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### Philosophy and Right: Sartrean freedom in the Right of this century

*Filosofía y derecho: libertad sartreana en el derecho de este siglo*

**José V. Villalobos Antúnez**

ORCID <http://orcid.org/0000-0002-3406-5000>

[jvillalo4@cuc.edu.co](mailto:jvillalo4@cuc.edu.co)

Scopus ID: 53866100800

Universidad de la Costa (CUC), Barranquilla, Colombia / Universidad Católica de Temuco / Universidad Pedro de Valdivia, Chile

**Luis E. Díaz Zuluaga**

[ledz1984@gmail.com](mailto:ledz1984@gmail.com)

**Luis Díaz-Cid**

ORCID <https://orcid.org/0000-0002-9845-1701>

[chindos4o@gmail.com](mailto:chindos4o@gmail.com)

Universidad del Sinú "Elías Bechara Sainú", Montería, Colombia

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#### ABSTRACT

Sartre outlines and draws its philosophical ideas which have effects in the post-modern man (FLAJOLIET, Alain. (2009). This research aims to understand the incidence of the philosophical thought of the freedom from Sartre, in the Law of the New Age. The textual and literary criticism, philosophical hermeneutics were used; methods of philology and Linguistics as well; but above all, the eclectic method. The human freedom is the ability of consciousness to transcend its material situation. Human beings are free only if their basic needs, in practice, they are met. The Freedom implies that human beings are free in all situations.

**Keywords:** Being, Consciousness, Freedom, My essence, Nothingness.

#### RESUMEN

Sartre bosqueja y dibuja sus ideas filosóficas las cuales tienen efectos en el hombre postmoderno (FLAJOLIET, Alain. (2009). La investigación busca conocer la incidencia del pensamiento Filosófico de la Libertad de Sartre, en el Derecho de la Nueva Era. Se utilizó la crítica textual y literaria, la hermenéutica filosófica; del mismo modo los métodos de la filología y la lingüística; pero sobre todo un método ecléctico. La libertad humana consiste en la capacidad de la conciencia para trascender su situación material. Los seres humanos sólo son libres si sus necesidades básicas, en la práctica se cumplen. La libertad implica que los seres humanos son libres en todas las situaciones.

**Palabras clave** Conciencia, El ser, La nada, Libertad, Mi esencia.

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## **INTRODUCTION**

¿How has Jean Paul Sartre's Philosophical Philosophy of Freedom influenced the New Age Law, in order to be aware of the effects of Sartrean thought on the new jurisprudential and prison approaches?

To answer this question, I turned to the original writings of the philosopher Jean Paul Sartre (Sartre Jean Paul, 1956), of what his followers, detractors, critics and other thinkers (Sartre Jean Paul (2000) and authors have written about him, and from the reflection that I have been following over Sartre's thought for more than 30 years. In his writings we find the most adequate answer to the question. I proceeded by first attending the person of Sartre from his literary and philosophical production (Sartre Jean Paul, 1943), who provided us with the content of his philosophy, expressed above all in "Being and Nothing" (Sartre Jean Paul, 1966). From this fundamental point of view, I was able to present his concept of Freedom and its repercussion anthropological-social in the legal field of the late twentieth century and early twenty-first century and its effects on the legal, normative and jurisprudential conception, specific to Sartrean freedom, as it was conceived gone and expressed by this great French thinker.

### **General objective**

To know the impact that Jean Paul Sartre's Philosophical Philosophy of Liberty has had on New Age Law (late twentieth and early twenty-first century), to propose a new approach to freedom in the Legal Norms, Jurisprudence, legal doctrine, prison systems and in law in general.

