* by a system of ownership, tenure, and use of the land that guarantees social justice in rural areas and increases the production and productivity of the agricultural sector.<sup>193</sup>

The Panamanian Constitution also addresses land reform. Article 123 proclaims that “[t]he State shall not allow the existence of uncultivated, unproductive or idle lands, and shall regulate work relations on the farms, promoting a maximum productivity and a just distribution of the benefits of them.”<sup>194</sup> Article 125 states that “[t]he correct use of agricultural land is a duty of the owner towards the community and shall be regulated by the Law in accordance with its ecological classification, in order to avoid its underutilization and decrease of its production potential.”<sup>195</sup> Article 126 spells out a series of affirmative measures the State shall make in this regard, including land distribution to workers. Article 289 provides that “[t]he State shall regulate the adequate use of the land in accordance with its potential use

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<sup>190</sup> CPEUM art. 27 (Mex.).

<sup>191</sup> Cn. art. 106 (Nicar.).

<sup>192</sup> C.P. art. 343 (Hond.).

<sup>193</sup> *Id.* art. 344.

<sup>194</sup> C.P.R.P. art. 123 (Pan.).

<sup>195</sup> *Id.* art. 125.

and the national programs of development, with the objective to guarantee its optimum use.”<sup>196</sup>

Finally, Article 307 of the Venezuelan Constitution declares *latifundios* as “contrary to the interests of society.”<sup>197</sup> Article 105 of the Salvadorian Constitution limits private land ownership. Article 114 of the Paraguayan Constitution also addresses land reform and calls for the “effective incorporation of the peasant population to the economic and social development of the Nation. Equitable systems of distribution, property and tenancy of the land shall be adopted.”<sup>198</sup>

### C. Private Property Rights and Property in General

The issue of private property is ubiquitous in Latin American constitutions, from post-liberal to *laissez-faire*. While the content of each national constitution varies greatly in terms of substantive content, two issues stand out: (1) the fact that almost all of them, in one way or another, give some sort of protection to basic manifestations of property,<sup>199</sup> and (2) that Latin American constitutions strongly emphasize the *social function* of property.<sup>200</sup> In that sense, the region’s general approach to the property question is hardly classically liberal. On the contrary, it is quite progressive and socially oriented.<sup>201</sup> However, because private property tends to have greater protections in the capitalist constitutions, we begin our analysis in this group.

Brazil twice guarantees a general right to private property, with its accompanying social function. The Dominican Constitution also includes a general right to private property and an emphasis on its limits, as required by its social function. A similar provision exists in the Salvadorian Constitution.

Chile, unsurprisingly, provides very robust protections for private property, which include ownership over all kinds of goods, assets, and objects.<sup>202</sup> It does, however, emphasize that some limits on the exercise of this right can emanate from its social function, defined as “the general interests of the Nation,

<sup>196</sup> *Id.* art. 289.

<sup>197</sup> C.R.B.V. art. 307 (Venez.).

<sup>198</sup> C.R.P. art. 114 (Para.).

<sup>199</sup> C.P.E. art. 56(I) (Bol.); C.P. arts. 58, 60 (Colom.); C.R.C. art. 58 (Cuba); C.R.E. art. 321 (Ecuador); CPEUM art. 27 (Mex.); Cn. art. 44 (Nicar.); C.R.B.V. art. 115 (Venez.) (economic rights); C.F. arts. 5, 170 (Braz.); C.P. art. 23–24 (Chile); C.R.D. art. 51 (Dom. Rep.) (under Tit. II, “Of the Economic and Social Rights”); C.R.E.S. arts. 2, 22, 103 (El Sal.); C.P.R.G. art. 39 (Guat.); C.P. art. 103 (Hond.); C.P.R.P. art. 48 (Pan.); C.P.P. arts. 2, 70 (Peru); BELIZE CONST. § 17; JAM. CONST. § 13; C.R.P. art. 109 (Para.); C.R. art. 7 (Uru.).

<sup>200</sup> C.P.E. art. 56(I) (Bol.); C.P. art. 58 (Colom.); C.R.E. art. 321 (Ecuador); CPEUM art. 27 (Mex.); Cn. art. 44 (Nicar.); C.F. arts. 5, 170 (Braz.); C.P. art. 24 (Chile); C.R.D. art. 51 (Dom. Rep.) (under Tit. II, “Of the Economic and Social Rights”); C.R.E.S. art. 103 (El Sal.); C.P. art. 103 (Hond.); C.P.R.P. art. 48 (Pan.); C.R.P. art. 109 (Para.).

<sup>201</sup> See Ludwikoski, *supra* note 1, at 70–71.

<sup>202</sup> See C.P. art. 23 (Chile).

national security, public utility and health, and the conservation of the environmental patrimony.”<sup>203</sup>

The Guatemalan Constitution goes even further, defining property “as a right inherent to the human person.”<sup>204</sup> It also states that property is essential to individual progress, as well as national development, which benefits “all Guatemalans.”<sup>205</sup> Similarly, Article 103 of the Honduran Constitution provides that “[t]he State recognizes, guarantees, and promotes the existence of private property in its broadest concept as a social function and without further limitations than those established by law for reasons of necessity or public interest.”<sup>206</sup>

For its part, the Peruvian Constitution provides that “[t]he right of property is inviolable. The State guarantees it.”<sup>207</sup> Yet, like most of its counterparts, it also states that the right must be exercised “in harmony with the common good.”<sup>208</sup>

Some neutral constitutions also reference property rights and protections. For example, Belize, again reminiscent of the British constitutional tradition, contains basic language regarding takings and due process of law.<sup>209</sup> The same can be said of the Jamaican Constitution,<sup>210</sup> which also contains an express provision regarding the “[p]rotection of property rights.”<sup>211</sup>

Paraguay probably has the strongest protections of the neutral group. According to Article 109 of its constitution, “[p]rivate property, whose content and limits will be established by the law, attending to its economic and social function, in order to make it accessible to all, is guaranteed.”<sup>212</sup>

As for the post-liberal group, Article 56(I) of the Bolivian Constitution emphasizes that the right to individual or collective private property is *conditioned* on serving a social function.<sup>213</sup> Also, Article 56(II) states that the constitutional guarantee regarding private property depends on its use not being contrary to the collective interest.<sup>214</sup> In other words, it is a limited right subject to the needs of the general welfare. Similarly, the Colombian

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<sup>203</sup> *Id.* art. 24.

