
Neoconstitutionalism and legal guarantees: theoretical tensions and practical application in current legal systems

Neoconstitucionalismo y garantismo jurídico: tensiones teóricas y aplicación práctica en los sistemas jurídicos actuales

Neoconstitucionalismo e garantias legais: tensões teóricas e aplicação prática nos sistemas jurídicos atuais

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Abstract

This study aimed to analyze the theoretical tensions between neoconstitutionalism and legal guarantees, as well as their impact on practical application in contemporary legal systems. To this end, a qualitative approach was adopted, based on doctrinal review and jurisprudential analysis. This allowed for the examination of relevant theoretical contributions and their materialization in judicial decisions, especially in the Latin American context. The methodology employed included the selection of key authors, the systematization of scholarly sources, and the critical interpretation of emblematic cases. The results showed that both currents share the goal of protecting fundamental rights, although they differ in their mechanisms of application. Neoconstitutionalism prioritizes the centrality of the Constitution, the use of principles, and balancing, while legal guarantees emphasize strict legality and legal certainty. Significant tensions were also identified regarding judicial discretion, the predictability of the law, and the role of the judge in constitutional interpretation. It is concluded that, despite their differences, both approaches can be understood as complementary perspectives within the constitutional state governed by the rule of law. In this sense, the challenge lies in achieving a balance between interpretive flexibility and legal certainty, guaranteeing both the effectiveness of fundamental rights and the stability of the legal system.

Keywords: Neoconstitutionalism, Legal guarantees, Legal principles, Constitutional interpretation

Resumen

El presente estudio tuvo como objetivo analizar las tensiones teóricas entre el neoconstitucionalismo y el garantismo jurídico, así como su incidencia en la aplicación práctica en los sistemas jurídicos contemporáneos. Para ello, se adoptó un enfoque cualitativo basado en la revisión doctrinal y el análisis jurisprudencial, lo que permitió examinar aportes teóricos relevantes y su materialización en decisiones judiciales, especialmente en el contexto

latinoamericano. La metodología empleada incluyó la selección de autores clave, la sistematización de fuentes científicas y la interpretación crítica de casos emblemáticos. Los resultados evidenciaron que ambas corrientes comparten la finalidad de proteger los derechos fundamentales, aunque difieren en sus mecanismos de aplicación. El neoconstitucionalismo privilegia la centralidad de la Constitución, el uso de principios y la ponderación, mientras que el garantismo enfatiza la legalidad estricta y la seguridad jurídica. Asimismo, se identificaron tensiones significativas en torno a la discrecionalidad judicial, la previsibilidad del derecho y el rol del juez en la interpretación constitucional. Se concluye que, pese a sus diferencias, ambas corrientes pueden ser entendidas como enfoques complementarios dentro del Estado constitucional de derecho. En este sentido, el desafío radica en lograr un equilibrio entre la flexibilidad interpretativa y la seguridad jurídica, garantizando tanto la eficacia de los derechos fundamentales como la estabilidad del ordenamiento jurídico.

Palabras clave: Neoconstitucionalismo, Garantismo, Principios jurídicos, Interpretación constitucional

Resumo

Este estudo teve como objetivo analisar as tensões teóricas entre o neoconstitucionalismo e as garantias jurídicas, bem como o seu impacto na aplicação prática nos sistemas jurídicos contemporâneos. Para tal, adotou-se uma abordagem qualitativa, baseada na revisão doutrinal e na análise jurisprudencial. Tal permitiu o exame de contributos teóricos relevantes e a sua materialização em decisões judiciais, sobretudo no contexto latino-americano. A metodologia empregue incluiu a seleção de autores-chave, a sistematização de fontes académicas e a interpretação crítica de casos emblemáticos. Os resultados mostraram que ambas as correntes partilham o objetivo de proteger os direitos fundamentais, embora difiram nos seus mecanismos de aplicação. O neoconstitucionalismo prioriza a centralidade da Constituição, o uso de princípios e o equilíbrio, enquanto as garantias legais enfatizam a estrita legalidade e a segurança jurídica. Foram também identificadas tensões significativas em relação à discricionariedade judicial, à previsibilidade do direito e ao papel do juiz na interpretação constitucional. Conclui-se que, apesar das suas diferenças, ambas as abordagens podem ser entendidas como perspectivas complementares no âmbito do Estado de direito constitucional. Neste sentido, o desafio reside em alcançar um equilíbrio entre a flexibilidade interpretativa e a segurança jurídica, garantindo tanto a eficácia dos direitos fundamentais como a estabilidade do sistema jurídico.