### **Specific objectives**

Analyze the thought of Jean Paul Sartre from his literary and philosophical production, which gives us the content of his philosophy, reflected above all in "The Being and The Nothing" Recognize from the concept of freedom of Jean Paul Sartre, the anthropological-social impact in the legal field of the late twentieth century and early twenty-first century. Identify the effects that Jean Paul Sartre's approach to freedom has had on the legal, normative and jurisprudential conception of the late twentieth century and early twentieth century

### **Proposed methodology**

It was necessary to adopt all the methods and instruments of interpretation that are used for any thinker who produces philosophical works of the characteristics of Jean Paul Sartre. The methods developed by literary genres, textual and literary criticism, philosophical hermeneutics, philological and linguistic methods were used, but above all for the present investigation an eclectic method was used, since unilaterality has been, according to the testimony of experience, bad counselor. The use of philosophy uses, in fact, the method of analysis and that of synthesis, that of induction and that of deduction, uses the abstraction and observation of human phenomena insofar as it deduces laws of general principles, predominating deduction; insofar as it observes the human fact and formulates the principles that regulate human behavior, this means that induction and analysis predominate, as does observation. In the present investigation the principles of the dogmatic method are rejected, although relieved in some modern methods; but I maintain that in the field of philosophy, the real and objective arguments are worth more than the value of dogmatic affirmations, even if they come from famous scholars.

The great human efforts in favor of justice and in the cult of the law were written in the heat of the Socratic Method, wise dialogue that has clarified concepts, that has enlightened humanity in the dark night of ignorance and tyranny. Even now in the classes, if they are wise, the Socratic Method remains. The neo-scholastic schools, since the Renaissance have maintained this method, both in the field of philosophy, as in the law, with laudable results, well that has been a not insignificant, effort both in teachers and students. The best books on these subjects have been published.

## **SARTREAN INFLUENCE**

The present exposition of the Philosophy of Jean Paul Sartre and its influence on the Law of the New Era, that is to say, of the end of the 20th century and the beginning of the 21st, has been conceived in order to show that its philosophy has not been a mere literary conceptual transposition but, as He himself points out in *LES MOTS* (Sartre, Jean Paul, 1964): "my first way of relating to the world was books" (Sartre Jean Paul, 1964). This attitude involves looking for the link that links his task as a writer with the real world; for this it was necessary to create the relationship between man and the world, to discover the human dimension of the World and the worldliness of existence (Sartre Jean Paul, 1960): his Philosophy responds to this just aspiration (Astier-Verson, Sophie, 2010).

His writings cannot be understood apart from his philosophical demand (Detmer, David 2010). We admit that, in his thought, he drafts, corrects and draws his philosophical ideas, which have their effect on the man of postmodernity (Flajoliet, Alain, 2009). The Knowledge of his philosophy is an effective aid to better understand the effect that his philosophical thought has had on the normative task of man (Wormser, Gérard, 2005) in society at the end of the last century and the beginning of the present. His ideas are systematized in "The Being and The Nothing" (Sartre Jean Paul, 2000; Villalobos and Ramírez (2018); Annía, Villalobos, Ramírez and Ramos, 2019; Villalobos, Ramírez and Díaz-Cid, 2019), dense work, difficult to penetrate and much more to explain linearly without betraying its complex structure. Except for the few texts (SARTRE Jean Paul, 1943) of his psychological works (SARTRE Jean Paul, 1960), his article on the theory of intentionality in Husserl and a fragment of the Transcendence of the Ego (Sartre Jean Paul, 1948).

I tried to establish that the period from 1936 to 1946, his thought (Sartre Jean Paul, 1962) is characterized by an existentialism very close to Husserl (Baugh, Bruce 2010; Ramírez Molina, Espindola, Ruíz And Hugueth, 2019; Ramírez, Lay And Sukier, 2020) and Heidegger, and the period that culminates in 1960, with the appearance of the Critique of the Dialectical Reason (Sartre Jean Paul, 1963), is where there is a continuous and sometimes almost imperceptible transition of Sartre's thought in relation to the concept of freedom. All this evolution is, on the other hand, conditioned and explained by the political events that arise in the wake of the Second World War. On the other hand, the most characteristic aspects of existentialism are admirably summarized in Sartre's Being and Nothing, published in 1943 (Sartre Jean Paul, 1943):

For the sole fact, in fact, of being aware of the motives that demand my action, those motives are already transcendent objects for my consciousness, they are outside; in vain I would try to grab them, I escape them for my own existence. I am condemned to exist forever beyond my essence, beyond the motives and motives of my act: I am condemned to be free. This means that my freedom could not have other limits than itself, or, if you like, that we are not free to stop being free.