<sup>204</sup> C.P.R.G. art. 39 (Guat.).

<sup>205</sup> *Id.*

<sup>206</sup> C.P. art. 103 (Hond.).

<sup>207</sup> C.P.P. art. 70 (Peru).

<sup>208</sup> *Id.*

<sup>209</sup> BELIZE CONST. § 17.

<sup>210</sup> JAM. CONST. § 13(3)(m).

<sup>211</sup> *Id.* § 15.

<sup>212</sup> C.R.P. art. 109 (Para.).

<sup>213</sup> C.P.E. art. 56(I) (Bol.).

<sup>214</sup> *Id.* art. 56(II).

Constitution states that “[p]roperty is a social function that implies obligations.”<sup>215</sup>

The Cuban Constitution merely states that “[a]ll persons have the right to the enjoyment of the assets of their ownership.”<sup>216</sup> Other parts of the constitution make sure that there is no undue accumulation of private property, which may threaten the constitutional goal of assuring a more just redistribution of wealth.<sup>217</sup>

The Nicaraguan Constitution explicitly recognizes the right of private property over means of production but emphasizes its social function.<sup>218</sup> As to agricultural lands, Article 108 states that private property will be guaranteed as long as the owner uses it productively and efficiently.<sup>219</sup>

Table 7 (Property)

Country <sup>220</sup>	General Characteristics
Bolivia	Individual and collective right; as long as it complies with social function
Colombia	General right; social function; priv. must yield to social/publ. interest
Cuba	Limited right to enjoy owned assets; limits accumulation of property
Ecuador	General right; must comply with social and environmental functions
Mexico	General right; State may impose limits related to publ. interest
Nicaragua	General right, including means of prod.; social function; special land rule
Venezuela	General right
Brazil	General right; social function
Chile	Strong general right; broad scope; limited to defined social function
Dominican Rep.	General right; limits related to its social function
El Salvador	General right; social function
Guatemala	General right; strong protective language
Honduras	General right; broad definition of social function; narrow limits

<sup>215</sup> C.P. art. 58 (Colom.).

<sup>216</sup> C.R.C. art. 58 (Cuba).

<sup>217</sup> *See id.* art. 30.

<sup>218</sup> Cn. art. 44 (Nicar.).

<sup>219</sup> *Id.* art. 108.

<sup>220</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Argentina, are not included.

Panama	General right; implies obligations stemming from its social function
Peru	General right; “inviolable”; exercised in harmony with common good
Belize	Language concerning takings and requirement of due process of law
Jamaica	General right; takings and due process language
Paraguay	General right; broad; narrow limits, stemming from social function
Uruguay	General right

#### *D. Labor Rights and Relations*

This is probably the largest subset of economic provisions in Latin American constitutions. Even more neutral constitutions address workers’ rights one way or another. This area encompasses a whole set of issues, from specific workplace protections like job security and overtime pay to collective matters, such as the right to unionize and engage in strikes. Because of this wide variety of policy provisions, it is better to address them separately.

It is also worth noting that, although almost all Latin American constitutions address these issues and universally tend to incorporate basic rights for workers, the breadth, scope, and ideological underpinnings regarding these rights and labor policies generally vary greatly depending on the type of constitution.

Evidently, the most important right in the labor context is the right to work. Virtually all the region’s constitutions recognize this basic right,<sup>221</sup> adopting a strong public policy in favor of its protection. Others characterize it as both a right and a social duty.<sup>222</sup> For example, Article 31 of the Cuban Constitution states that “[w]ork is a primary value of our society. It constitutes a right, a social duty and a motive of honor for all persons in condition to work.”<sup>223</sup> Article 33 of the Ecuadorian Constitution provides that “[w]ork is a right and a social duty, as well as an economic right, source of personal fulfillment and the basis for the economy. The State shall guarantee full respect for the dignity of working persons, a decent life, fair pay and retribution, and performance of a healthy job that is freely chosen and accepted.”<sup>224</sup> Finally, Article 37 of the Salvadorean Constitution indicates that “work is a social function, it enjoys the protection of the State, and it is not considered an article of commerce.”<sup>225</sup>

<sup>221</sup> C.P.E. art. 46(I) (Bol.); CPEUM art. 123 (Mex.); Cn. art. 57 (Nicar.); C.F. art. 6 (Braz.); C.R.E.S. arts. 2, 37 (El Sal.); C.P. art. 127 (Hond.); CONST. NAC. art. 14 (Arg.); C.R.P. art. 86 (Para.); C.R. arts. 7, 53 (Uru.).

<sup>222</sup> C.P. art. 25 (Colom.); C.R.C. arts. 31, 64 (Cuba); C.R.E. arts. 33, 325 (Ecuador); C.R.B.V. arts. 3, 87, 89 (Venez.); C.R.D. arts. 7, 62, 75 (Dom. Rep.); C.P.R.G. art. 101 (Guat.); C.P.R.P. art. 64 (Pan.); C.P.P. art. 22 (Peru); C.P.R.C.R. art. 56 (Costa Rica).

<sup>223</sup> C.R.C. art. 31 (Cuba).

<sup>224</sup> C.R.E. art. 33 (Ecuador).

<sup>225</sup> C.R.E.S. art. 37 (El Sal.).

Intricately connected to this primary right is the right to freely choose one's profession.<sup>226</sup> Also closely related to the recognition of a general right to work is the prohibition against unjust dismissals. A dozen Latin American constitutions explicitly recognize this labor protection.<sup>227</sup>

Minimum wage provisions are also ubiquitous in the region. They range from a general statement concerning the right to sufficient remuneration to specific constitutional commands regarding periodic increases and the inclusion of substantive standards to determine a wage's reasonableness.