Palavras-chave: Neoconstitucionalismo, Garantias jurídicas, Princípios jurídicos, Interpretação constitucional

Introduction

The development of contemporary constitutionalism has led to the consolidation of neo-constitutionalism as a theoretical framework that redefines the structure, function, and application of law within modern legal systems. This perspective emerged in response to the limitations of traditional legal positivism, particularly regarding the need to ensure the effective protection of fundamental rights and to strengthen the role of the Constitution as the supreme legal norm. In this regard, Espinoza-Espinoza (2023) argues that neo-constitutionalism not only transforms normative hierarchy but also directly influences legislative production and judicial practice, thereby shaping a more dynamic and value-oriented legal order.

From a conceptual standpoint, neo-constitutionalism is characterized by the centrality of legal principles, the normative force of the Constitution, and the expanded role of judges in legal interpretation. According to Carrillo de la Rosa (2010), this approach emphasizes the protection of fundamental rights through a flexible and value-based interpretative

methodology, moving away from the rigid formalism traditionally associated with classical positivism. Similarly, Cotrina Maccha (2018) highlights that judges are no longer mere applicators of statutory rules but active guarantors of constitutional rights, introducing new dynamics into judicial decision-making.

Nevertheless, this interpretative and axiological shift has not been exempt from criticism and theoretical tensions. One of the most significant debates concerns the relationship between law and morality, a subject extensively discussed within contemporary legal positivism. Himma (2011) examines the distinctions between inclusive and exclusive positivism, noting that the former allows moral criteria to influence legal validity, whereas the latter rejects such incorporation. Likewise, Jiménez Cano (2008) proposes a metatheoretical approach to positivism that facilitates understanding these divergences and their implications for legal theory, suggesting that neo-constitutionalism represents, to a considerable extent, a partial departure from traditional positivist paradigms.

Within this context, legal guarantism emerges as a doctrinal approach that, while sharing neo-constitutionalism's concern for the protection of fundamental rights, advocates a more structured framework centered on legal certainty and strict adherence to normative guarantees. Inspired by the work of Luigi Ferrajoli, guarantism emphasizes the necessity of limiting state power through clear and predictable legal rules, thereby preventing judicial arbitrariness. This distinction generates significant tensions, particularly regarding the degree of discretion that judges should exercise in constitutional interpretation.

One of the principal challenges arising from this tension is the issue of legal indeterminacy in relation to the demand for legal certainty. The extensive reliance on constitutional principles and balancing techniques may lead to divergent judicial outcomes, thereby undermining the predictability of the legal system. Puchachaqui (2022) warns that normative indeterminacy can create uncertainty in the application of law, particularly in areas such as the expiration of rights, where normative clarity is essential. Similarly, Serrano Carlozama and Rocha Pullopaxi (2025) demonstrate that the lack of precision in determining legal responsibilities may compromise legal certainty, especially within contexts such as the Ecuadorian legal system.

These tensions reflect a central dilemma of contemporary legal systems: how to reconcile the effective protection of fundamental rights with the need to ensure certainty, stability, and predictability in the law. While neo-constitutionalism advocates a flexible and value-oriented interpretative approach, guarantism underscores the importance of clear legal rules and strict limits on judicial power. This dichotomy does not necessarily imply absolute incompatibility; rather, it represents a field of interaction in which both approaches may complement one another, albeit not without generating theoretical and practical frictions.

Against this background, the present study aims to analyze the tensions between neo-constitutionalism and legal guarantism by identifying their principal points of convergence and divergence, as well as their implications for the practical application of law in contemporary legal systems. Through a doctrinal and jurisprudential review, this research seeks to examine how these theoretical approaches shape constitutional interpretation, judicial functions, and the protection of fundamental rights. In doing so, it contributes to the broader academic debate on the challenges facing contemporary legal theory, particularly regarding the balance between substantive justice and legal certainty.