From this paragraph the following reflections are extracted:

(1) The freedom of man is absolute and unlimited (Sartre Jean Paul, 1947), since its borders are determined in any case by itself.

(2) The ontological position of Sartre (Sartre Jean Paul, 1960), presents psychologizing and ahistorical characteristics since, being this freedom constituting the human essence, it is susceptible of being applied to any man at any historical moment and under any political regime: this is a freedom of conscience and material constraints have not been included yet.

(3) The words: "transcendent" "I escape" and "beyond my essence", constitute defining notes of the concept of the Project (Sartre Jean Paul, 2000).

For now it is enough to say that it is about the human capacity by means of which man escapes, through his conscience, from a present condition to a future one. That is, through the Project, man perpetuates his freedom (Contat, Michel, 2005; Ríos Pérez, Ramírez, Villalobos, Ruiz and Ramos, 2019; Villalobos, Francisco and Romero, 2019). This concept is so essential to Sartrean thought that it will appear in his later works as a means to reintroduce human freedom (Detmer, David, 2010).

In his Theater works written before Being and Nothing reflect all these conceptions. In *Las Moscas* (Sartre Jean Paul, 1942) and in *A Puertas Cerradas* (Sartre Jean Paul 1968), for example, the characters are placed

in ahistorical places, or at least in non-compromising historical periods. The flies are a play of Theater that remembers the best Greek tragedies of Sophocles and Euripides. Located in the Greek city of Argos, in a historical moment not completely defined since the situations presented seem timeless, a drama of murders, betrayals and incest is presented where human freedom, embodied in Orestes, hero and central character of the work, triumphs over the absolute necessity embodied in the God Jupiter. Orestes discovers his essential freedom by accepting all responsibility for the act of having murdered his mother and proclaims it to the four winds (Sartre Jean Paul, 1942):

I'm free Electra; freedom has fallen on me like lightning (...) I have performed my act and this act was good. I will carry it on my shoulders as the baleador takes the travelers, I will take him to the other shore and I will render an account of him. And the heavier it is to carry, the more I will rejoice, for he is my freedom.

The freedom-necessity opposition is posed as an act of conscience; at the moment when man recognizes freedom he subjugates the determinism of nature. In his Dialogue with Jupiter, Orestes affirms (Sartre Jean Paul, 1942):

Yesterday all your nature was narrowing around me [. . .] But suddenly the freedom fell on me and pierced me, nature jumped back [. . .] and I felt completely alone in your benign world, like someone who has lost his shadow [. . .] But I will not return under your law; I am condemned to have no other law than mine. I will not return to your nature; in it there are a thousand paths that lead to you, but I can only follow my path. Because I am a man, Jupiter, and every man must invent his way. Nature has horror to man.

As can be seen Sartre affirms an absolute freedom, essential to man, and without natural limitations. Naturalist determinism is set aside in the face of this freedom. In Being and nothingness, Sartre will try to show that the only adventure that can occur to the being, to the in-itself -which is the one that is and whose fullness has no fissures-, in order to affirm oneself, is to be discovered by an awareness that exists only in so far as it leaves itself, completely, towards this world that it is not and with which, however, it is not confused. This fundamental ontological relationship that we live in knowledge and action is expressed by intentionality, as understood by Sartre, that is, being at the same time the position of the world outside of me and internal denial that forbids me, forever and ever, to confuse me with the (Villalobos and Ganga, 2016; Villalobos and Ganga, 2018).

At the same time, consciousness reveals itself as empty of all its interiority. In it there is no inner life.

Consciousness is always beyond, outside of itself: (consciousness) is purified, it is clear like a great wind, there is nothing in it, except a movement to flee from itself, a gliding outside of itself ... consciousness does not it is nothing more than its own exteriority, and it is this absolute flight, this refusal to be substance, which constitutes it as a consciousness.

