Do Constitutions constrain?
Legal, moral and cultural self-bindings to prevent shortcuts

Antanas Mockus*

Abstract
Do Constitutions constrain? Yes they do, usually in good ways but occasionally in bad ways. To show this I will discuss the relationship between the Colombian Constitution and my personal work as Mayor of Bogotá (1995-7 and 2001-3), taking into account the results of my research on the peaceful coexistence of youngsters in Bogotá. In what follows, I will first define three regulation systems and I will refer to agreements. I will reinterpret these systems and agreements as means of self-binding. Secondly, I will discuss the possible consistency and inconsistency of bindings from the perspective of the harmony and divorce between law, morale, culture and agreements. Thirdly, I will discuss the concept of shortcut culture as the cultural acceptance of actions related to temporal blindness, high discount rates, temporal inconsistency and non-solidarity. I will show how self-binding (in a legal, cultural and moral sense) has been part of a city government campaign against “shortcut culture.” Finally I will draw some conclusions on the role of constitutional bindings in government action. I will show that constitutional bindings are not only limitations but also guidelines and aids for governance.

1. Different kinds of bindings
My work in Bogotá has been based on the acknowledgement of the importance of three regulation systems (law, morale and culture) and of agreements for the construction of citizenship. During my first term as mayor (1995-7) I focused on government intervention on cultural regulations through a program called Civic Culture. Through diverse mechanisms (such as the “civic coexistence card”) the city government promoted mutual cultural regulation to encourage a change in citizen behavior for the construction of civic coexistence. On my second term, and after understanding the need to explicitly connect the changes in culture and morale with the law, the city

---

1 I would like to thank Federico Pérez, Tomás Martin, Francisco Ruiz and Pablo Kalmanovitz for their help in the writing of this paper.

2 Mayor of Bogotá and Associate Professor of the Universidad Nacional de Colombia.

2 This understanding was partly the result of my work as co-researcher of coexistence of youngsters in Bogotá.
administration has put into effect an initiative for the formation of a democratic culture oriented towards the harmonization of law, morale and culture.

**a. Law, morale, culture and agreements as bindings and self-bindings**

Legal, moral and cultural regulations are based on norms and they can be reinterpreted as bindings on people’s behavior. Agreements are also binding mechanisms in which individuals make certain commitments with one another to regulate their behavior and/or to achieve certain goals. Bindings can hold the destructive effects of temporal blindness (or ignoring the future), inability to project, high discount rates (or discounting future benefits or costs), temporal inconsistency (change of preferences) and social myopia (misestimating consequences for socio-culturally distant persons and communities). One is protected from such temporal and social distortions by such bindings.

Each binding system is accompanied by mechanisms that compel individuals to obey either on “good terms” or on “bad terms” (see table). In this way a person may obey the law because of admiration or simply because of fear of punishment. Similarly, obedience to moral principles basically depends on self-gratification or fear of guilt. Compliance with social norms results from the pursuit of social recognition or from fear of social rejection. The distinction –within informal rules– between regulation by guilt and regulation by shame is made, for example, by Deepak Lal, who studies the priority given to one or the other without examining what happens when they converge. Finally, people can honor agreements either to receive certain benefits or to avoid the liabilities of not honoring the agreement. In every case, legal, moral and cultural regulations can be obeyed because of a sense of duty referred to each; the same can be said of honoring agreements.

When Colombians are asked to determine which of these mechanisms most regulate their behavior, they usually say that moral principles are what most regulate them whereas the law is what regulates other people and that they understand norms on good terms whereas other people only understand norms in bad terms, that is to say, through fear and punishment. Usually discussions about the rule of law consider its enforcement only through the threat of legal punishment. In this regard, a Colombian philosopher in the 1970’s said: “if one does not want to have a society full of jails and prisoners, one
has to accept strong feelings of guilt.” Social norms can also promote compliance with the law, and a series of positive mechanisms can support obedience of moral principles and of social norms. The model of law, morale and culture is very useful to acknowledge the problems that arise when the regulation systems diverge, when they contradict each other.

