

Guevara, Y. y Rodríguez, A. (2018). French influence on the Colombian constitutional regime during the 20th century and on the debates in the National Constituent Assembly. In: Twenty-five Years of the Constitution, 1991-2016. Constitutional debates and constituent perspectives. Bogotá: Universidad Nacional de Colombia.

Establish the influence of French constitutionalism on the debates leading up to the issuance of the 1991 Constitution.

It presents the French influence on the 1886 Constitution and its main reforms, a quantitative and qualitative analysis of the French influence on the debates of the National Constituent Assembly, as well as some final considerations.

The influence of French constitutionalism was very important in the National Constituent Assembly and subsequent promulgation of the 1991 Political Constitution, although it was relativized, at least in quantitative terms, by the influence of American constitutionalism or the Anglo-Saxon common law system.

The 1886 Constitution and some of its subsequent major reforms were influenced by constitutional debates in France and the United States. An analysis of the debates in the National Constituent Assembly shows that the influence of these countries continues into the 20th century and is strongly reflected in the 1991 constitutional text.

The quantitative and qualitative analysis shows how allusions to the institutions characteristic of American constitutionalism were predominant in the debates prior to the issuance of the 1991 Political Constitution. This influence is evident in four areas: administration of justice, state structure, international relations and economic affairs. On the other hand, the Spanish influence predominated in issues related to territorial planning and rights and duties. Finally, the French influence occurred on issues such as the preamble and the structure of the State.

The above allows us to state that the 1991 Constitution is a hybrid product of the importation of theories, institutions and principles from different legal traditions. This affirmation is proven in two of the fundamental topics of the reform: the administration of justice and rights, guarantees and duties. In the first issue, there is the function of control of constitutionality, an American influence, based on an institution like the Constitutional Court. For its part, on issues such as rights, guarantees and duties, the Constitution projects the legacy of the French Revolution and the American Revolution, which is evidenced by establishing mechanisms for their protection, taking the Spanish Constitution of 1978 as a model.

The ideas imported from France during the period prior to the issuance of the 1991 Political Charter coexist with ideas and practices typical of American constitutionalism, which has generated confrontations between those who defend legality and legal security, in the French tradition, and those who emphasize the importance of the judicial creation of law, the judicial review of laws and the duty to obey the judicial precedent, in the American tradition.