Sartre, from the beginning and perhaps under the influence of Heidegger, is oriented towards an existential, even ethical, perspective. The "phenomenological reduction" does not have the same significance in him as in Husserl, does not discover a cogito that gives the world to see and illuminates it, but discovers beyond, the world in which we ourselves are a freedom to which we never we can give up, to which we cannot escape despite all our subterfuges. This is the radical freedom of the for-itself, "which is never what it is, and which is always what it is not", which constitutes the center and core of Sartre's worldview. We have already interviewed him in this note about intentionality when Sartre says that "everything is outside, everything, even ourselves". This affirmation constitutes, in fact, the subject of one of his philosophical studies on the Transcendence of the Ego, an important subject that is at the heart of his system and with which he clearly opposes Husserl under the pretext of prolonging it. The self, no matter how formal it is supposed to be, however reduced in its extension or in its outline, is still a kind of object that, like all objects, is transcendent to consciousness. Transcendence means here outside.

The freedom of consciousness is beyond the self. This I am constituted and, nevertheless, it cannot be apprehended completely as an object: "by essence it is elusive", while such is like one of those characters of

Pirandello, who agree more or less with its author; but there is no author, there is not that essence that would be the true, authentic or profound self. The self that I live in my way of being in the world, this mystery in full light, is not the center of my conscience, the conscience is radical freedom, it does not fully coincide with it, it has chosen it freely, it can still be separated from it, it cannot be imprisoned in an inalienable essence.

If he stops for himself is absolute freedom, he cannot help but be anguished when he reflects, like that woman who feared going to question abruptly the passers-by under his window-contrary to his habits-when her husband was absent. The constituted self is a kind of mirror, a beginning of immersion of the for-itself, converted into an object, what we try to achieve in order to escape as pure and gratuitous freedom, as spontaneity that does not know, in essence, the distinction between the voluntary and the involuntary.

Human freedom, therefore, consists in the capacity of consciousness to transcend its material situation. Human beings are only free if their basic needs, as organisms in practice are met. Sartre considers freedom as synonymous with human consciousness. Consciousness (the "being-for-itself") is characterized by its non-coincidence with itself. The conscience escapes so much because it is intentional (the consciousness always points to an object other than itself) and temporary (the consciousness is necessarily oriented the future). Human freedom consists of the capacity of consciousness, in the sense that no normal human being can stop being free.

Sartre argues that the prisoners are free, because they have the power of conscience. A prisoner, although forced, can choose how to react to his imprisonment. The prisoner is free because he controls his reaction to prison terms: he can resist or accept. Since there are no objective barriers to the will, the bars of the prison contain me only if I form the will to escape. In a similar example, Sartre points out that a mountain is only a barrier if the person wants to enter the other side, but cannot. The human being can never lose his ontological freedom, the loss of freedom in question must be of a different kind: oppression must endanger material freedom. El prisionero es ontológicamente libre, porque se controla si se intenta escapar. Desde esta perspectiva, la libertad es sinónimo de elección. Pero no hay una distinción cualitativa entre los tipos de opciones. Si la libertad es la existencia de la elección, entonces incluso una mala elección es promover la libertad.

The choice is not synonymous with freedom, because a poor person who accepts a degrading, low-wage job for the sake of satisfying their basic needs has a choice-they may starve or accept a degrading job, but their choice is inhuman. He does not pretend that social structures such as poverty are spread as the literal agency of individual human beings, but that the class structure is a "destiny" and we can speak convincingly of the social forces that exert causality and make us "slaves". Material freedom is independent of any notion of human nature. He always rejects the existence of a pre-social human essence or a set of natural human desires. Freedom supposes a fine series of universal human goods, including positive human goods (food, water, housing and education) and negative goods (absence of all the following: slavery, poverty, discrimination, domination and the chasing).

For Sartre, there is no timeless choice, freedom is not exercised only once, then crumbles in the course of a life. Consciousness is always freedom; the choice can always be reconsidered or rejected, and precisely this is what the anguish or the threat of the moment signifies, suspended over this pursued persecution of our project that is our action in the world. As paradoxical as it may seem, freedom can be limited only by itself, and the notions of situation and freedom cannot be distinguished so that one part can be attributed to objective factuality and the other to subjective choice; the overcoming of this distinction is what constitutes the fundamental theme of Sartre's conception, a subject that undoubtedly makes possible an ethical rethinking, in the reflexive plane, of this primary and original freedom. Perhaps this ethical rethinking, is free assumption of the human condition, without support or resources, is, after all, the axis of Sartre's philosophy.