Methodology

This study was conducted under a qualitative research approach aimed at understanding the theoretical tensions between neo-constitutionalism and legal guarantism, as well as their implications for contemporary legal practice. This approach enabled the phenomenon to be examined from an interpretative perspective, emphasizing the analysis of legal concepts, doctrinal positions, and jurisprudential criteria. As noted by Espinoza Freire (2020a), qualitative research constitutes an appropriate methodological tool for the study of complex legal phenomena, as it facilitates an in-depth understanding of their theoretical and practical

dimensions. Accordingly, priority was given to the critical interpretation of sources rather than the quantification of data.

Regarding the research design, a systematic theoretical review of the specialized literature was undertaken, involving the collection, organization, and analysis of relevant academic sources. This process included the examination of books, peer-reviewed journal articles, and documents indexed in recognized academic databases. According to Espinoza Freire (2020b), the search and selection of scientific information from academic databases represent an essential stage in ensuring the quality, relevance, and timeliness of research, thereby providing a solid and verifiable foundation for scholarly analysis. This procedure facilitated the construction of a robust theoretical framework for understanding the legal doctrines under examination.

Furthermore, a purposive selection of key authors was carried out based on their relevance, scholarly impact, and contribution to the development of neo-constitutionalism and legal guarantism. This criterion allowed the analysis to focus on significant doctrinal contributions while avoiding conceptual dispersion. In this regard, Pereira Poças (2020) emphasizes that the rigorous selection of sources is fundamental in legal research because it helps delimit the object of study and ensures argumentative coherence. Consequently, priority was given to representative scholars whose works have substantially influenced contemporary debates concerning the relationship between law, morality, and constitutionalism.

In addition, jurisprudential analysis was incorporated as a complementary research technique to examine the practical application of the theoretical approaches under study in relevant judicial decisions. This analysis made it possible to identify how judges interpret constitutional principles and apply legal guarantees in specific cases, thereby revealing tensions between judicial discretion and legal certainty. Batista Hernández et al. (2021) argue that assessing transparency and coherence in judicial decisions contributes to evaluating the quality of legal reasoning, a key aspect in the study of contemporary constitutional systems.

Finally, the research process was guided by methodological rigor criteria commonly associated with qualitative inquiry, including internal coherence, interpretative validity, and theoretical consistency. In this respect, insights derived from grounded theory were considered as an analytical strategy, insofar as they enabled the progressive construction of interpretative categories based on the reviewed data. Espinoza-Freire (2024, 2025) highlights that this approach promotes the generation of contextualized and meaningful knowledge, particularly in legal studies where interpretation plays a central role. Accordingly, the adopted methodology ensured a comprehensive, critical, and theoretically grounded analysis of the research object.

Development

Foundations of Neo-Constitutionalism

Neo-constitutionalism has become a prominent legal doctrine that redefines the role of the Constitution within contemporary normative systems by positioning it as the central axis of the legal order. In this regard, Medina Peña et al. (2021) argue that this doctrine entails an epistemological transformation of law, whereby the Constitution ceases to be a merely programmatic document and becomes a directly enforceable legal norm. This constitutional centrality implies that all legal norms and public actions must be interpreted in light of constitutional principles, thereby reinforcing the normative and binding force of the Constitution within the contemporary state.

From a historical and doctrinal perspective, García Amado (2013) explains that neo-constitutionalism originated in post-war constitutionalism, particularly in Europe, where efforts were directed toward ensuring the effective protection of fundamental rights against abuses of state power. This approach was subsequently adopted in Latin America, where it acquired distinctive characteristics linked to the social and political realities of the region. Within this

framework, the Constitution is conceived as an instrument of social transformation aimed at promoting substantive justice and human dignity, thereby extending its function beyond the mere organization of political power.

One of the defining features of neo-constitutionalism is the primacy of principles over rules in legal interpretation. Ávila (2009a) argues that principles operate as optimization mandates that guide legal decision-making toward the most appropriate solution in each particular case, unlike rules, which function in a more rigid and determinative manner. This distinction implies that law can no longer be understood as a closed and predictable system but rather as an open normative framework that requires continuous interpretation, thereby increasing the complexity of legal reasoning.