<table>
<thead>
<tr>
<th>Formal rules</th>
<th>Informal rules</th>
<th>Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>Morale</td>
<td>Culture</td>
</tr>
<tr>
<td>“Good terms” mechanisms</td>
<td>Admiration for the law and/or sense of duty to comply with the law</td>
<td>Self-gratification by acting according to personal moral principles and/or sense of duty to do it</td>
</tr>
<tr>
<td>Bad terms” mechanisms</td>
<td>Fear of legal punishment (fine, jail, etc.)</td>
<td>Fear of guilt</td>
</tr>
<tr>
<td>Reinterpretation</td>
<td>“Self-binding” via democratic procedures</td>
<td>“Self-binding” via construction of personal identity</td>
</tr>
<tr>
<td>Possible transformation</td>
<td>Can be transformed via democratic procedures (the major restrictions to such transformation are constitutional bindings)</td>
<td>Can be freely transformed by the individual. Can be transformed through moral development (which can be promoted by means of the discussion of dilemmas)</td>
</tr>
</tbody>
</table>

Furthermore, individuals can adopt legal, moral and cultural self-bindings. In some cases this is a way to bind others. Regarding the law, majorities can bind themselves through democratic procedures and by doing so they also bind minorities. This explains the importance given to the protection of minorities in the Constitution. Moral self-binding is possible through the construction of a personal identity. This implies an autonomous and voluntary precommitment motivated by personal moral principles. Also, individual moral self-binding sets an example that can help bind others. The aesthetics of ethical action is of crucial importance to obtain this effect. Cultural self-binding can be defined as a collective precommitment through norms of reciprocity and social pressure (recognition and trust formation mechanisms). Self-binding or mutual-binding in this respect is a result of the construction of a social identity in which the
sense of belonging to a specific group results in the obligation of complying with certain social norms. Finally, collective and voluntary agreements can be understood as self-binding mechanisms in which individuals commit to a particular series of norms.

The promotion of consistent or mutually reinforcing legal, moral and cultural self-bindings is very effective in reducing temporal inconsistency and non-solidarity. However, different forms of self-binding transformation are necessary to achieve consistent self-bindings. Legal bindings can be modified through democratic procedures and their flexibility basically depends on the restrictions imposed by the Constitution. Moral bindings are susceptible to change either by the free will of the individual. In this regard, several schools of ethics consider that there is a sort of universal path for moral development; an example of this is the work of Lawrence Kohlberg. Other theories of ethics are more relativistic, or realistic. Moreover, the discussion of moral dilemmas can be helpful, for example, to stimulate moral development. But in democratic constitutions there is a wide margin for moral pluralism. Similarly, cultural bindings can either change in unpredictable directions by spontaneous cultural change or in the framework of collective processes such as those implemented in Civic Culture. Agreements can also be transformed by the parts involved with conditions and procedures sometimes previously established to do so.

c. The constitutional framework and the self-imposition of bindings
Constitutional bindings protect both the stability and flexibility of other bindings. As the four binding systems become more differentiated and dynamic, Constitutional bindings become more important. Additionally, Constitutional doctrine and jurisprudence frequently fix frontiers between each binding system’s scope.

The Colombian Constitution protects moral and cultural diversity. Accordingly, the city administration has promoted an open, inclusive and decentralized cultural policy in Bogotá and has implemented a series of participation mechanisms in this regard. On the one hand, the generation and circulation of symbols through art, culture and sports enrich the possibilities of expression and interpretation. On the other hand, the cultural policy implemented through the Civic Culture programs aims more directly at strengthening the moral and cultural regulations in the areas that promote compliance with the law. The Administration’s effort to harmonize law, morale and culture is an
attempt to abolish only the habits or beliefs that are contrary to law and to promote a cultural and moral support for the legal foundations of our society. The diversity of other social norms or moral principles, which are not illegal, is in fact upheld as one of the pillars of urban productivity and democratic debate.

According to our constitutional framework, people are free to adopt moral and cultural bindings that go beyond the established legal bindings, but in these fields they are also free to unbind themselves. In this regard the City Administration has invited citizens, through a pedagogical approach, to assume more duties or bindings (moral self-regulation) than those that have been legally established and to help other citizens in a peaceful manner to do the same (mutual social regulation) or to assume legal bindings as basic ethical and cultural norms. This is the main objective of Bogotá’s new Police Code, recently sanctioned by the City Administration and the City Council. The Code includes specific types of behavior that promote coexistence; these are constitutional and legal bindings, that is, minimum legal requirements. For example, every hospital in the city has the legal obligation of giving medical attention to an injured person. The failure to comply with these norms may lead to penalties such as fines. On the other hand, the Code includes duties, which are basically moral and cultural self-bindings that entail maximum ethical obligations. One of these general duties is to help victims and cooperate with authorities in an emergency. Not fulfilling such duties does not lead to legal punishments. In this sense, the code is an invitation to adopt higher ethical standards than those required by the law.