Sartre maintains that the control of the social forces to which one is subject is a valuable type of human freedom. This freedom that possesses us is our destiny; we are not free, in fact, not to choose. We are not free to choose or not freedom, if freedom is itself election. The choice, as such, is fatal. Consciousness comes

to admit, the existence of law and legal norms. Regardless of whether legal consciousness exists or ceases to exist, the being in itself as a being must always be identical with itself. The social and legal phenomenon itself is an abstract without legal awareness but not its being. The legal phenomenon is shown through the legal conscience, but being in itself is independent of it.

Sartre maintains that the legal conscience immediately understands its situation within the contingency without needing an explanation. In effect, there is a legal pre-ontological understanding of being. The being has a prior idea of the good, the bad; that is to say, that Being, independently of the social or juridical phenomenon, has a previous idea of the good, the bad. That is, it causes the in-itself to be revealed in one's own consciousness of a prior or pre-ontological juridical form even without knowledge of Law and justice. Although in itself is ontologically prior to *paraíso*, however, it is not the cause of its emergence. Through the *para-yes* the in-itself becomes the world, it is being aware of something in front of a concrete and full presence that is not the conscience; is to surround it with the halo of nothing and make it appear, singular, against the background of the world. Being in itself apprehends and dynamizes the pre and legal ontological awareness of what is a good act and what is a bad act. The total existence that occurs in the for-itself when it is contemplated in its performance itself and asks if what has been done by it responds or not to the transfenomenalization of its acts that are inserted or rejected by the legal system or transgresses it.

This search for oneself and the failure to which it is called, express the universal project of human reality that always points, through every concrete project, to a unity between the for-itself and itself in-itself; it is an impossible unity, since he for-himself is always fleeing from himself in the original temporality, and he in-itself is always to be full, dense, identical with himself. Certainly, consciousness is desire to be in-itself-for-itself: "consciousness is Hegelian, but this is its greatest illusion". This realized unity would be God, and the universal project of human reality is, then, the vain project of being God, of finding oneself without ceasing to be free. Reflection is already an attempt to recover this for-itself that always escapes itself; the conscience makes appear then a species of ghostly being, my shadow, and I am like the man who persecutes his own shadow, the conscience tries to give an absolute existence to this shadow, but this attempt is not more than sketched in the reflection; the conscience only takes on all its significance in my relations with the other, because the other is the only one that gives it a consistency. The other is my alter ego, which serves as an image and for which I am a fixed image. The existence of the other makes almost the ideal of reflection. "In reflection, he for-himself almost sees conferring an exterior to his own eyes, but this exterior is purely virtual. We will later see the being-for-another perform the sketch of this exterior."

The being realizes that his existential action in relation to his legal conscience as essence in-itself and existence for-itself are not alone as possible dichotomies; rather, it is disturbed by the intrusion of a third party that looks at us, the being for another. For the other, in effect, I am like an essence, but at the same time I am denied as freedom; I aspire, then, to integrate in me this vision of the other, to realize it by merging it with my freedom. But this is something unrealizable, an insurmountable limit and out of reach. It would be a matter of assuming, once and for all, the permanent alienation of my being, of becoming a sick person, if I look sick; brave or cowardly, if you look like that. Equally the revolutionary worker assumes, by his project, a being-to-be-worker. By recognizing my objectivity I experience that the other also has a legal conscience. The neighbor has a secret; the secret of what I am as soon as I do it and for that reason it owns me. My freedom becomes the freedom of the neighbor. The other looks at me and as such gathers the secret of my being, knows what I am. Thus the deep meaning of my being is outside of me, imprisoned in an absence; the other chains me. The legal norm protects me and helps me recover that freedom that is the foundation of my being-in-itself. If my act has produced the transgression of the rules of Law, I will be absorbed by the other.