In this same vein, Ávila (2009b) emphasizes that the coexistence of principles and rules generates tensions in legal practice, particularly when constitutional principles conflict with one another. In such circumstances, automatic solutions are not feasible; instead, a balancing process is required to determine which principle should prevail in light of the specific circumstances of the case. This approach introduces a value-laden dimension into judicial decision-making, which has become a central subject of debate within contemporary legal theory.

Balancing, as a core technique of neo-constitutionalism, has been extensively developed in contemporary legal scholarship. Fuenmayor and Romero (2022) maintain that balancing serves to resolve conflicts among principles through a proportionality analysis that evaluates the suitability, necessity, and proportionality *stricto sensu* of the measures adopted. Likewise, Portela (2009) contends that this method strengthens the protection of fundamental rights by enabling a flexible and context-sensitive application of law, although it simultaneously expands the scope of judicial discretion.

Legal Guarantism

Legal guarantism, primarily developed by Luigi Ferrajoli, constitutes a normative theory aimed at limiting state power through strict adherence to the rule of law and the effective protection of fundamental rights. Ferrajoli (2023) argues that guarantism is a theory of constitutional democracy grounded in the existence of legal guarantees that ensure the protection of rights in both their formal and substantive dimensions. From this perspective, law must not only establish legal norms but also provide institutional mechanisms capable of ensuring their effective enforcement.

Within this framework, fundamental rights occupy a central position, as they are conceived as insurmountable limits on the exercise of public power. Portales, Enrique, and Sánchez (2004) contend that, in guarantist theory, rights are not merely declaratory statements but genuine legal norms that impose obligations upon the state and protect individuals against potential abuses of power. This conception reinforces both the normative character of fundamental rights and their enforceability within judicial proceedings.

Likewise, Ferrajoli (2016) maintains that constitutional democracy can only be fully understood if the effectiveness of fundamental rights is secured through a system of guarantees capable of constraining political power. Accordingly, guarantism is concerned not only with the formal validity of legal norms but also with their substantive legitimacy. This implies that laws must respect fundamental rights in order to be regarded as fully valid within a constitutional legal order.

Regarding the role of rights as constraints on public authority, Torres Ávila (2017) argues that guarantism establishes a model of state in which power is subordinated to the Constitution and to fundamental rights. Similarly, Anón Roig (2002) emphasizes that the constitutional state is characterized by the existence of institutional mechanisms designed to ensure the protection of such rights, thereby strengthening legal certainty and public confidence in the legal system.

Moreover, the principle of strict legality constitutes one of the fundamental pillars of legal guarantism. Rojas Cárdenas, Pino Andrade, and Cueva Moscoso (2023) note that this principle requires every exercise of public authority to be previously established by law, thereby limiting discretion and preventing arbitrariness. In the criminal law context, Ferrajoli (2010) emphasizes that strict legality is essential for safeguarding individual rights, particularly against the punitive power of the state.

Theoretical Tensions

The tensions between neo-constitutionalism and legal guarantism become particularly evident in the realm of judicial discretion. Whereas neo-constitutionalism promotes a flexible interpretative approach grounded in constitutional principles, guarantism advocates a strict application of legal norms. Flórez Aristizábal and Mojica Araque (2020) argue that judicial discretion is a constantly evolving concept that reflects the need to adapt law to changing social realities, although it simultaneously raises concerns regarding arbitrariness and judicial overreach.

In this regard, Echeverry Restrepo (2008) warns that an expansion of judicial discretion may weaken the principle of legality by allowing judges to adopt decisions based on subjective considerations. This situation gives rise to a broader debate concerning the limits of judicial authority and the necessity of establishing mechanisms capable of ensuring coherence, predictability, and consistency in judicial decision-making.

Another significant source of tension relates to legal certainty, understood as the predictability and stability of the legal order. Pino (2023) defines legal certainty as an essential component of the rule of law, enabling individuals to foresee the legal consequences of their actions. However, the extensive reliance on constitutional principles and balancing techniques may generate uncertainty by making judicial outcomes more difficult to anticipate.