Table 8 (Minimum, Just, or Reasonable Wage)

Country <sup>228</sup>	General Characteristics
Bolivia	Just, equitable and satisfactory wage; enough for wkrs. and their families
Colombia	General right; proportional to quantity and quality of work
Cuba	Wages as primary source of income for decent living; equitable
Ecuador	General right; enough for wkrs. and their families; yearly update
Mexico	General right; enough for wkrs. and their families
Venezuela	General right; enough for wkrs. and their families; yearly update
Brazil	General right; enough for wkrs and their families; by statute
Chile	General right
Dominican Rep.	General right; statute
El Salvador	General right; periodic update
Guatemala	General right; enough for wkrs. and their families
Honduras	General right; enough for wkrs. and their families; periodic update
Panama	General right; enough for wkrs. and their families; periodic update; statute
Peru	General right; enough for wkrs. and their families
Argentina	General right

<sup>226</sup> C.P.E. art. 47(I) (Bol.); C.P. art. 26 (Colom.); C.R.E. art. 33 (Ecuador); CPEUM art. 5 (Mex.); Cn. art. 86 (Nicar.); C.F. art. 5 (Braz.); C.P. art. 19(16) (Chile); C.P.R.G. arts. 43, 62 (Guat.); C.P. art. 127 (Hond.); C.P.R.P. arts. 40, 79 (Pan.); C.P.P. art. 2 (Peru); CONST. NAC. art. 14 (Arg.); C.P.R.C.R. art. 56 (Costa Rica); C.R.P. arts. 86, 107 (Para.); C.R. art. 36 (Uru.).

<sup>227</sup> C.P.E. art. 49(III) (Bol.); CPEUM art. 123(XXII) (Mex.); Cn. art. 86 (Nicar.); C.F. art. 7(I) (Braz.); C.R.E.S. art. 38(11) (El Sal.); C.P.R.G. art. 102 (Guat.); C.P. art. 129 (Hond.); C.P.R.P. art. 74 (Pan.); C.P.P. art. 27 (Peru); CONST. NAC. art. 14(bis) (Arg.); C.P.R.C.R. art. 63 (Costa Rica); C.R.P. art. 94 (Para.).

<sup>228</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Nicaragua, are not included.



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Costa Rica	General right; enough for a decent existence; periodic update
Paraguay	General right; enough for wkrs. and their families
Uruguay	General right

We now turn to provisions that deal with general working conditions, such as maximum daily or weekly shifts, overtime, rest, vacations, and health and safety.

Table 9 (Working Conditions)

Country <sup>229</sup>	General Characteristics
Colombia	General statement regarding healthy working conditions
Cuba	8-hour day; general statements on rest, paid vacations
Ecuador	General statement regarding healthy and safe working conditions
Mexico	8-hour day; night shift; 7th day rest; 2x overtime; max. 3 hours; healthy
Nicaragua	8-hour day; weekly rest; vacations; healthy and safe work conditions
Venezuela	8/40-hour day/week; night shift; rest; paid vacations; healthy and safe
Brazil	8/40-hour day/week; weekly rest; 1.5x overtime; paid vacations; safe
Dominican Rep.	Reasonable shifts; rest; vacations; healthy and safe work conditions
El Salvador	8/40-hour day/week; overtime; weekly rest; paid vacations; healthy
Guatemala	8/40-hour day/week; night shift; 7th day rest; 15 paid vacations days
Honduras	8/44-hour day/week; night shift; paid vacations; healthy and safe
Panama	8/48-hour day/week; night shift; overtime; weekly rest
Peru	8/48-hour day/week; rest
Argentina	Reasonable shifts; paid rest and vacations
Costa Rica	8/40-hour days/week; night; 1.5x overtime; rest; vacations; healthy/safe
Paraguay	8/40-hour days/week; overtime
Uruguay	Reasonable shifts; weekly rest; healthy and safe working conditions

<sup>229</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Chile, are not included.

Some Latin American constitutions also include provisions that address specific areas, such as equal pay for equal work,<sup>230</sup> protections for pregnant workers,<sup>231</sup> child labor,<sup>232</sup> workplace accidents or illness,<sup>233</sup> and money bonuses.<sup>234</sup>

In addition to individual protections for workers, many of the region's constitutions also include important provisions that address collective rights and the relation between workers and their employers. Depending on the economic ideology of each constitution, these provisions can be more or less favorable to each group.

Probably the most important collective right in the labor realm is the right to form and join unions. Most Latin American constitutions include this right.<sup>235</sup> Others also recognize the right of employers to establish their own organizations.<sup>236</sup>

Some constitutions emphasize the importance of unions.<sup>237</sup> Others subject them to state regulations and limitations,<sup>238</sup> including the right of workers not to join a union.<sup>239</sup> Still, others guarantee labor unions considerable operating space.<sup>240</sup>

A corollary to the right to form labor unions is the right to engage in collective bargaining. Many Latin American constitutions also include this

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<sup>230</sup> C.P.E. art. 48(V) (Bol.); C.R.C. art. 42 (Cuba); C.R.E. art. 326(4) (Ecuador); CPEUM art. 123(VII) (Mex.); Cn. art. 82(2) (Nicar.); C.R.B.V. art. 91 (Venez.); C.P.R.G. art. 102(c) (Guat.); C.P.R.P. art. 67 (Pan.); CONST. NAC. art. 14(bis) (Arg.); C.P.R.C.R. art. 57 (Costa Rica).

<sup>231</sup> C.P.E. art. 48(VI) (Bol.); Cn. art. 74 (Nicar.); C.F. art. 7(XVIII) (Braz.); C.R.E.S. art. 42 (El Sal.); C.P.R.G. art. 102(k) (Guat.); C.P. art. 128(11) (Hond.); C.R.P. art. 89 (Para.).