The Constitution also protects the signing of contracts and agreements. Accordingly, the current Administration has stimulated the creation of probity and performance pacts between district departments and contractors. This introduces a form of binding based on legal dispositions, moral principles and social norms where the institutions and individuals involved make a commitment either to comply with a set of rules or to reach certain goals. Although these rules are frequently legal norms, the parties involved explicitly and publicly underwrite such regulations. Probity Pacts promote moral and cultural self-bindings regarding the constitutional principle of transparency in public administration.
In Colombia, the Constitution establishes a *Social* State of Law to which it appoints the responsibility of ensuring solidarity. This is the basis on which the City Administration has put into effect initiatives such as the ones described above. Within the fundamental duty of generating social solidarity the city government has intended to persuade citizens to assume greater duties and bindings than the minimum legal requirements. Another example of this is a campaign for *voluntary tax payment* carried out in the current term through which the city government has invited citizens to pay an extra 10% over the main city taxes, giving them the possibility to decide on which government programs they would prefer their money to be invested. During the past two years the city government has received over 100,000 voluntary contributions. By participating in this initiative citizens explicitly commit to the city’s development and to social inclusion through the democratic mechanism of tax redistribution. Such moral and cultural bindings are based on the constitutional principle of solidarity.

2. Consistency and inconsistency of bindings

The differentiation between three regulation systems and its correspondence with agreements brings to mind the work of Douglass North regarding, on the one hand, the distinction he draws between formal rules and informal rules and, on the other, the effect of their alignment on the costs of making agreements. Bindings are in some cases complementary or even harmonic and mutually reinforcing. For example, law, conscience and social norms can converge in promoting the honoring of agreements. A social norm may coincide with a certain law. “We have to educate honest people that will still be honest even if they loose their faith” was one of the educational principles at the National Mining School in Medellín at the beginning of the 20th century.

In small closed communities there is a strong tendency to homogeneity in terms of morale and culture. In larger and more complex societies, links are looser and the three regulation systems –law, morale and culture– can be extremely differentiated and independent. In this context the diverse bindings associated to them can either be consistent or inconsistent. When moral or cultural bindings or agreements contradict legal bindings it is especially difficult to achieve compliance with the law. In these conditions, enforcement and transactions become particularly costly for society. For this reason, the law (and the Constitution) must be regarded as the framework that
establishes the basic norms or principles of society and, consequently, that sets boundaries for what is culturally and morally acceptable (for a ‘reasonable pluralism’).

Because of the relative autonomy of the regulation systems the tensions between law, morale and culture are inevitable. In this regard, an initiative such as the Civic Culture program, which intends to harmonize law, morale and culture, has a two-fold objective: on the one hand, to promote cultural and moral transformations to achieve greater consistency with the law and, on the other hand, to invite citizens to resolve any existing tensions or inconsistency between their beliefs or customs and the law through legitimate democratic mechanisms.

a. Harmony or divorce between law, morale and culture
The main difficulties of the Colombian society correspond to the divorce between law, morale and culture. This *divorce* implies the moral and/or social approval of illicit actions and/or the moral and/or cultural disapproval of legal obligations. To harmonize law, morale and culture does not mean to equate the three bindings as would occur in an integrism. It means to achieve moral and cultural disapproval of illicit actions and moral and cultural approval of legal obligations and to process the tensions between law and morale through democratic procedures of law formation. For this reason, and because of the emphasis on self-legislation (and of its logical complements, personal self-regulation and mutual citizen regulation) we prefer the expression “civic culture” rather than the also suggestive “culture of lawfulness” (used in some regions of Mexico, Sicily and the United States).

But the three kinds of normative bindings may coincide: for example murder and theft can be legally, morally and culturally forbidden. In some cases it is also possible for the law to remain silent and the decision to depend on the free will of the individual (diversity of sexual preferences, euthanasia where permitted by the law). The silence of the law corresponds to areas of moral and cultural pluralism; in some cases the law explicitly protects personal options. Something similar occurs with cultural diversity: the law tends to protect the coexistence of traditions associated with social norms partly incompatible with each other.
The divorce of law, morale and culture becomes apparent at three different levels. The divorce can take place regarding behavior. This is the case when people engage in illegal activities which a certain community or group approves and which individuals deem morally acceptable. The divorce can also take place at the level of justifications: as when people behave according to the law, but justify either others’ illegal behavior or their own in hypothetical situations. And finally, at a third level, the divorce of the systems can become visible in the inconsistency of bindings. A person can make a commitment to follow the Constitution and the law and at the same time make illegal agreements with political groups. Even if the person does not have concrete conflicts after doing this, in that moment the person has made two bindings –one legal and one cultural– that are not compatible.