Gallego Marín (2012) argues that legal certainty constitutes a fundamental value within the social and democratic state governed by the rule of law, as it fosters citizens' trust in legal institutions. Nevertheless, this value may be undermined when judicial decisions rely on variable interpretations of constitutional principles, thereby revealing the tension between interpretative flexibility and normative certainty.

The role of the judge represents another major point of divergence between these two theoretical approaches. Duquelsky Gómez (2015) contends that, within a democratic society, judges must play an active role in safeguarding fundamental rights, a position consistent with the neo-constitutionalist perspective. Conversely, Restrepo Aramburo (2010) argues that judicial activism must remain constrained by respect for statutory law and the principle of legality, in accordance with the core tenets of legal guarantism.

Practical Application

In legal practice, neo-constitutionalism has exerted a significant influence on constitutional jurisprudence, particularly through the application of the principle of proportionality. Mogrovejo-Gavilanes et al. (2020) observe that the Constitutional Court of Ecuador has employed proportionality as a key instrument for resolving conflicts between fundamental rights, illustrating the influence of balancing methodologies in judicial decision-making. This approach enhances the protection of constitutional rights while simultaneously increasing the complexity of legal reasoning.

Similarly, Rubio (2015) notes that the proportionality test has become a central instrument within constitutional adjudication, enabling courts to assess the legitimacy of restrictions imposed on fundamental rights. Widely adopted by constitutional tribunals across different jurisdictions, this method reflects the profound impact of neo-constitutionalist thought on contemporary judicial practice.

Within the Latin American context, constitutional jurisprudence has developed significant doctrinal standards concerning the protection of social rights. Landa Arroyo (2012) argues that constitutional courts have assumed an increasingly active role in guaranteeing these rights, thereby contributing to their justiciability and enforceability. Nevertheless, Oteiza (2007) warns that the absence of consistent jurisprudential standards may create challenges regarding coherence and legal certainty throughout the region.

Finally, the influence of these theoretical currents on judicial decision-making is also reflected in the incorporation of approaches such as gender-sensitive adjudication and fiscal impact analysis. Pita-Arizaga (2024) highlights that constitutional jurisprudence has progressively integrated a gender perspective as an interpretative criterion, reflecting an evolution toward a more inclusive legal framework. Likewise, Sierra Fagua (2020) argues that fiscal impact analysis introduces additional considerations into judicial reasoning, illustrating the growing complexity of contemporary law and the need to balance multiple and often competing interests within constitutional adjudication.

Discussion

The analysis conducted demonstrates that neo-constitutionalism and legal guarantism, rather than constituting entirely antagonistic theoretical frameworks, share a common concern for the protection of fundamental rights, although they differ substantially regarding the mechanisms through which such protection should be achieved. In this respect, Medina Peña et al. (2021) emphasize that neo-constitutionalism advances an expansive conception of the Constitution as the supreme legal norm, thereby strengthening the protection of rights through their direct applicability. From the guarantist perspective, however, Ferrajoli (2023) cautions that such constitutional expansion must remain subject to clear normative constraints in order to prevent interpretative excesses that may undermine legal certainty.

With regard to the centrality of legal principles, the findings indicate that neo-constitutionalism promotes their use as essential instruments for resolving normative conflicts, particularly through balancing techniques. Ávila (2009a) argues that principles facilitate the achievement of more equitable and context-sensitive solutions by adapting legal reasoning to the specific circumstances of each case. Nevertheless, this interpretative flexibility has been questioned by guarantist scholarship, which emphasizes the need for clear and predictable legal rules. In this regard, Rojas Cárdenas, Pino Andrade, and Cueva Moscoso (2023) underscore that normative indeterminacy may generate uncertainty and weaken confidence in the legal system.

Balancing, as one of the defining methodologies of neo-constitutionalism, constitutes a major source of debate within contemporary legal theory. Fuenmayor and Romero (2022) contend that balancing enables the reconciliation of competing rights through proportionality-based reasoning, thereby contributing to a more substantively just legal order. However, Echeverry Restrepo (2008) warns that balancing may lead to highly subjective judicial outcomes, given its significant dependence on judicial assessment and interpretative judgment. This concern raises important questions regarding the limits of judicial discretion and the need to establish more objective standards for constitutional adjudication.