Sartre insists that if I plan to realize unity with that other, that means that I project assimilate the alterity of another as such as my own possibility. Which means that it is a denial of my own individuality as acting in a legal world. I am no longer myself, I have freely given my freedom to the freedom of another. I have stopped being "*sui iuris*" to become "*alieni iuris*". I have been absorbed, totalized by the other and my legal conscience, my in-itself for-itself has been modified into a being for-another. Each one claims the freedom of the other and

therefore their rights, when the law is interposed as a third party different from the individual legal consciences and with an "erga omnes" authority that demands unalterably compliance under penalty of sanction. A precarious situation of being in-itself caused by the para-other arises. There is a "capitis diminutio" of your right. Therefore, the situation in-itself for-itself in its dichotomy in relation to the being-other is overcome by an abstract legal conscience alien to the self and the other and that imposes submission.

¿What happens so that, being always free, we are not always anguished? This question can be given a double answer, which allows us to understand the relationship established between the for-itself and itself. In the first place, anguish is no more than the reflective understanding of freedom. We do not present ourselves first before projecting ourselves into the world. There is no inner human reality, with its intentions, which would precede its action and its mundane operation. We find ourselves only in the "doing", in the exteriority of the world. "To be is to act and to stop acting is to stop being". Second, I can defend myself against this anguish by hiding it from myself. Freedom then consists in proposing ends as given transcendences and not already maintained by freedom.

The thesis of Sartre, which proposes absolute freedom beyond all motives and all motives, could not place it at the level of the voluntary. This distinction between the voluntary and the involuntary is secondary in relation to the fundamental choice. This is possibly the most suggestive part of his analysis, which shows in passion and in the will two different ways of behaving with respect to freely proposed and maintained ends. Freedom is not the will that opposes passion. "Human reality could not receive its ends either from outside or from a pretended inner nature." When emerging in the world, human reality chooses us ipso facto and its behavior, passionate or voluntary, revealing a magical or technical world, is secondary in relation to this fundamental choice, to this free spontaneity that cannot be compatible with a passivity, something given with what would be found and what would be linked, from outside, in an inexplicable way.

My place, my surroundings, my body, my situation in the world, in a word, are all explained by my project, they are understandable only in the light of this project that makes my being -in-the-world. Freedom is the only source, the only foundation. The personal para-yes, in effect, is a being "whose being is in question in his being in the form of a project of being". I am what is missing from being, what nihilizes the in-itself to found it and also tries to reconquer the being in the form of an in-itself-for-itself of a cause-sui. The being that is the object of the desire of the for-itself is, then, an in-itself that would be its own foundation: God. The human reality is desire to be God. If it is true that I am not, since my being is suspended in freedom, it is at least true, for Sartre, that I am fundamentally desire to be, project of being.

On the other hand, the work of Sartre has contributions to fields as diverse as Law, Philosophy of Law, Ontology, Literature, Theater, Anthropology, Sociology, Political Philosophy, the Philosophy of History and Psychology. I point out the impact of this study from the following question and answer: ¿How from the conception of a concept like Freedom and its understanding in the legal academic field has repercussion in the Being of the people in a context and in a specific time?

With this proposed research, I point out the impact and repercussion of Jean Paul Sartre's concept of freedom, from the texts of the same thinker and from what other thinkers and followers of his approaches, and even critics, have done about the work of Liberty of man from a Sartrean perspective (SARTRE Jean Paul, 1960) and how this type of approach substantially affects the exercise of law and / or jurisprudence; in the Jurisconsults or lawyers, in the administrators of justice and even in the same prisoner or convicted, and even within the same penitentiaries or prisons of the world, from the last quarter of the 20th century and the beginning of the present century. The repercussion would be observed in the new approaches to punishment, in the treatment of the condemned, in the way in which legal processes would be carried out and even in the postmodern legal doctrine itself.

## RESULTS

A new Legal Theoretical Proposal was made from the conception of freedom in Jean Paul Sartre. A juridical and epistemological reflection of the concept of Freedom for Jurisprudence and prison policies is proposed.

A pedagogical reflection of the concept of freedom proposed by Jean Paul Sartre should be promoted in the schools of legal education to rethink a new vision of the prisoner or the incarcerated or the detainee in the postmodern world.