<sup>232</sup> C.R.C. art. 66 (Cuba); C.R.E. art. 46 (Ecuador); CPEUM art. 123(III) (Mex.); Cn. art. 84 (Nicar.); C.R.B.V. art. 89(6) (Venez.); C.F. art. 7(XXXIII) (Braz.); C.R.D. art. 56 (Dom. Rep.); C.R.E.S. art. 38(6) (El Sal.); C.P. art. 128(7) (Hond.); C.P.R.P. art. 70 (Pan.); C.P.P. art. 23 (Peru); C.R. art. 54 (Uru.).

<sup>233</sup> C.R.E. art. 326(6) (Ecuador); CPEUM art. 123(XIV) (Mex.); C.F. art. 7(XXVIII) (Braz.); C.P. arts. 128(12), 148 (Hond.).

<sup>234</sup> C.P.R.G. art. 102(j) (Guat.); C.R.P. art. 92 (Para.).

<sup>235</sup> C.P.E. art. 51(I) (Bol.); C.P. art. 39 (Colom.); C.R.E. art. 326 (Ecuador); CPEUM art. 123(XVI) (Mex.); Cn. art. 87 (Nicar.); C.R.B.V. art. 95 (Venez.); C.F. art. 8 (Braz.); C.P. art. 19(16), (19) (Chile); C.R.D. art. 62(3)–(4) (Dom. Rep.); C.R.E.S. art. 47 (El Sal.); C.P.R.G. art. 102(q) (Guat.); C.P. art. 128(14) (Hond.); C.P.R.P. art. 68 (Pan.); C.P.P. art. 28 (Peru); CONST. NAC. art. 14(bis) (Arg.); C.P.R.C.R. art. 60 (Costa Rica); C.R.P. art. 96 (Para.); C.R. art. 57 (Uru.).

<sup>236</sup> C.P.E. art. 52(I) (Bol.); COLO. CONST. art. 39; C.R.E. art. 326 (Ecuador); CPEUM art. 123(XVI) (Mex.); C.R.E.S. art. 47 (El Sal.); C.P. art. 128(14) (Hond.); C.P.R.C.R. art. 60 (Costa Rica).

<sup>237</sup> C.P.E. art. 51(I) (Bol.); C.P.R.P. art. 40 (Pan.).

<sup>238</sup> C.R.D. art. 62 (Dom. Rep.); C.R.E.S. art. 47 (El Sal.); C.P.P. art. 28(3) (Peru).

<sup>239</sup> C.F. art. 8(V) (Braz.); C.P. art. 19(16), (19) (Chile); C.R.P. art. 96 (Para.).

<sup>240</sup> C.P. art. 39 (Colom.); Cn. art. 87 (Nicar.); C.R.B.V. art. 95 (Venez.).

important collective right of workers,<sup>241</sup> though some do with notable limitations.<sup>242</sup> Others make clear that this right is meant to mostly benefit workers. For example, Article 78 of the Panamanian Constitution states that “[t]he law shall regulate the relations between capital and labor, placing them on a basis of social justice and setting a special State protection for the benefit of the workers.”<sup>243</sup>

Finally, there is the historic right to strike. Depending on the ideological lean of the particular constitution, this right can be expansive, or limited.

Table 10 (Right to Strike)

Country <sup>244</sup>	Comments
Bolivia	General right
Colombia	Unavbl. as to essential publ. services
Ecuador	Unavbl. as to certain services (healthcare, education, oil, etc.)
Mexico	Only illegal if majority of strikers are violent; 10-day notice for publ. wkrs.
Nicaragua	General right
Venezuela	General right
Brazil	Possible limits as to essential services or activities
Chile	Illegal for publ. wkrs.; unavbl. if it impairs health, economy, national sec.
Dominican Rep.	General right for priv. sector; issue of publ. services
El Salvador	Unavbl. for essential publ. services
Guatemala	General right; law can limit; also limited for publ. wkrs.
Honduras	General right; law can limit with regard to publ. services
Panama	Subject to limitations with regard to publ. services
Peru	General right; must be exercised in harmony with the social interest
Argentina	General right
Costa Rica	Unavbl. for publ. services
Paraguay	Subject to limitations to ensure indispensable publ. services
Uruguay	General right

<sup>241</sup> C.P.E. art. 49(I) (Bol.); C.P. art. 55 (Colom.); CPEUM art. 123(XXII) (Mex.); Cn. art. 88 (Nicar.); C.R.B.V. art. 96 (Venez.); C.F. art. 8(XXVI) (Braz.); C.P. art. 19(16) (Chile); C.R.E.S. art. 39 (El Sal.); C.P.R.G. art. 102(ñ) (Guat.); C.P. art. 128(15) (Hond.); C.P.R.P. art. 78 (Pan.); C.P.P. art. 28 (Peru); CONST. NAC. art. 14(bis) (Arg.); C.P.R.C.R. art. 62 (Costa Rica); C.R.P. art. 97 (Para.).

<sup>242</sup> C.P. art. 19(16) (Chile); C.P.P. art. 28(3) (Peru).

<sup>243</sup> C.P.R.P. art. 78 (Pan.).

<sup>244</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Cuba, are not included.

Finally, many constitutions have provisions that explicitly establish that the catalog of labor rights contained in the text constitutes irreducible minimums that are absolutely un-waivable.<sup>245</sup> Others also include provisions that require courts to interpret these labor rights as broadly as possible.<sup>246</sup>

*E. Worker Participation in Private Enterprises and Economic Planning*

The post-liberal group tends to lead in this area. It is noteworthy that, because post-liberal economies are mainly led by state, social, and communitarian entities, those countries' constitutions focus more on the issue of worker participation in the general economy than on the particular issue of their participation in private entities in which they are employed, as opposed to entities in which they are the leading force.

Article 54 of the Bolivian Constitution states:

[W]orkers, in defense of their source of work and to safeguard the social interest shall, in accordance with the law, reactivate and reorganize enterprises that are in the process of bankruptcy, insolvency or liquidation, or closed or abandoned unjustifiably, and they shall form communitarian or social enterprises. The State shall support the actions of the workers.<sup>247</sup>

This is in addition to a constitutional favoring of cooperative and socially oriented enterprises.<sup>248</sup> Article 57 of the Colombian Constitution states that “[t]he law may establish the incentives and means so that workers participate in the management of enterprises [in which they are employed].”<sup>249</sup> Both of these constitutions mainly address this issue by expressly authorizing the Legislature to adopt measures.