Within this framework, judicial discretion emerges as a key analytical category for understanding the tensions between both approaches. Flórez Aristizábal and Mojica Araque (2020) argue that discretion is inherent to judicial functions within complex legal systems; nevertheless, its exercise must be subject to adequate institutional controls. From a guarantist perspective, excessive discretion may evolve into arbitrariness, thereby jeopardizing the principle of legality. In contrast, neo-constitutionalism defends a broader interpretative margin as a necessary condition for the effective protection of fundamental rights in contexts characterized by constitutional complexity and normative pluralism.

Legal certainty also occupies a central position within this debate, as it embodies the values of stability, predictability, and coherence within the legal order. Pino (2023) maintains that legal certainty is indispensable for fostering citizens' trust in the law by enabling them to foresee the legal consequences of their actions. Nevertheless, Gallego Marín (2012) notes that this value may be compromised in contexts where flexible interpretations of constitutional principles predominate, resulting in variable judicial outcomes. Consequently, the tension between legal certainty and substantive justice emerges as one of the most significant challenges facing contemporary legal systems.

The role of the judiciary likewise assumes particular relevance within this discussion, as judges become the principal actors responsible for implementing these competing theoretical paradigms. Duquelsky Gómez (2015) argues that judges in democratic societies must adopt an active role in safeguarding fundamental rights, a position consistent with neo-constitutionalist theory. Conversely, Restrepo Aramburo (2010) emphasizes that judicial protagonism should be exercised within the limits established by law and in accordance with the principle of legality, reflecting the core assumptions of legal guarantism. These competing perspectives reveal the need to strike an appropriate balance between judicial activism and respect for democratic legality.

From a practical standpoint, constitutional jurisprudence has reflected these tensions through the application of the proportionality principle and the adoption of broad interpretative methodologies. Mogrovejo-Gavilanes et al. (2020) observe that the Constitutional Court of Ecuador has frequently employed balancing techniques to resolve conflicts involving fundamental rights, illustrating the substantial influence of neo-constitutionalism on constitutional adjudication. However, Rubio (2015) argues that the application of the proportionality test requires rigorous methodological standards to prevent arbitrary outcomes, thereby reinforcing the importance of establishing clear limits on judicial reasoning.

Within the Latin American context, the diversity of constitutional approaches highlights the absence of uniformity in the application of these theoretical frameworks. Landa Arroyo (2012) contends that constitutional courts have played a decisive role in protecting social rights, although with heterogeneous results across jurisdictions. Similarly, Oteiza (2007) warns that such jurisprudential diversity may generate legal uncertainty by hindering the consolidation of stable and coherent interpretative standards. This situation underscores the need to strengthen jurisprudential consistency throughout the region.

Finally, the impact of these tensions is reflected in the incorporation of emerging approaches within constitutional jurisprudence, including gender-sensitive adjudication and fiscal impact analysis. Pita-Arizaga (2024) highlights that the integration of a gender perspective has contributed to a more inclusive interpretation of constitutional rights, in line with neo-constitutionalist principles. At the same time, Sierra Fagua (2020) notes that the consideration of fiscal impact introduces additional complexities into judicial decision-making by requiring courts to balance the protection of rights with concerns related to economic sustainability and public resource allocation. Consequently, the debate between neo-constitutionalism and legal guarantism remains highly relevant, reflecting the growing complexity of law and constitutional governance in contemporary legal systems.

Conclusion

The analysis of neo-constitutionalism and legal guarantism has demonstrated that both theoretical frameworks constitute fundamental pillars in the configuration of contemporary legal systems, albeit from distinct theoretical and methodological perspectives. Whereas neo-constitutionalism advocates an open and principle-based approach to legal interpretation aimed at achieving substantive justice, legal guarantism emphasizes the necessity of clear normative structures capable of safeguarding rights through strict adherence to the rule of law. In this regard, Ferrajoli (2023) argues that constitutional democracy can only be fully

consolidated when effective guarantees exist to constrain public power, thereby underscoring the continuing relevance of the guarantist paradigm within contemporary legal orders.