There can also be lack of harmony within a regulation system. Even though the law is meant to be internally consistent, tensions among different constitutional mandates arise sometimes, and they are usually solved through legislation or by rulings of the Constitutional Court. In some cases not only mere tensions take place but also clear contradictions. For example, the Colombian Constitution is about to be reformed by referendum on fifteen issues. One of these modifications transfers the control over the investment budget from the executive branch to Congress, with previous public consultation hearings. Nevertheless the reform does not suppress or substitute the constitutional norms that currently confer the executive branch the control over the budget. Should the Court jurisprudence or Congress legislation solve this flagrant inconsistency? The referendum, which will take place the 25th of October, actually intends to unbind some constitutional bindings –such as those referred to the social expenditure and real salaries in the public sector– to reduce the fiscal deficit.

b. Harmony or divorce between agreements and norms

The intended harmony between law, morale and culture breaks when one single illicit action is morally or culturally accepted. Nevertheless, that rupture seems to be greater when such an action has been previously agreed on and planned. Illegal agreements or, more precisely, agreeing on illegal actions is frequently considered in the law as an aggravating circumstance or as a specific penal typification (“plot to commit a crime”).
“What do you do when you do not honor an agreement or when the other part does not honor it?” This question was identified as a key factor for coexistence in the research on coexistence of youngsters in Bogotá. The following are crucial elements in the construction of a civic culture: to learn to communicate with the other person when an agreement is broken, to give or ask for explanations, to offer and demand compensations and, above all, to rebuild the agreement. The inclination of some youngsters to honor agreements only within family relations or in regard to close relations in fact contradicts the principles of Civic Culture. Youngsters who were more inclined to the reparation of agreements were empirically identified as those with fewer conflicts regarding compliance with social, legal and moral norms. For this reason, the implementation of conflict resolution and conciliation mechanisms has been regarded as one of the main objectives of the Civic Culture programs of the city government.

c. Constitutional basis of Civic Culture
Moral self-regulation of citizens is closely related to the Latin American tradition of “raising awareness (concientización)” as a form of political and government action. The self-regulation derived from “being aware” presupposes that established moral principles remain stable. The proposal of mutual-regulation in which every citizen becomes co-responsible for the behavior of other citizens is more innovative. Even though social norms apparently work in small and closed communities, a social regulation among strangers is also possible (as is shown in the international campaign against tobacco). If the Constitution is the fundamental pact between strangers, the Civic Culture policies attempt to translate basic features of the constitutional agreement into every day life, without depending exclusively on the specialized action of authorities. In Palermo, Sicily, a similar process of education in the culture of lawfulness was regarded as an indispensable complement of the improvement of law enforcement.

The Constitution establishes a wide scope of individual liberties that can bring about agreements or behavior that conflict with certain moral principles. However, when a moral or cultural preference is inconsistent with a legal disposition, the Constitution orders the primacy of the law. The Civic Culture program in Bogotá has had a strong constitutional foundation. During inauguration day, the mayor begins his term in office by making an oath to obey and to make others obey the Constitution and the Law.
this context, my approach regarding the law enforcement problem has been to promote a pedagogical form of enforcement. I assumed this approach in order to fulfill my commitment of achieving greater compliance with the law. Specifically, this is an explicit and open intervention on moral and on cultural preferences when they are not consistent with legal dispositions. One of the ways to make the rule of the law effective is by changing such cultural or moral preferences.

Accordingly, the city government has put into effect strategies against beliefs and/or customs that conflict with the law. Such is the case of voluntary disarmament campaigns and legally enforced disarmament programs, which had a significant impact (of approximately 14%) on homicide reduction in Bogotá (from 4,452 homicides in 1993 to 2,000 in 2001). When the Ministry of Defense withdrew its support to the Mayor’s initiative to suspend fire gun permits, an invitation to voluntary disarmament was made with the support of the Catholic Church. This invitation might be understood as the promotion of a unilateral and unconditional moral self-binding. Successive initiatives focused on legal, moral and social (acceptance or repudiation) factors were very useful to deal with the justifications for the use of guns. The main objective was to abolish the beliefs that validate private justice and to fight against the custom of civilian possession and use of firearms.