Article 20 of the Cuban Constitution is more explicit in general terms: “Workers participate in the processes of planning, regulation, management and control of the economy.”<sup>250</sup> Article 334 of the Ecuadorian Constitution strikes a similar tone, calling for the “[d]emocratization of credit.”<sup>251</sup> The same can be said of Article 101 of the Nicaraguan Constitution: “[W]orkers and other

<sup>245</sup> C.P.E. arts. 46(II), 48(III) (Bol.); C.P. art. 53 (Colom.); C.R.E. art. 326(2) (Ecuador); CPEUM art. 123(XXVII) (Mex.); Cn. art. 82 (Nicar.); C.R.B.V. art. 89(2), 93 (Venez.); C.R.E.S. arts. 38, 52 (El Sal.); C.P.R.G. arts. 102, 106 (Guat.); C.P. art. 128 (Hond.); C.P.R.P. art. 71 (Pan.); C.P.P. arts. 23, 26 (Peru); C.P.R.C.R. art. 74 (Costa Rica); C.R.P. art. 86 (Para.).

<sup>246</sup> C.P.E. art. 48(II) (Bol.); C.P. art. 53 (Colom.); C.R.E. art. 326(3) (Ecuador); C.R.B.V. art. 89 (Venez.); C.P.P. art. 26 (Peru).

<sup>247</sup> C.P.E. art. 54(III) (Bol.).

<sup>248</sup> *Id.* art. 55. See also C.R.B.V. art. 118 (Venez.) (stating a similar policy, establishing the right of workers and communities to develop participatory and social associations, like cooperatives).

<sup>249</sup> C.P. art. 57 (Colom.).

<sup>250</sup> C.R.C. art. 20 (Cuba).

<sup>251</sup> C.R.E. art. 334 (Ecuador).

productive sectors . . . have the right to participate in the drafting, execution and control of economic plans.”<sup>252</sup>

As we can imagine, neither the neutral constitutions—with the exception of Paraguay—nor Chile’s *laissez-faire* model address this issue.<sup>253</sup> But there are a few top-down reformist constitutions that do.<sup>254</sup> Precisely because these constitutions are premised on the existence of capitalism and the predominance of private enterprise, this issue is mostly addressed through the possibility of worker participation in the profits or operation of these private entities.

Article 136 of the Honduran Constitution recognizes the right of every worker “to share the profits of employers, but never assume [their] risks or losses.”<sup>255</sup> Article 65 of the Panamanian Constitution states that “[t]he workers of the enterprises that the law determines will participate in the profits of the same, in accordance with the economic conditions of the country.”<sup>256</sup> Similarly, Article 29 of the Peruvian Constitution recognizes the “right of workers to participate in the profits of the enterprise [in which they are employed].”<sup>257</sup>

### F. Monopolies

Virtually all constitutional provisions in Latin America that deal with monopolies prohibit them.<sup>258</sup> Some make the important distinction between private and public monopolies, normally allowing the latter as part of a policy of state control over certain strategic industries, an issue that was addressed earlier.

Table 11 (Monopolies)

Country <sup>259</sup>	General Approach
Bolivia	General prohibition; excludes State

<sup>252</sup> Cn. art. 101 (Nicar.).

<sup>253</sup> The only exception seems to be Argentina. Article 14(bis) of its constitution mentions the right of workers to participate in the direction of the enterprises which employ them. CONST. NAC. art. 14 (Arg.).

<sup>254</sup> Article 93 of the Paraguayan Constitution provides that “[t]he State shall establish an incentive regime for enterprises that provide further benefits to their workers.” C.R.P. art. 93 (Para.). Article 111 also gives workers participation when a state entity is privatized. *Id.* art. 111.

<sup>255</sup> C.P. art. 136 (Hond.).

<sup>256</sup> C.P.R.P. art. 65 (Pan.).

<sup>257</sup> C.P.P. art. 29 (Peru). This article also promotes the creation of “other forms of [worker] participation.” *Id.*

<sup>258</sup> C.P.E. art. 314 (Bol.); CPEUM art. 28 (Mex.); Cn. art. 68 (Nicar.); C.R.B.V. art. 113 (Venez.); C.R.D. art. 50 (Dom. Rep.); C.R.E.S. art. 110 (El Sal.); C.P.R.G. art. 130 (Guat.); C.P. art. 339 (Hond.); C.P.R.P. art. 295 (Pan.); C.P.R.C.R. art. 46 (Costa Rica).

<sup>259</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Argentina, are not included.

Mexico	General prohibition; excludes State and wkr.s.' associations
Nicaragua	Prohibition in media/communications sector
Venezuela	General prohibition; excludes State
Dominican Rep.	General prohibition; excludes State
El Salvador	General prohibition; excludes State; applies to monopolistic practices
Guatemala	General prohibition
Honduras	General prohibition
Panama	General prohibition
Costa Rica	General prohibition; excludes State

### G. Access to Water (and Food)

Access to water has been a constant constitutional debate topic in Latin America during the past few decades. Recently, this right has been successfully entrenched in several constitutional texts, whether through new constitutions or amendments to current ones. Once again, the post-liberal constitutions lead the way.

The Bolivian and Ecuadorian constitutions are the real trailblazers on this issue. This is reflective of (1) the importance of this issue to indigenous communities and (2) the fact that these are some of the most recently adopted constitutions which, in turn, were the result of successful social and popular mobilizations.

Article 16 of the Bolivian Constitutions provides: "Every person has the right to water and food."<sup>260</sup> More specifically, the constitution guarantees "universal and equitable access to basic services of potable water, sewer systems, electricity, gas services in their domicile, postal, and telecommunications services."<sup>261</sup> The State shall provide these services through "public, mixed, cooperatives or community entities."<sup>262</sup> As to the particular issue of water, the Bolivian Constitution declares it a human right that can never be subject to concession or privatization.<sup>263</sup> In fact, Article 373 proclaims water to be a "fundamental right for life."<sup>264</sup>

The Ecuadorian Constitution addresses the water issue as both a state duty and an individual right. As to the former, Article 3 identifies a primary duty of the State "[g]uaranteeing . . . the true possession of the rights set forth in the Constitution and in international instruments, especially the rights to

<sup>260</sup> C.P.E. art. 16(I) (Bol.). Furthermore, "[t]he State has the obligation to guarantee food security." *Id.* art. 16(II).