Conversely, neo-constitutionalism has significantly contributed to strengthening the centrality of the Constitution and enhancing the effectiveness of fundamental rights, particularly through the application of constitutional principles and interpretative techniques such as balancing. Medina Peña et al. (2021) emphasize that this doctrinal approach has transformed the understanding of law by assigning judges a more active role in constitutional interpretation and rights protection. Nevertheless, the expansion of judicial interpretative authority has also attracted criticism, particularly regarding the risks of subjectivity in judicial decision-making and the potential erosion of legal certainty.

One of the principal tensions identified in this study concerns the balance between judicial discretion and legal certainty. As Flórez Aristizábal and Mojica Araque (2020) observe, discretion is unavoidable within complex legal systems; however, its exercise must be adequately constrained in order to prevent arbitrariness. In a similar vein, Pino (2023) highlights that legal certainty is a fundamental component of the rule of law because it guarantees the predictability and stability of the normative system. Consequently, a structural dilemma emerges between the need for interpretative flexibility and the requirement of legal certainty, a dilemma that remains at the heart of contemporary constitutional theory.

The role of the judge also emerges as a crucial element in reconciling these competing approaches. Duquelsky Gómez (2015) contends that contemporary judges must assume an active role in the protection of fundamental rights, thereby demonstrating a commitment to constitutional values and democratic principles. However, this role must be exercised within the limits established by the legal order, as emphasized by Restrepo Aramburo (2010), in accordance with the fundamental premises of legal guarantism. The challenge, therefore, lies in achieving an appropriate balance that enables judges to function as effective guardians of rights without exceeding the boundaries imposed by legality and constitutional legitimacy.

From a practical perspective, constitutional jurisprudence in Ecuador and throughout Latin America illustrates the coexistence of these theoretical currents, particularly through the use of instruments such as the proportionality test and principle-based constitutional interpretation. Mogrovejo-Gavilanes et al. (2020) highlight that the application of proportionality has facilitated more equitable resolutions of conflicts involving fundamental rights, although it has simultaneously increased the complexity of judicial reasoning. Likewise, Landa Arroyo (2012) notes that constitutional courts have played a decisive role in the protection of social rights, albeit with varying degrees of jurisprudential coherence and consistency across jurisdictions.

Ultimately, this study concludes that neo-constitutionalism and legal guarantism should not be understood as mutually exclusive paradigms but rather as complementary approaches that jointly contribute to the consolidation of a more balanced constitutional state governed by the rule of law. The key challenge lies in harmonizing interpretative flexibility with legal certainty, thereby ensuring both the effective protection of fundamental rights and the stability of the normative order. In this context, contemporary legal systems must develop interpretative standards and institutional mechanisms capable of integrating both perspectives, strengthening the legitimacy, coherence, and effectiveness of law within democratic societies.

Study Limitations

This study presents certain limitations inherent to its methodological design, primarily due to its qualitative nature and its reliance on doctrinal and jurisprudential review. As a result, the analysis depended on the availability, scope, and quality of previously published academic sources. Furthermore, although the selection of authors and judicial decisions was conducted rigorously, it may have limited the inclusion of other relevant perspectives within contemporary debates on constitutional theory and legal philosophy. Finally, the interpretation of the tensions between neo-constitutionalism and legal guarantism was influenced by the

theoretical framework adopted in this research, which may lead to alternative readings when examined through different epistemological or methodological lenses.

Future Research

Future studies should deepen the empirical examination of the application of neo-constitutionalism and legal guarantism in specific legal contexts, particularly through case studies involving Latin American judicial systems. Additionally, comparative approaches and mixed-methods research designs would provide broader insights into the impact of these theoretical frameworks on legal certainty, the quality of judicial decision-making, institutional legitimacy, and public perceptions of justice. Such investigations could contribute to a more comprehensive understanding of how constitutional principles and legal guarantees operate in practice across diverse legal and political environments.

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Declaration of Conflict of Interest

The author declares that there are no conflicts of interest related to the conception, development, authorship, or publication of this study.

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