On another matter, the city government has promoted the respect of public urban spaces. According to the Constitution, the State must protect the integrity of public spaces and ensure its common use over particular interests or private utilization. In Bogotá, the occupation of public spaces (informal commerce, fences, uncontrolled parking on sidewalks, etc.) was a widespread custom. The city government has managed to recover such spaces through construction and renovation endeavors, but also by means of pedagogical strategies aimed at raising citizen awareness, i.e., stimulating self-regulation and mutual-regulation mechanisms to achieve a moral and cultural support of the law.

Regarding urban mobility and sustainable development, the city government has put into effect a series of initiatives to discourage the prevalent use of the private car. Among the policies implemented for this purpose are the following: the construction of bicycle routes, the implementation of the Transmilenio public bus system, the car-free
day and schedule restrictions for private and public transportation. Within the objective of making a more efficient and rational use of the city’s road infrastructure, the city government set out to change the prevailing customs in this matter and stimulate in its place the use of alternative forms of transportation and a moderate utilization of the private car. Along with legal restrictions the administration has promoted the creation of moral and social self-bindings. The car-free day (democratically approved measure by which the use of private cars is restricted during 13 hours for the whole city) is crucial in strengthening citizens’ acknowledgment of the collective benefits derived from such transportation model and thus in the construction of self-regulation and mutual regulation mechanisms.

Another example of collective regulation and self-regulation was the initiative to regulate alcohol consumption. In 1995, the city government decreed the “Carrot Law”\(^3\) (Ley Zanahoria) and in 2001 the “Optimistic Hour” (Hora Optimista) with an impact on the reduction in homicides (from 3,363 in 1995 to 1,902 in 2002) and traffic accident fatalities (from 1,387 in 1995 to 697 in 2002). The case of alcohol consumption—a legally and culturally approved drug—shows the weakness of legal regulation when it lacks the support of other regulation systems. Most citizens accepted the restriction, which prohibited the sale of alcohol and its consumption in public places after 1:00 a.m. This law was put into effect for six and a half years. Recently, the Mayor’s office put into force the Optimistic Hour (alcohol restriction after 3:00 a.m.) as an appeal for self-regulation, i.e., for an opportune selection of safe conducts. As traffic accident and homicide rates show, the combination of legal, moral and cultural bindings has been effective in modifying people’s drinking habits.

A final example to illustrate the city government’s approach to the reinforcement of legal bindings through the creation of moral and cultural bindings is the prohibition of the unprofessional use of fireworks. In this matter there was an evident conflict between the widespread custom of using fireworks on holidays (especially Christmas and New Year) and the constitutional protection of life and of the physical integrity of children. Through campaigns showing the consequences of firework utilization, the city government stimulated a moral and social backing of the prohibition, achieving a

\(^3\) In Colombia, “carrot” and “carrot-like behavior” refers to moderate behavior.
significant reduction of this custom (and a 70% diminution—from 204 in 1995 to 62 in 2002 cases—of injured children).

3. Shortcut culture

The work on the divorce between law, morale and culture led me to study the behavior of youngsters, specifically how they justify violent behavior and how they justify the violation of legal dispositions. The main hypothesis of this research is the recognition of what I call shortcut culture. Colombians pride themselves in being very ingenious and creative, and in being able to get out of specific problems with great ease through their own capacities. This ability for innovation frequently leads us to assume costly consequences or to affect other people in undesirable ways. I define shortcut culture as the social acceptance and even promotion of actions that are mainly aimed at obtaining immediate results without taking into account future costs or negative effects on socio-culturally distant individuals or communities; it implies a sort of difficulty to see future consequences and to have consideration for those who are distant and different.

Most of the efforts of the Civic Culture program both in the 1995-1997 term and again in the current period can be understood as part of the struggle against “shortcut culture” (first included in the 1995-1997 City Development Plan). As it was noted above, the harmonization of legal, moral and cultural bindings and agreements intends to reduce temporal shortsightedness and non-solidarity. Shortcut culture can be defined as the social acceptance (or even promotion) of actions that are primarily aimed at obtaining immediate results, disregarding future costs or its effects on socio-culturally distant individuals or communities. According to Jon Elster’s work in social sciences one could explain shortcut culture in the following way: in the first place, as the result of high discount rates when assessing future costs or benefits; then, as an inability to project, which is a kind of shortsightedness. Moreover, certain emotions can also induce people to take shortcuts. Fear, for example, can make people disregard consequences and only focus on the problem at hand; this is sometimes the case with issues related to personal security. Shortcut culture can also be reinforced by certain social norms such as those of “machismo culture” in which revenge is an imperative in certain situations. Finally, in some cases the individual takes a shortcut based on an unrestricted rationality, in which case the individual optimization of results is not sufficiently controlled by law, morale, culture and agreements.
Shortcut culture is closely related to \textit{anomy}\textsuperscript{4}, which (following the work of Robert Merton) is basically the pursuit of [generally good] goals through unrestricted means. In the research on peaceful coexistence of youngsters, anomy appeared as a shortcut in relation to complying with the law: 57\% of the sample of ninth grade students justified breaking the law when it is the only way of reaching a goal. In general terms, the priority given to immediate results in shortcut culture broadens the scope of the methods used, including in many cases illegal activities. Anomy is empirically linked to practical and cultural justifications for breaking the law and to a difficulty to make agreements, to honor them and specially to restore them in case of not being fulfilled by the subject or by the other part. Shortcut culture can help explain anomy and, consequently, its recognition can be useful in the fight against the justifications and motivations for not complying with the law.