<sup>261</sup> *Id.* art. 20(I).

<sup>262</sup> *Id.* art. 20(II).

<sup>263</sup> *Id.* art. 20(III).

<sup>264</sup> *Id.* art. 373.

education, health, food, social security and water for its inhabitants.”<sup>265</sup> As to the latter, Article 12 states that “[t]he human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life.”<sup>266</sup>

As to the administration, operation, and delivery of water, the Ecuadorian Constitution gives that duty to the government: “The State shall be responsible for the provision of the public services of drinking and irrigation water, sanitation, [and] electricity . . . .”<sup>267</sup> Specifically, Article 315 states that these services shall be provided by “public companies.”<sup>268</sup> Because water is “part of the country’s strategic heritage for public use, . . . [a]ny form of water privatization is forbidden.”<sup>269</sup>

Article 76 of the Cuban Constitution also recognizes a “right to water.”<sup>270</sup> So too does Article 366 of the Colombian Constitution and Article 4 of the Mexican Constitution. Finally, Article 63 of the Nicaraguan Constitution guarantees the right “to be protected against hunger. The State shall promote programs which assure an adequate availability of foods and an equitable distribution of them.”<sup>271</sup>

Top-down reformist constitutions also address the water issue. According to Article 15 of the Dominican Constitution: “Water constitutes a strategic national asset of public use, it is unalienable, imprescriptible, unattachable and essential for life.”<sup>272</sup> Note that is basically *word for word* what the Ecuadorian Constitution states. Because the current Dominican Constitution postdates its Ecuadorian counterpart, we can conclude that the former borrowed the language from the latter.

The Peruvian Constitution was amended in 2017 to include a new Article 7-A: “The State recognizes the right of every person to access in a progressive and universal form to drinking water. The State guarantees this right by prioritizing human consumption over other uses.”<sup>273</sup> It further establishes that “[t]he State promotes the sustainable management of water, which is recognized as an essential natural resource and as such, constitutes a public asset and a patrimony of the Nation. Its domain is inalienable and imprescriptible.”<sup>274</sup>

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<sup>265</sup> C.R.E. art. 3 (Ecuador).

<sup>266</sup> *Id.* art. 12.

<sup>267</sup> *Id.* art. 314.

<sup>268</sup> *Id.* art. 315.

<sup>269</sup> *Id.* art. 318.

<sup>270</sup> C.R.C. art. 87 (Cuba).

<sup>271</sup> Cn. art. 63 (Nicar.).

<sup>272</sup> C.R.D. art. 15 (Dom. Rep.) (under Tit. I, On Natural Resources”).

<sup>273</sup> C.P.P. art. 7(A) (Peru).

<sup>274</sup> *Id.*

Finally, the Uruguayan Constitution was also recently amended to address the water issue. This makes it the only member of the neutral group to do so. The fact that it was included as a recent amendment may explain why. Article 47 proclaims that “[w]ater is a natural resource essential for life. The access to potable water and the access to sanitation, constitute fundamental human rights.”<sup>275</sup> As to its administration, these services “will be provided exclusively and directly by state juridical persons.”<sup>276</sup>

#### *H. Healthcare*

Healthcare is a constant feature of Latin American constitutions. Most constitutional texts have some type of reference to this issue, at least as a general individual right.<sup>277</sup> Other constitutions go further and actually address this matter in terms of the country’s healthcare system as such. Of this group, a majority focuses on a constitutionally established, cost-free national public healthcare system.

The Bolivian Constitution states that there should be “a single health system, which shall be universal, free, equitable, intra-cultural, intercultural, and participatory . . . . The system is based on the principles of solidarity, efficiency and co-responsibility.”<sup>278</sup> It also states that “[all] [p]ublic health goods and services are State property and may be privatized or licensed to others.”<sup>279</sup>

For its part, the Venezuelan Constitution proclaims that “[h]ealth is a fundamental social right and the responsibility of the State, which shall guarantee it as part of the right to life.”<sup>280</sup> In turn, the State “creates, exercises guidance over and administers a national public health system that crosses sector boundaries, and is decentralized and participatory in nature, integrated with the social security system and governed by the principles of gratuity, universality, completeness, fairness, social integration and solidarity.”<sup>281</sup>

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<sup>275</sup> C.R. art. 47 (Uru.).

<sup>276</sup> *Id.*

<sup>277</sup> C.P.E. arts. 18, 35 (Bol.); C.P. arts. 48, 366 (Colom.); C.R.C. arts. 46, 69, 72 (Cuba); C.R.E. arts. 3, 32, 358 (Ecuador); Cn. arts. 59, 105 (Nicar.); C.R.B.V. arts. 83–85 (Venez.); C.F. art. 6 (Braz.); C.P. art. 19(9) (Chile); C.R.D. art. 61 (Dom. Rep.); C.R.E.S. art. 65 (El Sal.); C.P.R.G. art. 93 (Guat.); C.P. art. 145 (Hond.); C.P.R.P. arts. 109–110 (Pan.); C.P.P. art. 7 (Peru); C.R.P. art. 69 (Para.).

<sup>278</sup> C.P.E. art. 18(III) (Bol.).

<sup>279</sup> *Id.* art. 38(I); Article 40 of the constitution also calls for the “democratization” of the healthcare system. *Id.* art. 40.

<sup>280</sup> C.R.B.V. art. 83 (Venez.).

<sup>281</sup> *Id.* art. 84.