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## **BIODATA**

**José Vicente VILLALOBOS ANTÚNEZ:** Postdoctor in State, Public Policy and Social Peace (Universidad Privada Dr. Rafael Beloso Chacín - URBE, 2015), Postdoctor in Human Sciences (Universidad del Zulia - LUZ, 2015), Postdoctor in Management of Higher Education (URBE, 2011), Postdoctor in Management in Organizations (URBE, 2007). Doctor of Law (LUZ, 2000). Specialist in Financial Management (LUZ, 1998). Lawyer (LUZ, 1987). Bachelor of Philosophy (LUZ, 2000). Professor and Half Time International Researcher, Department of Law and Political Science at Universidad de la Costa, Barranquilla-Atlántico, Colombia. Professor and Researcher at Universidad del Zulia (LUZ), Venezuela. Coordinator of the Diplomate in Bioethics and the Laboratory of Philosophy of Science, Experimental Faculty of Sciences, Universidad del Zulia (LUZ). Guest Professor at the following Universities: Pedro de Valdivia; Católica de Temuco, Los Lagos (Chile); Benemérita Universidad Autónoma de Puebla, México; Católica de Bogotá and Colegio Mayor de Cundinamarca (Colombia). Member of the Research Group: Law, Politics and Society at Universidad de la Costa-COLCIENCIAS. International Speaker and Editor-in-Chief of *Opción Magazine*. Institutional mail: [jvillalo4@cuc.edu.co](mailto:jvillalo4@cuc.edu.co) ORCID ID: <http://orcid.org/0000-0002-3406-5000> Personal Mail: [jvillalobos@gmail.com](mailto:jvillalobos@gmail.com)

**Luis DÍAZ-CID:** licenciatura en filosofía y ciencias religiosas. Universidad Santo Tomás de Aquino de Bogotá. 1989, licenciatura en teología. pontificia universidad javeriana 1993. maestría en teología con énfasis en bioética. universidad pontificia bolivariana de medellín. 1999, maestría en estudios bíblicos. universidad de antioquia. medellín 1999, maestría en teología. equivalente a licenciatura canónica en teología. universidad pontificia bolivariana de medellín. 1999; doctorado en filosofía. universidad pontificia bolivariana de medellín.

1994 – 2000, doctorado en teología. universidad pontificia bolivariana de medellín. 2006 – 2008, doctorado en theology and biblical counseling. santa mónica california usa. 2008 - 2010. doctorado en filosofía del derecho. saint alcuin of york anglican college. concepción chile. 2010 - 2013. postdoctorado en gerencia de la educación superior. urbe maracaibo venezuela. 2013- 2014. en estado, políticas públicas y paz social. urbe maracaibo venezuela. 2014 – 2015. docente investigador de la facultad de educación de la universidad javeriana. 1989 – 1997 (subsede Montería), Docente Investigador del Instituto Universitario “Juan de Castellanos. Tunja 1990 – 1997 (Subsede Montería), Director creador del Departamento de Humanidades de la Corporación Universitaria del Sinú 1999 – 2001, Docente Investigador de la Facultad de Medicina de la Universidad del Sinú “Elías Bechara Zainúm” 2002 – 2005, Creador y Director de los Grupos de Investigación “Ciencias Sociales Aplicadas y Derecho”; “Ciencias Sociales y Humanidades” de la Universidad del Sinú “Elías Bechara Zainúm” 2001 – 2006, Docente Investigador Invitado por la Universidad Privada “Dr. Rafael Belloso Chacín” de Maracaibo Venezuela 2008 – 2016, Docente Investigador Invitado por la Universidad “Saint Alcuin of York Anglican College” de Concepción Chile 2010 – 2013, Director de Investigación de la Maestría en “Derecho Penal y Criminología” de la Universidad del Sinú “Elías Bechara Zainúm” 2012 – 2016, Director del Grupo de Investigación “Ciencias Sociales Aplicadas y Derecho” de la Facultad de Derecho de la Universidad del Sinú “Elías Bechara Zainúm”. 2013 a la fecha. Reconocido y Categorizado por Colciencias en A desde 2017. Perteneciente al Comité de Asesores Internacionales de la Revista Opción de la Universidad del Zulia. Desde 2018 INVESTIGADOR EMERITO DE COLCIENCIAS.