\textbf{a. Some shortcuts}

Shortcut culture can be observed in every-day citizen behavior. Such is the case of jaywalking. Other widespread features related to shortcut culture are “clientelism” (which is a kind of patronage), negotiation based on the capability to harm and violence.

\textit{Pedestrian carelessness (jaywalking)}

Jaywalking and disrespect for traffic regulations and crosswalks are a clear illustration of giving priority to immediate results –getting from one place to another through the shortest path– over consequences such as being involved in a traffic accident. This is probably the clearest manifestation of shortcut culture, which in a way evidences the widespread acceptance, in everyday life, of disobeying norms or ignoring consequences in order to achieve immediate results.

\textit{Clientelism (or patronage)}

“Clientelism” is the tendency to make appointments to government jobs and contracts for economic or political advantage. “Clientelism” uses public resources to make private

\textsuperscript{4} In sociology this term is used to denote the absence or weakness of social norms. In the research on coexistence it was used in a narrower sense to refer to the absence or weakness of the acknowledgement of the need to comply with the law. For Durkheim, economic crises or bonanzas change expectations and reduce the regulating power of norms. Robert Merton notes that when anomy exists society continues to successfully impose ends (values and ideals) but fails in regulating acceptable means to reach such ends.
favors in exchange for political support or decisions. In “clientelistic” culture, legal restrictions are commonly used to increase the value of complicity in the moment of violating the binding. In Colombia, the stronger the rules against “clientelism” get, the stronger the complicity among those engaged in “clientelism” becomes. This could be seen as a kind of perverse social capital. “Clientelism” is legally prohibited but widely accepted in our culture. This is a very clear case of divorce between law and culture.

Violence and private justice
The threat to use or the effective use of violence may be understood as the most radical form of shortcut. In most cases violence is used to reach an objective (economic, political or individual) by coercing and even eliminating individuals who stand in the way. The use of violence excludes non-violent and legitimate methods and concentrates on the obtainment of immediate results. In ideological matters, violence is a shortcut in relation to legitimate political methods and persuasion through communication and debate. In profiting economically violence is a shortcut in relation to legal profitable activities. Among citizens, violence can be a shortcut in relation to communication, to solving conflicts through legal and pacific methods (such as reaching, honoring or restoring agreements) and, in general, to recurring to the competence of legal authorities.

Sometimes, negotiation is based on a reciprocal capability to harm. A joke is frequently used to illustrate this phenomenon. A person goes to the dentist. The dentist immediately begins to drill into one of his teeth causing a great deal of pain. Without hesitating the patient grabs the dentist’s private parts and says: “let’s both be gentle”. This stands as a good caricature for a relationship in which there is no prior communication, no effort to create an agreement or an opportunity to express pain to regulate behavior. Instead, only the crude reciprocal capability of harming becomes relevant in reaching a precarious equilibrium.

b. Self-bindings as part of a campaign against shortcut culture
The binding and self-binding mechanisms described in previous sections have all been in some sense part of the campaign against shortcut culture, i.e., against the social and moral validation of illegal activities and, in wider sense, of temporal short-sight and
non-solidarity. Part of this effort has also involved the explicit self-binding of the city government regarding matters such as “clientelism” and the use of violence.

One of the strategies connected to the idea of shortcut culture and which attempts to create moral and cultural self-bindings against temporal inconsistency and non-solidarity is a campaign to mark with stars with a question mark inside the places where pedestrians died in traffic accidents in the last five years because of crossing the street in an improper manner. The nearly 1,500 stars in Bogotá’s streets try to raise awareness on this issue, both by appealing to citizens’ conscience and by promoting mutual regulation. In the same way, the pedagogic programs for traffic control have attempted to invite citizens to assume voluntary restrictions –moral and cultural– in their behavior. In the 1995-1997 term this program was carried out through the guidance of mimes and currently it depends on a group of civic guides (who in their turn offer this service as part of a resocialization program).