Table 12 (Healthcare)

Country <sup>282</sup>	General Characteristics (Rights; System)
Bolivia	Cost-free publ. system; universal insurance; publ. system cannot be privatized
Colombia	General right and guarantee of access
Cuba	Cost-free publ. system
Ecuador	Leading state role in healthcare; cost-free publ. system; priv. allowed
Nicaragua	General right; general and binding state duty to provide
Venezuela	General right and state duty; cost-free publ. system
Brazil	General right
Chile	General right; can be provided by publ. or priv. entities
Dom. Rep.	General right and state duty
El Salvador	Healthcare as a publ. good; cost-free for low-income individuals and others
Guatemala	Healthcare as a fundamental right; general state duty
Honduras	General right
Panama	General right and state duty; duty to create a cost-free publ. system
Peru	General right; state determines national health policy for equitable access
Paraguay	Creates national healthcare system

### I. Education

Most Latin American constitutions also address the issue of education one way or another, and include, at least, some sort of general right to an education.<sup>283</sup> Some post-liberal and top-down reformist constitutions include additional elements and characteristics that warrant mention.

For example, the Bolivian Constitution calls for an educational system that is “universal, productive, free, comprehensive and inter-cultural,”<sup>284</sup> as well as “unitary, public, universal, democratic, participatory, communitarian, decolonizing and of quality.”<sup>285</sup> For its part, the Ecuadorian Constitution states that “[e]ducation is a right of persons throughout their lives and an unavoidable and mandatory duty of the State. It constitutes a priority area for

<sup>282</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Argentina and Mexico, are not included.

<sup>283</sup> C.P.E. arts. 17, 77 (Bol.); C.P. arts. 67, 366 (Colom.); C.R.C. art. 46 (Cuba); C.R.E. arts. 3, 28 (Ecuador); CPEUM art. 3 (Mex.); Cn. art. 58 (Nicar.); C.R.B.V. arts. 3, 102 (Venez.); C.F. art. 6 (Braz.); C.P. art. 19(10) (Chile); C.R.D. art. 63 (Dom. Rep.); C.R.E.S. art. 53 (El Sal.); C.P.R.G. art. 71 (Guat.); C.P. art. 123 (Hond.); C.P.R.P. arts. 91, 95 (Pan.); C.P.P. art. 13 (Peru); C.P.R.C.R. art. 77 (Costa Rica); C.R.P. art. 74 (Para.).

<sup>284</sup> C.P.E. art. 17 (Bol.).

<sup>285</sup> *Id.* art. 78(I).

public policymaking and state investment, the guarantee of equality and social inclusion and the indispensable condition for the good way of living [*buen vivir*].”<sup>286</sup> Moreover, the education system “shall be for general welfare of the public and shall not be at the service of individual or corporate interests.”<sup>287</sup>

Article 3 of the Mexican Constitution establishes a universal, inclusive, public, tuition-free, and secular educational system, with a focus on human rights and substantive equality. Finally, Article 91 of the Panamanian Constitution states that education must be “democratic and . . . founded on principles of human solidarity and social justice.”<sup>288</sup>

Table 13 (Education)

Country <sup>289</sup>	General Characteristics (Tuition; Compulsory Nature)
Bolivia	Tuition-free until universal in publ. system; compulsory until high school
Colombia	Tuition-free in publ. institutions; compulsory between 5–15 yrs.
Cuba	Universal right; tuition-free state system
Ecuador	Tuition-free at most levels in publ. system; compulsory until universal
Mexico	Tuition-free at most levels in publ. system; compulsory
Nicaragua	Establishes publ. system; cannot be privatized
Venezuela	Generally tuition-free and compulsory
Brazil	Only general mention of the right
Chile	Tuition-free system <sup>290</sup> ; freedom of choice for parents
Dominican Rep.	Tuition-free publ. system; compulsory in most primary levels
El Salvador	Publ. and priv. systems; non-profit may be subsidized
Guatemala	Duty to provide; tuition-free in publ.; compulsory at most levels
Honduras	Only general mention of the right
Panama	Tuition-free until universal in publ. system; compulsory for basic level
Peru	Tuition-free at publ. institutions; compulsory until universal
Costa Rica	Publ. and priv. system; tuition-free until universal at publ.; compulsory at basic levels
Paraguay	Tuition-free at publ. schools; compulsory at basic levels

<sup>286</sup> C.R.E. art. 26 (Ecuador).

<sup>287</sup> *Id.* art. 28.

<sup>288</sup> C.P.R.P. art. 91 (Pan.).

<sup>289</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Mexico and Peru, are not included.

<sup>290</sup> This is the result of a relatively recent constitutional amendment.

### *J. Housing*

While less ubiquitous than education and healthcare, housing is mentioned by 11 Latin American constitutions, even if only as a general individual right or duty of the State.<sup>291</sup> Unlike education and healthcare, housing is mostly addressed at a general level with very scant normative specificity.

One notable exception is the Dominican Constitution, which provides: “Every person has the right to decent housing with the essential basic services. The State must establish the conditions necessary to make this right effective and to promote plans for housing and human settlements of social interest.”<sup>292</sup> The other exception is Uruguay. Article 45 of its constitution recognizes “the right to a decent home. The law shall seek to ensure hygienic and economical housing, by facilitating the purpose thereof its acquisition and stimulating the investment of private capital to this end.”<sup>293</sup>

Table 14 (Housing)

Country <sup>294</sup>	General Characteristics
Bolivia	General right; priority for low-income persons
Colombia	General right to decent housing; duty to plan for social housing
Cuba	General right to adequate housing
Ecuador	General right to adequate and decent housing
Nicaragua	General right to decent housing
Venezuela	General right to adequate housing; priority for low-income persons
Brazil	General right to housing
Dominican Rep.	General right to decent housing; duty to plan for social housing
Honduras	General right to decent housing; duty to plan for social housing
Paraguay	General right to decent housing; duty to plan for social housing
Uruguay	General right to decent housing; duty to plan for social housing

### *K. Social Security*

<sup>291</sup> C.P.E. art. 19 (Bol.); C.P. art. 51 (Colom.); C.R.C. art. 71 (Cuba); C.R.E. arts. 30, 375 (Ecuador); Cn. art. 64 (Nicar.); C.R.B.V. art. 82 (Venez.); C.F. art. 6 (Braz.); C.R.D. art. 59 (Dom. Rep.); C.P., art. 178 (Hond.); C.R.P. art. 100 (Para.); C.R. art. 45 (Uru.).