The local government has also promoted civil resistance both as a response against violence and as an effort to divulge International Humanitarian Law. The city government’s civil resistance proposal basically aims at achieving a widespread moral and cultural rejection of violence as a mean to obtain goals of any kind (economic, politic or individual). This initiative has promoted the moral self-binding of citizens through campaigns to stimulate individual pre-commitments against extortion, kidnapping, non-cooperation with state authorities, among others. Such pre-commitments could become socially enforced once they are made public. The city government has also promoted voluntary cooperation with state authorities.

Another initiative against shortcut culture has been the participative local allocation of more than one third of the flexible resources of the city. The creation of local planning councils, the involvement of the local mayor, the implementation of citizen encounters, and the creation of local management teams are all policies aimed at reducing the inclination to ignore future consequences or effects for other people in local investment decisions. Participation and planning are antidotes for shortcut culture as they force individuals and communities to assess the consequences and democratically establish collective priorities.
c. Self-binding of a local government

The local government has assumed self-bindings according to Constitutional Law, to the City Development Plan and to other pre-commitments made at the beginning of the term. In the first place, the Constitution requires candidates to inscribe a government plan which becomes obligatory upon election (and which can lead to a popular deposition if it is not complied). In the second place, the city government has attempted to adopt self-bindings for the eradication of “clientelism” in the relationship with City Council. This self-binding effort (through legal, moral and cultural mechanisms and public agreements) prevents all the members of the government team from negotiating with the Council and considers public debate as the only legitimate mechanism to reach agreements or make decisions. The unilateral refusal to utilize traditional clientelistic methods is at the same time a binding for the members of the Council: without the consent of the Administration it is impossible for them to engage in favoritism and illegal negotiations.

Finally, government self-bindings also include the promotion of democratic procedures, such as public consultations, to make decisions on relevant issues for the city (this was the case for the implementation of the car-free day). In our case the Civic Culture program has been established as the priority of the city government in both terms (“Those who elect governors and mayors impose on the elected individual the government program which he inscribed as a candidate”). In this context, it was precisely democratic procedures that enabled government action in the field of culture.

Bindings against clientelism

Constitutional bindings in this matter are established as follows: “Congress must not interfere by laws or resolutions in issues that are the competence of other authorities”. According to the Constitution, “Bogotá will have a special organic statute”. In the statute, sanctioned in 1993, City Council members were excluded from the boards of directors of city companies and the Contracting Board was abolished. Another legal binding established in the Bogotá’s Statute ruled out Council interference in issues of the competence of other authorities.

Regarding personal bindings on the issue of “clientelism” I would first refer to my experience as President of the Universidad Nacional de Colombia. “Recommendation”
letters to request the admittance of students ignoring the strict examination process (in which more than 30,000 students apply and only 3,000 are selected per semester) were answered defending the conditions of equity that the university must ensure for all applicants. A combination of academic elitism and judicious distance from the government and the national policies has helped the Universidad Nacional de Colombia to avoid “clientelism” in other decisions. Similarly, during the mayor elections in 1994 and from the beginning of 1995 I made a public commitment to establish transparent relations with the City Council even if this meant the sacrifice or delay in obtaining certain results. For this same purpose, the city’s government team carried out a detailed examination of the legal definition of responsibilities.

In my experience as mayor and candidate for mayor I have also taken part in a series of processes to establish interpersonal bindings. During the 2000 mayor elections all the candidates signed a transparency pact with the support of the anti-corruption department of the Vice-president’s Office and of the Colombian chapter of Transparency International. In addition, the Development Plan for our term in office explicitly established the rules by which we would carry out our relationship with the City Council and the government team subscribed a public transparency pact (May 6, 2001). To the express formulation of a set of rules the City Council presented a counterproposal that in its turn was accepted by the city government and modified with a series of specific disclaimers. Another form of self-binding of the city government was made with our public declaration of no negotiation under threats and improper demands, but great flexibility when facing the force of arguments. Our initiatives in this matter were partially based on an approach akin to that of Jürgen Habermas. Through a team commitment we decided to base the relationship between the Mayor’s Office and the City Council on deliberation rather than on any form of improper negotiation.

Bindings against violence

Up to this point no assassination has taken place within our government team. Our hypothesis in this regard is that for the most diverse actors in Colombian society we

---

5 As President of the university I once replied a congressman’s recommendation letter with a public communication in which I warned him that somebody had probably taken advantage of his official writing paper. In another occasion, in a Senate commission I expressed my admiration for the proofs of consistency to which I was being submitted, as someone ostentatiously put a credential number of a medicine applicant (the most competitive career) in my pocket.
have clearly bound our own hands to avoid using threats in any way or illegal acts of violence. We have managed to keep hostilities (which are sometimes intense) in the legal and/or political scenario.

In 2001, when the FARC threatened all the mayors in the country (in spite of having promoted the popular election of mayors in 1984), I decided to wear a bullet-proof vest with a heart-shaped hole in the chest as an expression of indignation and as an acknowledgement of vulnerability. After the terrorist attacks against Bogotá’s water supply infrastructure and civilian population (very serious attacks although with a partial technical success) we consciously decided to promote indignation rather than hatred and contempt, and resilience rather than desire to take revenge (“against destruction, construction” was one of our slogans). In October of 2002, when the Rome Statute was sanctioned for Colombia (the jurisdiction of the Court over war crimes was not approved, but its jurisdiction over crimes against humanity was) we removed the bulletproof vest. Even though armed groups such as FARC have explicitly denied their submission to the Constitution and to International Humanitarian Law, we have expressed in diverse manners that in spite of this the State must act strictly within this framework, gaining from this self-restriction its moral authority.

Car-free day
These initiatives created a tension between the right to free mobility and the mayor’s legal faculties. In the case of the car-free day, the restriction applies to the whole city during 13 hours of a workday and it was initially established by a mayor’s decree (February 2000). During that same year it was democratically approved through a popular consultation in October. Since then the car-free day takes place the first Thursday of February every year. In September of 2003 a second car-free day for that year was held; this second day had been solicited by the majority as a result of previous car-free days. Citizen support for the car-free day is partly a result of the fact that most of the population uses public transportation (only 20% use private cars). However, on the last occasion and because it was the second car-free day of the year, commerce federations and gas stations strongly opposed the measure. In any case, the car-free day took place and the court appeals arguing a violation of Constitutional rights were all dismissed. In this regard it is important to point out that in 2000 a popular consultation
almost approved a daily six-hour car restriction during rush hours for Bogotá as of 2015.

4. Constitutions bind, but also guide and support governance

In our case, the Constitution has restricted the implementation of certain policies that conflicted with constitutional rights. Such was the case in the attempt to make an *only women's night* through a legal partial curfew (an unconstitutional course of action). The city government solved the impediment by inviting citizens to support this initiative without using legal sanctions. In another occasion, and as part of the campaign against the use of firearms by civilians, the city government attempted to declare Bogotá a public performance to ensure the prohibition of firearms. The Commander of the Military Forces objected this initiative before the Prosecutor’s Office obliging the city government to use other means to achieve its objective (fortunately other faculties could generate the same practical effects). On another matter, according to the interpretations of the Constitutional Court, the Colombian Constitution does not allow an anti-kidnapping law to prohibit the payment of ransoms by families, companies or individuals. This interpretation would also impede the legal enforcement of anti-kidnapping pre-commitments. In this case, as Jon Elster noted, the Constitution works as a self-binding against self-bindings.

But, of course, Constitutions not only constrain. As I have shown they also guide and facilitate the definition of government priorities. It would have been impossible to give such importance to the defense of life, of the physical integrity of children and of basic rights such as nutrition, health and education without the support of the Constitution. Through the Civic Culture program the civic government has tried to transform constitutional bindings into binding messages that rise moral emotions and (to some extent) transform social norms.

The Constitution establishes a course for our society’s development with rules and instruments that are essential to achieve it. When thinking of a desirable future for our society it seems inevitable to include the harmony between law, morale and culture. According to neo-institutional economy, particularly the work of Douglass North, such harmony is necessary to reduce transaction costs and to increase economic productivity.
and competitiveness. It is also necessary to reduce violence and increase peaceful coexistence. And finally, the harmony between law, morale and culture is essential in attaining and sustaining a culturally and morally pluralistic society, a society that uses democratic procedures to achieve (and combine) economic growth and rights for all.

Civic Culture is an approach and a path to promote citizen cooperation for the harmonization of the three regulation systems, complementing them with agreements and strengthening the converging action of each system’s mechanisms. Mobilizing moral self-gratification or social recognition is also a way to stimulate self-regulation and mutual regulation. Part of this effort can also be understood as a fight against three impunities: legal impunity, moral impunity and cultural impunity.
Bibliography