<sup>292</sup> C.R.D. art. 59 (Dom. Rep.).

<sup>293</sup> C.R. art. 45 (Uru.).

<sup>294</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Argentina, are not included.

Finally, we turn to the issues of social security, assistance, and retirement. Most Latin American constitutions address them in some fashion.<sup>295</sup> A few offer significant details.

For example, the Bolivian Constitution provides for a social security system under the principles of “universality, comprehensiveness, equity, solidarity,”<sup>296</sup> social security system administered by the State with social control and participation.<sup>297</sup> The same goes with retirement, which is recognized as a “universal, supportive and equitable” right.<sup>298</sup> These systems cannot be privatized or conceded.<sup>299</sup> For its part, the Colombian Constitution characterizes social security “as a public service of obligatory character that which will be provided under the direction, coordination and control of the State, subject to the principles of efficiency, universality and solidarity.”<sup>300</sup>

According to the Ecuadorian Constitution, “[s]ocial security is a right of all persons and it cannot be waived, and it shall be the State that must bear the prime duty and responsibility for this right. Social security shall be governed by the principles of solidarity, obligation, universality, equity, efficiency, subsidiarity, transparency and participation, to meet individual and collective needs.”<sup>301</sup> Article 367 states that social security shall be “public and universal, [and] it cannot be privatized.”<sup>302</sup> Similarly, the Venezuelan Constitution establishes a “universal and complete social security system, with joint unitary, efficient, and participatory financing from direct and indirect contributions.”<sup>303</sup>

Table 15 (Social Security)

Country <sup>304</sup>	General Characteristics
Bolivia	General right, includes retirement; must be publ.; assistance to families

<sup>295</sup> C.P.E. art. 45 (Bol.); C.P. arts. 43–44, 48 (Colom.); C.R.C. arts. 68, 70 (Cuba); C.R.E. arts. 3, 34, 367 (Ecuador); Cn. arts. 61, 105 (Nicar.); C.R.B.V. art. 86 (Venez.); C.F. art. 6 (Braz.); C.P. art. 19(18) (Chile); C.R.D. arts. 8, 60 (Dom. Rep.); C.R.E.S. art. 50 (El Sal.); C.P.R.G. arts. 94, 100 (Guat.); C.P. art. 123 (Hond.); C.P.R.P. arts. 56, 62, 113 (Pan.); C.P.P. arts. 4, 10–11 (Peru); C.P.R.C.R. art. 73 (Costa Rica); JAMAICA CONST. § 13; C.R.P. arts. 70, 95 (Para.); C.R. arts. 44, 46, 67 (Uru.).

<sup>296</sup> C.P.E. art. 45(II) (Bol.).

<sup>297</sup> *See id.*

<sup>298</sup> *Id.* art. 45(III).

<sup>299</sup> *Id.* art. 45(VI).

<sup>300</sup> C.P. art. 48 (Colom.).

<sup>301</sup> C.R.E. art. 34 (Ecuador).

<sup>302</sup> *Id.* art. 367.

<sup>303</sup> C.R.B.V. art. 86 (Venez.).

<sup>304</sup> The countries are organized alphabetically within their respective groups: post-liberal, capitalist, and neutral. Those that do not address the issue, like Mexico, are not included.

Colombia	Un-waivable individual right; mandatory state system (priv. or publ.)
Cuba	General right; publ. system; direct publ. assistance
Ecuador	General right; creates publ. system (cannot be privatized)
Nicaragua	General right; state duty to provide
Venezuela	General right; must be publ. and non-profit
Brazil	General right
Chile	General right; can be provided by publ. or priv. entities
Dominican Rep.	General right
El Salvador	General right; mandatory publ. system (state, employer, individual)
Guatemala	General right; assistance; publ. system (state, employer, individual)
Honduras	Right of children
Panama	General right; state duty to give publ. assistance; disability
Peru	General right, includes retirement and publ. assistance (priv. or publ.; mixed)
Costa Rica	General right
Jamaica	General right for children
Paraguay	General right; social welfare program (publ. or priv.; mixed)
Uruguay	General right, including retirement; publ. assistance

## V. FINAL THOUGHTS

Latin American constitutionalism is considerably modern and full of substantive provisions when it comes to economic policy and issues. While there are evident ideological differences between individual national constitutions, most of them seem to have important things in common: (1) entrenching or favoring a particular economic system or model, and (2) establishing important socio-economic rights, mostly in the realm of labor conditions and public services, such as education, healthcare, and social security. With the possible exception of Chile, whose constitution is on the brink of being replaced, most substantive constitutions in the region, even those that tilt right-ward in terms of general economic policy, incorporate substantial protections for the popular and working classes.

There also seems to be some correlation between the creation process and the resulting content. Constitutions that were the result of elite-led processes, mostly during the reign of right-wing governments, whether military or civilian authoritarian, tend to be capitalist. Specifically, the constitutions born out of these processes tend to be top-down reformist. On the other side, constitutions that were created by popular-driven processes, mostly during periods of heightened political mobilization of the popular classes, tend to adopt post-liberal approaches.

As noted earlier, many of the top-down reformist constitutions were adopted in the 1980s, particularly in Central America during the height of the Cold War. On the other hand, constitutions in the Southern Cone tend to be mostly neutral. Finally, constitutions that were adopted during the 21st Century seem to be more varied in terms of substance, with post-liberal constitutions being the most evident. In other words, there seem to be important correlations between period, political atmosphere, geography, history, and level of popular mobilization, and the actual substantive approach to economic issues.

The bottom line is that Latin American constitutions, whether capitalist or post-liberal, demonstrate that constitutionalism and economic policy are not incompatible. On the contrary, economic policy, including enforceable socio-economic rights, can and should be a central element of constitutional drafting in modern times. After decades of bringing up the rear, Latin American constitutions are currently leading the way.